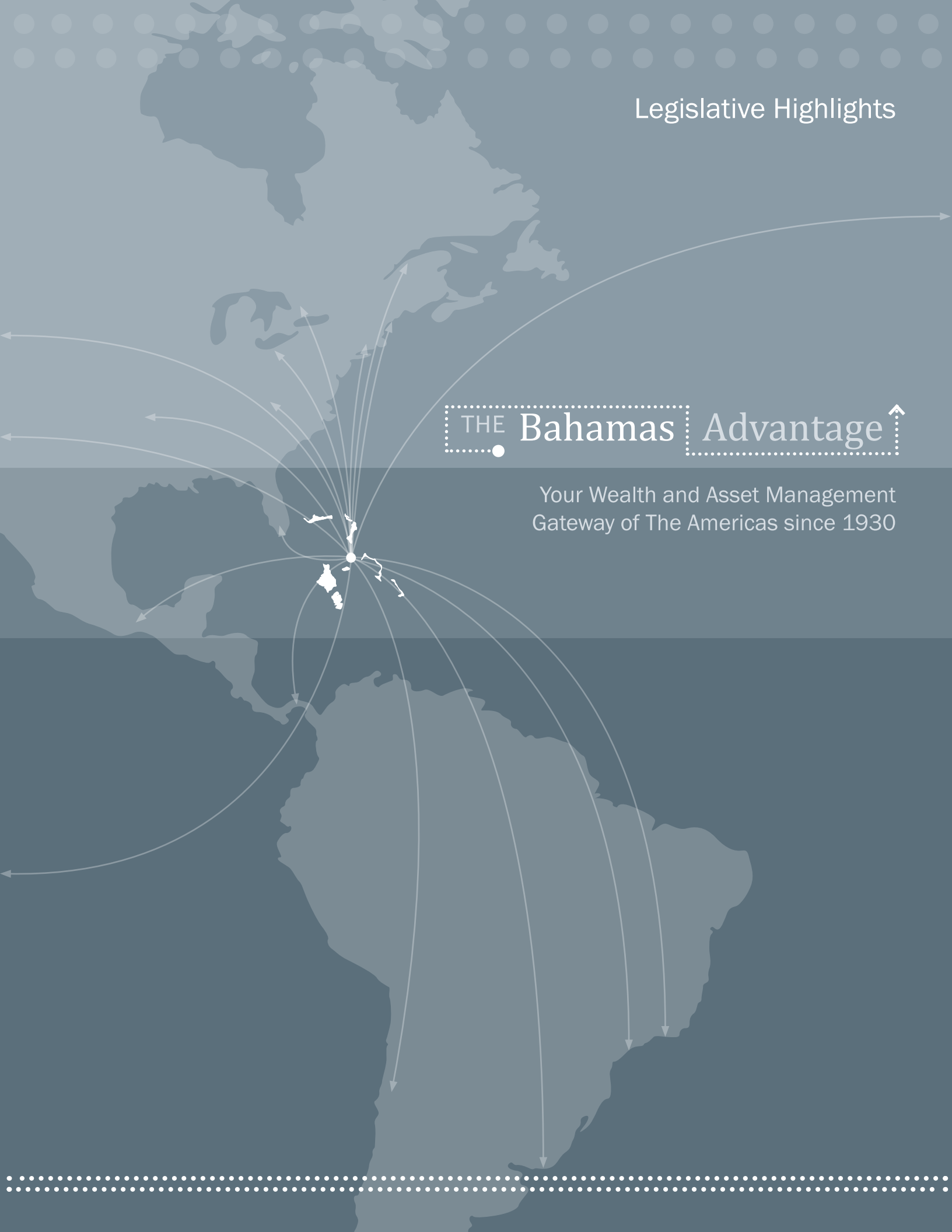


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Legislative Highlights

Bahamas Legislative Highlights

The Bahamas Financial Services Board is pleased to provide fact sheets on legislation relating to the financial services sector and conducting international business from The Bahamas.

The project was undertaken by BFSB in collaboration with a number of member law firms, including:

Gibson, Rigby & Co.
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We anticipate that additional fact sheets will be produced in conjunction with our member legal firms. We encourage you to visit www.bfsb-bahamas.com for new and updated fact sheets.

Disclaimer

The contents of these legal summaries are intended to be only an aid to understanding The Bahamas' legislative environment. The contents do not in any way constitute legal advice to any person for payment or otherwise and the Bahamas Financial Services Board, its members and directors do not and will not in any way accept responsibility or liability for any loss or damage caused by or arising from reliance on the information contained herein. Persons reading these legislative highlights are reminded that where a decision is to be made which depends for its correctness on the effect of the legislation or common law rules, professional advice should be sought from a firm of qualified legal professionals.

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CORPORATE STRUCTURES

Key Highlights of the Exempted Limited Partnership

Under the Exempted Limited Partnership Act, 1995 (“the Act”), an exempted limited partnership (“LP”) may be formed for any lawful purpose to be carried out and undertaken either in or from within The Bahamas or elsewhere provided that it “shall not undertake business with the public in The Bahamas other than so far as may be necessary for the carrying on of the business of that exempted Limited Partnership exterior to The Bahamas”.

The LP shall consist of one or more General Partners and one or more Limited Partners, each of which may be a body corporate.

General Partners

In general, the General Partners run the business and have unlimited liability. In this regard:

- (i) A General Partner shall enter into all letters, contracts, deeds, instruments and documents on behalf of the LP
- (ii) In the event that the assets of the LP are inadequate, the General Partner shall be liable for all debts and obligations of the LP.
- (iii) Any property of an LP conveyed to a General Partner of in the name of the LP shall be deemed to be held by the General Partner upon trust as an asset of the LP pursuant to the terms of the partnership agreement
- (iv) Any debt/obligation incurred by a General Partner in the conduct of business of an LP shall be a debt/obligation of the LP
- (vi) A General Partner may also take an interest in an LP as a Limited Partner.
- (vii) A General Partner is not required to have a trust license under the Banks & Trust Companies Regulation Act

At least one General Partner shall:

- (i) if an individual, be resident in The Bahamas; or
- (ii) if a company, be incorporated under the International Business Companies Act, or incorporated or registered under the Companies Act.

Limited Partners

In general, the Limited Partners do not run the business, and have limited liability. In this regard:

- (i) A Limited Partner shall not take part in the conduct of the business of an LP. A Limited Partner does not take part in the conduct of the business of the LP by doing one or more of the following:
 - (a) being a contractor/agent/employee of the LP/ a General Partner or acting as a director/officer/shareholder of a corporate general partner;
 - (b) consulting with/advising a General Partner with respect to the business of an LP;
 - (c) investigating/reviewing/approving or being advised as to the accounts/business affairs of the LP or exercising any right conferred by the Act;
 - (d) acting as surety/guarantor for the LP;
 - (e) approving/disapproving an amendment to the partnership agreement;
 - (f) voting as a limited partner in respect of:
 - the dissolution/winding up of the LP;
 - the purchase, sale, exchange, lease, mortgage, pledge or other acquisition or transfer of any asset by or of the LP;
 - incurring/renewal of indebtedness of the LP;
 - change in the nature of the business of the LP;
 - the admission, removal, withdrawal of a General Partner or a Limited Partner and the continuation of business of the LP thereafter;
 - transactions where one or more of the General Partners have a conflict of interest (actual/potential) with 1 or more of the Limited Partners;

(ii) A Limited Partner shall have the benefit of limited liability from the date of the Certificate of Registration issued by the Registrar.

(iii) A Limited Partner shall not be liable for the debts or obligations of the LP save as provided for in (i) the partnership agreement and (ii) sections 7(2) and 14(2) of the Act.

Section 7(2) of the Act provides that if the Limited Partner takes part in the conduct of the business of the LP with a non-partner, in the event of the insolvency of the LP he shall be liable to a non-partner for all debts and obligations of the LP incurred during that period (as if he were a general partner) if such person (i) had actual knowledge of such participation and (ii) reasonably believed such Limited Partner to be a General Partner.

Section 14(2) of the Act provides that where the Limited Partner receives a payment representing a return of any part of his contribution and at the time of and immediately following such payment the LP is not solvent, then in the event of the insolvency of the LP within six months of the payment, the payment is repayable by the Limited Partner to the extent that such contribution or part thereof is necessary to discharge a debt or obligation of the LP incurred during the period that the contribution represented an asset of the LP.

A LP has the following exemptions for fifty years from the date of its Certificate of Registration:

(i) Shall not be subject to any business license fee, income tax, capital gains tax or any other tax on income or distributions accruing to or derived from the LP.

(ii) Shall be exempt from the provision of the Exchange Control Regulations.

(iii) No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by a partner/his executors/administrators with respect to any interest in an LP.

(iv) Shall be exempt from the payment of stamp duty.

Registration Formalities & Fees

An LP:

(i) shall have a name, which includes the words "Limited Partnership", or the letters "L.P."

(ii) shall have a registered office in The Bahamas for service of process and to which all notices and communications may be addressed.

(iii) shall on or before 31st January in every year, pay an annual fee (\$475.00) and file with the Registrar a Return signed by or on behalf of a General Partner certifying that the LP has during the prior calendar year complied with the Act.

The registration of an LP is effected by the payment of the registration fee (\$850.00) and by filing a Statement with the Registrar. The partnership agreement does not have to be filed.

CORPORATE STRUCTURES

Key Highlights of the International Business Company

The International Business Company (“IBC”) Act provides a modern simple and cost effective corporate vehicle designed to suit in most flexible terms the needs of international business persons. The IBC, although incorporated and domiciled in The Bahamas, is designed to facilitate the undertaking of legitimate business anywhere in the world whether in its role as a holding company, trading company, a private investment vehicle, insurance company for non-domestic business, or other uses, including its ability to form part of a more sophisticated structure involving a combination of trust, foundation or other specialized corporate elements.

Of particular importance, The IBC operates in a responsible environment for both due diligence and corporate governance requirements. As a part of the global effort to combat money laundering and all other illegal activities, a Bahamian IBC must have

a Registered Agent which is a licensed entity under the Banks and Trust Companies Regulations Act or the Financial and Corporate Service Providers Act. Such Agents are under regulatory control of The Bahamas which requires that full compliance is maintained with established Know Your Customer standards. This information, although mandatory, is kept in confidential files of the Registered Agent. Further, every IBC is required to maintain a registered office in The Bahamas. The Directors may decide where the corporate records of the company are to be maintained and what they should consist of but copies of the Articles and Memorandum of Association, the Register of Directors and Officers and the Share Register must be kept at the Registered Office. A copy of the Register of Directors and Officers must be filed with the Registrar General’s office. There is no public filing of the Register of shareholders. Other key highlights of the IBC are provided below:

Company Law	International Business Companies Act, 2000 with amendments.		
Corporate Legislation Source	English Law		
Types of Company	• A company limited by shares and/or guarantee • An unlimited company • A limited duration company • A segregated accounts company (protected cell in some other jurisdictions).		
Classes of Shares	In addition to being designated as issued “without par value”, shares may have rights attached as voting, non-voting, preferred, redeemable, redeemable preference shares or shares entitled to participation only in certain assets of the company, and may include options, warrants or instruments of a certain nature.		
Currency for Authorized Share Capital	Any	Minimum Number of Directors	1
Minimum Share Capital	None Required	Corporate Directors Permitted	Yes
Standard Share Capital	US\$5,000	Corporate Secretary	Yes
Shares of No Par Value	Yes	Audit Required by Law	No
Minimum Number of Shareholders	1	Statutory Filing of Accounts	No
Bearer Shares	No	Filing of Annual Return	No
Stamp Duty	None	Certificates of Good Standing Available	Yes
Usual Incorporation Time	2-3 Days	Ready Made Companies Available	Yes
Liquidation Procedure	Easy	Dissolution Procedure Available	Yes
Due Diligence	Yes		
Meetings	Annual General meetings (“AGMs”) are not required. AGMs may be held anywhere inside or outside of The Bahamas and can take place by telephone. Directors meetings are discretionary. Directors entitled to vote on resolutions at a duly constituted meeting need not formally attend but may pass such resolutions by unanimous written consent signed by all of the directors (provided that there is no restriction thereon in the Articles). Directors may attend meetings by telephone or video conference.		
Company Name	May end in Ltd., Corp., GmbH, Inc. or S.A. either in abbreviated form or in full.		
Reservation of Company Names	Yes (may be reserved free of charge for 90 days).		
Government Fees	Registration fee for registration of original Memorandum and Articles of Association with the Registrar of Companies – US\$330.		
Government Fees - Annual	IBC with authorized share capital of US\$0 to US\$50,000 - US\$350; IBC with authorized share capital of US\$50,001 & above - US\$1,000		
Details held on public record	• Name of company • Date of incorporation • Memorandum and Articles of Association • Registered office and agent address • Directors and Officers • Authorized share capital and number of shares • Registered number • Register of Charges (optional at election of company).		
Taxation	An IBC and its shareholders are not subject to any income tax, corporate tax, business license fees or stamp duty on transactions concerning an IBC, except that stamp duty is payable in relation to real property situate in The Bahamas which it owns, or is owned by any company in which it holds shares or for which it hold a lease. Statutory exemption valid for 20 years from date of incorporation.		
Redomiciliation	By way of continuation in and outside the jurisdiction in accordance with the laws of The Bahamas and the laws of the jurisdiction from or to which the IBC is being continued.		
Liquidation/Dissolution Procedures	Voluntary and Court supervised procedures available.		
Exchange Control	No - unless an IBC does business with a person resident in The Bahamas or where a person who is deemed to be a resident of The Bahamas for exchange control purposes desires to purchase shares, debts or securities in the IBC.		

CORPORATE STRUCTURES

Key Highlights of the Segregated Accounts Company

Snapshot

A SAC is a company which is registered under the Segregated Accounts Companies Act 2004. The SAC may create separate accounts with assets and liabilities which are segregated from the assets and liabilities attributable to every other account and also from the company's general assets and liabilities.

- A segregated account is not a legal person distinct from the SAC.
- A SAC must inform any person with whom it deals that it is a SAC.
- A SAC must identify the segregated account which is connected to a particular transaction.
- All assets linked by a SAC to a segregated account shall be held by the company as a separate fund which will not be part of the general account of the company but held exclusively for the benefit of the account owners of the particular segregated account. Those assets will be available to meet the rights of the account holders and satisfy the liabilities connected to the particular segregated account.
- The SAC will record what assets are in its general account and such assets shall be the only assets of a SAC available to meet the general liabilities of the SAC. Assets in the general account will not be available to satisfy liability which is linked to a segregated account.
- The rights and obligations of account owners in a segregated account are contained in a governing instrument. The governing instrument may provide for conditions which must be complied with in order for a person to become a segregated account holder. The governing instrument may also provide for management of the segregated account, appointments of one or more managers, and the orderly winding up of the affairs and termination of the segregated account.
- The governing instrument must be governed by the laws of The Bahamas and the parties to it must submit to the jurisdiction of the courts of The Bahamas.
- The rights and obligations of counterparties dealing with the SAC are evidenced in the form of contracts.

Structures

A company registered as a SAC must be governed by the Companies Act or the International Business Companies Act and that company (i) must be engaged in the business of either (a) investment funds (b) issuing securities or (c) insurance, or (ii) is a subsidiary of a Bank or Trust Company (and not licensed by the Central Bank), or (iii) is engaged in a business where the Minister responsible for Companies has prescribed a primary regulator. No company licensed under the Banks and Trust Companies Regulation Act may register as a SAC.

Registration

A SAC must file a request with the Registrar to be registered as a SAC containing the prescribed information and accompanied by the consent of the primary regulator of the relevant business. Where the company has conducted business prior to the application for registration a statutory declaration containing prescribed information must also be filed with the primary regulator along with evidence of the consent of 75% of the intended account holders and 75% of the would be creditors of the SAC. The Registrar will issue a certificate of registration on completion of registration.

Requirements

- A SAC Representative who monitors and reports on the activity of the SAC may be required where the primary regulator is especially prescribed by the Minister responsible for companies.
- A SAC must maintain a private register of account owners.
- A SAC must file an annual declaration stating that the company is in compliance with the Segregated Accounts Companies Act.
- A SAC must maintain records in accordance with generally accepted accounting principles. Records must be made available at least once a year to each account owner, unless waived by the account owner.
- A SAC must pay prescribed fees based on the number of accounts.

ESTATE PLANNING

Key Highlights of Foundations

Summary

A foundation is a distinct legal entity registered under the Foundations Act of 2004¹. Once registered, a foundation is deemed to be resident and domiciled in The Bahamas. Foundations may be established for private, commercial or charitable purposes provided same are lawful and include the management of its assets. Foundations are created by the will of the founder or by the founder executing a charter which may, but need not, be filed in the Registry of Foundations.

Foundations may be used for most purposes for which trusts and companies are presently used: estate planning, tax planning, preserving family wealth, segregating assets, perpetuating corporate governance philosophy, subordinating debts, separating voting and economic benefits, investing in private companies with a poor economic performance, owning private trust companies and establishing charities. Foundations may also be used where anti-forced heirship and creditor protection are important.

Features

- The Founder of the Foundation may be a natural or legal person and a Nominee Founder may be used
- A Foundation must appoint either or both a Secretary or Foundation Agent to conduct the necessary due diligence, provide the registered office, undertake duties relating to anti-money laundering and counterterrorism regulations and ensure that the foundation complies with statutory requirements. The Secretary or Foundation Agent must either be a licensed trust company under the Banks and Trust Companies Regulation Act or a duly licensed financial and corporate service provider under the Financial and Corporate Services Providers Act. If a Foundation has a Foundation Agent and a Secretary, but the latter does not perform any of the statutory duties, such Secretary need not be a licensed financial and corporate service provider or trust company
- Where there are no officers appointed, the Foundation Charter shall provide for the appointment of a Foundation Council, which may consist of:
 - (i) two or more natural persons
 - (ii) a legal person and one or more natural person, or
 - (iii) a legal person by itself
- The Foundation Council's members need not be located in The Bahamas and its functions include:
 - (i) ensuring that the Foundation and the Officers comply with the Charter and Articles and
 - (ii) supervising the Officers and their management of the Foundation.
- The Council is entitled to:
 - (i) access to the books and records of the Foundation,
 - (ii) be informed of all meetings of the Officers,
 - (iii) attend and be heard but not vote at such meetings,
 - (iv) be included in the circulation of Foundation documents, and
 - (v) be informed of any delegation of powers to an Officer
- Fiduciary and other responsibilities are usually vested in a Foundation Council or similar governing body and the Foundation may also have a protector or committee of protectors
- Charter may reserve powers to the founder, including the power to amend or revoke same
- Charter may appoint other officers in addition to the secretary, whose duties will be mainly administrative
- Charter may include in terrorem provisions
- The procedures for appointing beneficiaries may be included in the Charter rather than the names of the beneficiaries
- A beneficiary with a vested interest in the assets of the Foundation has the right to be notified of interests, request the Charter, Articles, any audit report, and any minutes of any meeting of the officers or the Council or other supervisory body. A beneficiary has the right to confidentiality and the officers of the Foundation Council shall take all reasonable steps to secure such confidentiality
- Due diligence in respect of Founder and beneficiaries required, but confidentiality with regard to Foundation information must be maintained
- Foundations are exempt from Bahamian taxes and business license fees, stamp duties (excepting Bahamian real estate taxes) and exchange controls
- Foundations may redomicile to or from The Bahamas
- Articles are optional. If no Articles, the Act applies

- A Foundation need only keep such financial statement accounts and records as the officers consider necessary or desirable to reflect the financial position of the foundation
- Foundations may be established for a fixed or indefinite period. Foundations may be formally liquidated or revoked
- Instruments of disposition may include restrictions against alienation

Registration Formalities

- Registration statement contains name of Foundation, date of Charter, purposes and objects, date of articles (if any), details of Founder (could be nominee), Secretary and Foundation Council or other governing body or supervisory person, address of registered office, period for which established and value of initial assets
- Only additional filing required is statement containing particulars of any amendments to initial registration statement
- Foundations must have initial assets of \$10,000.00 which must be maintained. (Note: Assets of a Foundation need not be transferred until after registration although there will be a commitment in the charter by the founder to transfer the assets)
- Foundations must have a registered office and Secretary or Foundation Agent in The Bahamas

Fees

- \$500.00 if registered in 1st Qtr of calendar year
- \$375.00 if registered in 2nd Qtr of the calendar year
- \$250.00 if registered in the 3rd Qtr of the calendar year
- \$125.00 if registered in the 4th Qtr of the calendar year
- Subsequent annual fee is \$500.00

¹ Amended in 2005 and 2007

ESTATE PLANNING

Key Highlights of the Private Trust Companies Legislation

Introduction

The Private Trust Company (PTC) is a company incorporated under the Laws of The Bahamas to provide trusteeship to a defined class of trusts. The Central Bank of The Bahamas acts as Regulator of the PTC. Recent legislative changes have enhanced the operation of the companies exempting the PTC from certain licensing requirements as other trust companies. PTCs are governed by the Banks and Trust Companies Regulation (Amendment) Act, 2010 and Banks and Trust Companies (Private Trust Companies) Regulations, 2007.

Highlights And Requirements Of PTC

Incorporation:

- A PTC can be incorporated under either the Companies Act, 1992 or the International Business Companies Act, 2000
- The Memorandum and Articles of Association must provide for the PTC to act as trustee only for a trust or trusts created by a Designated Person named in the prescribed Designating Instrument pursuant to the Regulations

Designated Person:

- Is an individual named in the Designating Instrument
- if more than one Designated Person is named, then each Designated Person must be a blood relative of or related by some other family relationship to the other Designated Person(s)
- can be deceased and his trust established by testamentary disposition

Designating Instrument:

- names the Designated Person(s) and is kept at the office of the Registered Representative

A Form of Acknowledgement is required whereby the Settlor formally acknowledges that PTCs do not require:

- directors to possess expertise in trust administration
- capital exceeding \$5,000
- a fidelity bond
- an annual audit

The Registered Representative must:

- be a separate legal entity
- be either a licensee of the Central Bank of The Bahamas or a Financial and Corporate Service Provider approved by the Central Bank
- be resident in The Bahamas
- provide the services of a secretary, director, or Bahamas Agent

- ensure that the PTC is established for lawful purpose and that it operates as a PTC
- have a minimum share capital of \$50,000
- retain copies of certain documents in relation to the PTC
- require verification and maintenance in The Bahamas of records relating to the identities of the following:
 - settlor and any person providing funds or assets subject to trust(s) administered by the PTC
 - Designated Person(s)
 - protector of trust(s) of which the PTC is trustee
 - any person with a vested interest under trust(s) of which the PTC is trustee
- report suspicious transactions to the Financial Intelligence Unit

Special Director is:

- a person (who need not necessarily be resident in The Bahamas) of good reputation who must possess at least five years of experience in a discipline relevant to trust administration (law, finance, commerce, investment management, or accountancy)

Distinguishing Features of PTC

PTCs are distinguished from public, restricted and nominee trust companies as they are unique vehicles operating under the regulatory regime prescribed in the 2007 Banks and Trust Companies (Private Trust Companies) Regulations.

They are restricted from carrying out any other business other than that of a trusteeship to a trust or group of trusts created by the Designated Person(s). The PTC must not amend its Memorandum and Articles of Association of the Company, is not allowed to solicit trust business and must comply with yearly compliance regulations and fees.

If the PTC fails to comply with directions from The Central Bank or engages in illegal conduct, the PTC or its Registered Representative will be liable to a fine up to \$5,000.00 and can face an order from the Supreme Court compelling compliance or further sanctions. PTCs can transfer or dispose of their shares provided that the Registered Representative maintains a current share register of all its shareholders.

Summary

PTCs are flexible and investor friendly vehicles which can be utilized in wealth management solutions for high net worth individuals.

ESTATE PLANNING

Key Highlights of Probate & Administration of Estates

Summary

In a world of globalization and economic uncertainty, one of the most important questions a potential investor will consider is what would happen to his Bahamian investment in the event of his demise. For example, *“Are my investments protected?” “Who will be entitled to apply to the Bahamian Court for a Grant of Representation in order to administer my estate and undertake the requisite transfers, devolution or repatriation of my Bahamian assets upon my demise?”*

At the time of investing in The Bahamas, an investor would have secured his investments by completing the requisite due diligence for Exchange Control purposes and all other necessary requisitions, licences, etc. relative to his investments. In cases where an investment includes real estate, a Certificate of Registration or Permit should have been obtained from the Bahamas Investment Authority in respect of his acquisition of such property.

The general rule with respect to the distribution of estate assets is that immovable properties are governed by the laws of The Commonwealth of The Bahamas and personal properties are distributed according to the law of the place of domicile of a person at the date of his death.

Statutory Provisions

The Commonwealth of The Bahamas is a common law jurisdiction and our Probate and Administration of Estates Legislation is based entirely on the laws of England and Wales. Our Supreme Court will issue Grants of Representation in respect of the Estates of persons domiciled outside The Bahamas in respect of their Bahamian assets upon their demise.

There are several testamentary dispositions by which an investor may deal with his Bahamian assets. However, a person can only have one domicile at a time.

(i) An investor can make a Bahamian Will solely in respect of his Bahamian assets with a provision to the effect that such Will must be construed and interpreted in accordance with the laws of the Commonwealth of The Bahamas. In this case, the Court will issue a Grant of Probate.

(ii) He can declare in his Will that he is domiciled in The Bahamas. In this case the Court will issue a Grant of Probate.

(iii) If he was residing as a Permanent Resident in The Bahamas, his Will can be administered under the laws of The Bahamas. In this case the Court will issue a Grant of Probate.

(iv) An investor can settle his Bahamian assets in an Inter Vivos Trust which he can incorporate as a part of his Last Will and Testament. In this case he should appoint the Trustees named in the Trust as Executors and Trustees of his Last Will and Testament. Alternatively, he can create a Trust in his Will. In either case the provisions under the Trustees Act will apply.

(v) Where he dies domiciled outside The Bahamas in different circumstances, there are other provisions under Bahamian law for such cases.

Under the Probate and Administration of Estates Act, 2011, the Court has jurisdiction with respect to the eligibility of persons who are entitled to obtain a Grant of Representation in the Estate of a deceased person and the Act also requires that a Notice of a proposed application for a Grant must be published in the Official Gazette on three consecutive occasions prior to submitting an application to the Probate Court for processing.

It is not necessary for an Executor or Administrator of an Estate to personally attend the Court in order to obtain a Grant of Representation; he can appoint a local attorney-at-law by Deed of Power of Attorney to undertake the application and act on his behalf.

In the case where a local Trust Company has been appointed as an Executor, the Trust Company can designate two of its officers by special resolution to undertake the application.

Where a testator fails to name an executor in his will, any beneficiary or devisee named in the will may apply to the Court for a Grant of Letters of Administration with the Will Annexed and upon issue of the Grant, they will have the powers and duties similar to those of an executor which would enable them to distribute the testator’s estate as set out in the Will.

Resealed Grants of Representation

The Court will issue a Resealed Grant in respect of any Grant of Probate or other Testamentary disposition issued by another common law jurisdiction e.g. the United Kingdom, the United States of America, Australia, New Zealand, Canada and any Commonwealth State provided that the requisite certified and duly authenticated copies of such foreign grant, etc. are produced to support the application.

The Court will also issue a Grant of Letters of Administration with the Will Annexed where a deceased testator owns Bahamian assets but for some specific reason it was not necessary to apply for a Grant in respect of his Will in his place of domicile.

Where a person dies intestate in a common law jurisdiction, the Court will issue a Grant of Letters of Administration in respect of his estate in the first instance to the surviving spouse or to such other person approved by the Court and by which grant the Administrator becomes clothed with powers and duties similar to those of an Executor.

Grants Issued in a Civil Law Jurisdiction

The Court will not reseal Grants issued in a civil law jurisdiction.

However, notwithstanding that The Bahamas is a common law jurisdiction, the law adequately provides for administration of estates emanating from civil law jurisdictions such as the European countries (e.g. Switzerland, Germany, France), the South American countries (e.g. Argentina, Brazil, Chile) and other territories such as the Dutch Antilles and Quebec to name a few.

Where a person dies testate domiciled in a civil law jurisdiction, the Court will issue a Grant of Letters of Administration with the Will Annexed.

Where a person dies intestate domiciled in a civil law jurisdiction, the Court will issue a Grant of Letters of Administration.

An application for a Grant in respect of each of the above cases must be accompanied by the Civil Law Testamentary disposition and the supporting documents all of which must be duly translated into the English language by a certified translator whose status must be notarized and authenticated as required under The Hague Convention 1961 to which The Bahamas is a signatory.

In cases of this nature, the local attorney will ascertain and advise the client as to the appropriate Grant for which an application should be made and he will also advise the client of the exact civil law documents, certificates, etc. which will be required to support the application.

Executors, Trustees, Devisees and Beneficiaries

The full names, current address and occupation of each Executor, Trustee, Devisee and Beneficiary must be given to the attorney by the Personal Representative in the case of each application. In addition, it will be necessary to obtain due diligence in respect of each Executor, Trustee, Devisee and Beneficiary.

Administration of Assets

There is no Inheritance Tax in The Bahamas.

Upon issue of a Grant of representation the Personal Representative of the Estate must:

- (i) settle the Estate's indebtedness including payment of Real Property Taxes, if applicable;
- (ii) deal with the assets as settled in the Trust, if applicable; or distribute the personal assets as set out in the Will to local and/or foreign beneficiaries;
- (iii) or in the case of an intestacy, distribute the personal assets as provided for under the Inheritance Act, 2002;
- (iv) arrange for transfer or settling of corporate shares;
- (v) obtain Exchange Control approval in order to transfer pecuniary legacies to beneficiaries residing outside The Bahamas;
- (vi) execute Deeds of Assent whereby the real property of the deceased will be legally vested in the devisees, apply for the requisite Certificate of Registration or Permit in respect of a non-Bahamian devisees' acquisition and obtain permission from the Exchange Control Department of The Central Bank of The Bahamas in respect of such devisees' acquisition of the said real property;
- (vii) upon completion of all of the administration work in respect of the Estate the Personal Representative must prepare a true accounting in respect of the administration and complete the Return for filing with the Registrar as prescribed by the Act.

All duties relating to the administration of Estates are undertaken in strict confidence.

ESTATE PLANNING

Key Highlights of Trusts

Snapshot

The trust is a unique relationship which allows an individual or legal entity (known as the ‘Settlor’) to transfer assets of almost any type to a third party (the ‘Trustee’) to administer for the benefit of persons chosen by the Settlor (the ‘Beneficiaries’) in accordance with the provisions of a document (the ‘Trust Deed’).

- even though the trustee holds legal title to the trust’s assets, the beneficiaries have a beneficial interest in them.
- the assets of a trust may include assets such as securities, real estate, artwork and bank accounts.
- trusts facilitate separating the legal ownership of the trust assets (which rests with the trustees) from the beneficial ownership (which rests with the Beneficiaries).

Who Can Establish a Trust

Any individual of adult age and capacity; or any legal person.

Who Can Act as Trustee?

In the Bahamas - Any individual or a licensed trust company.
Outside The Bahamas - Any individual or a legal person.

Regulators

Corporate trustees are regulated by the Central Bank of The Bahamas under the Banks and Trust Companies Regulation Act.

Uses of Trusts

A Settlor, depending on his objectives, may establish an ordinary trust or a Purpose Trust. Examples include:

Ordinary Trust

- asset protection/confidentiality
- forced heirship avoidance
- to transfer assets to future generations avoiding:
 - costs of legal proceedings and taxes imposed on succession to the transfer of assets
 - probate or notarial formalities relating to the transfer of assets
 - publicity
- to administer and distribute assets during the life of the Settlor as well as after his death
- to transfer assets situated in countries other than the place of residence of the Settlor, with complete privacy

Purpose Trust

- to hold the shares of a private trust company. In this structure the Settlor and members of his family and his advisors may be appointed directors of the private trust company and thereby assume some responsibility for the management of the trust
- to achieve both philanthropic and charitable purposes
- for asset purchase or financing transactions
- to separate voting control and economic benefit

General

- No taxes and stamp duty other than, for non-residents, an initial \$50 stamp on all trust deeds
- Exemption from exchange control regulations for non-resident settlors and beneficiaries
- No registration

Usual Trust Instrument Provisions

Ordinary Trust

- Name of the Settlor
- Name of the Trustee
- Names or classes of Beneficiaries and distribution provisions
- The Trustee’s powers and any restrictions
- The terms and conditions under which the Trustee can be removed or resign
- Description of initial trust property
- Perpetuity period
- Whether trust is revocable or irrevocable
- Discretionary / Non – discretionary

Purpose Trust

While general trust law applies, additionally, a Purpose Trust also requires that:

- the purpose must be possible and sufficiently certain to allow the trust to be carried out
- the purpose must not be contrary to public policy or unlawful
- the trust instrument must specify the event upon the happening of which the trust terminates and provide for the disposition of surplus assets of the trust upon its termination
- A Purpose Trust need not have a perpetuity period

Legislation Relating to Trusts

Fraudulent Dispositions Act

This Act attempts to strike a balance between the protection of assets and the protection of creditors. It limits the ability of future creditors to make claims against assets placed into Trust. In order to establish a claim that a transfer of assets to a trust is voidable:

- the liability to the creditors must have existed at the date of the transfer
- the transfer must have been made at an undervalue
- in making the transfer there must have been an intent to defraud the creditor
- the creditor must prove intent to defraud
- the creditor must bring his action within two years of the transfer

The Trustee Act

Some significant provisions are:

- that the Settlor's retention of certain powers (e.g. power of revocation, amendment and powers of appointment) does not invalidate a trust (Section 3)
- that the Trustee is vested with significant discretion to withhold information from certain beneficiaries (e.g. those who are objects of a power of appointment and discretionary beneficiaries) (Section 83)
- that a trustee has the same powers of investment as an individual owner absolutely entitled to trust property. The prudent investor rule is introduced and the trustee must have regard to the purposes, distribution requirements and other circumstances of the trust

Perpetuities Act 1995 and the 2004 Amendment

- The Act institutes a statutory perpetuity period for the first time and follows the English Perpetuity and Accumulation Act 1964 very closely
- The Amendment, which came into effect on August 13th, 2004, increased the statutory perpetuity period for trusts from 80 years to 150 years

Trusts (Choice of Governing Law) Act

Key features of this Act are that:

- it protects Bahamian trusts from "forced heirship" claims which may arise in civil law jurisdictions
- foreign judgments based on heirship claims will not be recognized or enforced in The Bahamas

Purpose Trust Act, 2004

This Act came into force on August 17th 2004 and allows for the formation of Purpose Trusts in The Bahamas. As a general rule, trusts, with the notable exception of charitable trusts, are required to benefit named beneficiaries or classes of beneficiaries rather than expressed purposes. The Purpose Trust Act permits the establishment of a trust for non-charitable purposes.

INVESTMENT TOOLS

Key Highlights of the Professional Fund

Snapshot

A recognized legal structure in The Bahamas that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains from the acquisition, holding, management or disposal of investments.

Equity Interest

- Equity Interest held only by Eligible Investor.
- No Minimum Investment by the Eligible Investor.
- A share, trust unit or partnership interest that carries an entitlement to participate in the profits or gains of the issuer and is redeemable or subject to be repurchased at the option of the Investor.
- Does not include closed-end issuers.
- Closed-end issuers may elect to be licensed as an Investment Fund.

Licensors

A Professional Fund must be licensed by one of:

Unrestricted Fund Administrator: Same day once all documents approved by relevant parties (sponsors, lawyers, administrators) and due diligence is complete

Securities Commission of The Bahamas: Within 72 hours of a complete application and letter from the Bahamas administrator or legal counsel indicating the Investment Fund is in compliance with Bahamian law.

Eligible Investors

- A bank or trust company licensed in The Bahamas or licensed pursuant to the laws of another jurisdiction.
- A securities firm registered in The Bahamas or registered pursuant to the laws of another jurisdiction.
- A Bahamian Investment Fund or investment fund regulated pursuant to the laws of another jurisdiction.
- An insurance company licensed in The Bahamas or pursuant to the laws of another jurisdiction.
- Natural person (jointly w/spouse) with a net worth of \$1,000,000.
- Natural person who had minimum income of \$200,000 for last 2 years (\$300,000 w/spouse) and has reasonable expectation of same for current year.

- A trust with minimum \$5,000,000 in assets.
- An entity owned by any one of the above.
- Any entity with net assets in excess of five million dollars.

Structures

Company (including Segregated Accounts Company), Limited Partnership, Unit Trust.

Requirements

- Bahamian Administrator – delegation to foreign sub-administrator is acceptable.
- Accounts prepared in accordance with International Accepted Accounting Standards (or other recognized GAAP).

Prescribed Disclosure Requirements in the Offering Memorandum. These are in line with best industry practices.

Open Architecture

- No local auditor requirement.
- No local custodian requirement.
- No restrictions on investments or investment style. No restrictions on leverage.
- No direct taxation. Therefore no tax on income, capital gains, dividends earned by the fund or the investor.
- No stamp duty on transactions.
- No public disclosure of Investors or the Accounts.
- No exchange controls.

INVESTMENT TOOLS

Key Highlights of the SMART Fund

Snapshot

A recognized legal structure in The Bahamas that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains from the acquisition, holding, management or disposal of investments. This type of fund must satisfy the parameters and requirements of a category, class, type of Investment Fund previously approved by the Securities Commission.

Equity Interest and Investment

Equity Interest held only by Investor. No Minimum Investment by the Investor. A share, trust unit or partnership interest that carries an entitlement to participate in the profits or gains of the issuer and is redeemable or subject to be repurchased at the option of the Investor. Does not include closed-end issuers. Closed-end issuers may elect to be licensed as an Investment Fund.

SMART Fund Models (SFM)

- **SFM001:** An Investment Fund where the promoter is a financial institution and the investors in the Investment Fund are also customers of the financial institution and party to a Discretionary Management Agreement with the financial institution.
- **SFM002:** An Investment Fund that has no more than ten investors who hold equity interests in the Investment Fund who meet the criteria of an 'Eligible Investor' in a Professional Fund and the majority of whom have the power to appoint and remove the operators of the Investment Fund. The fund may be licensed and launched same day through an Unrestricted Fund Administrator or 72-hour response through the SCB.
- **SFM003:** An Investment Fund that has no more than 15 investors holding equity interest in the Investment Fund, the majority of whom have the power to appoint or remove the operators of the Investment Fund.
- **SFM004:** An Investment Fund with a maximum of 5 investors operating as a private investment company. May be used as a credible, licensed holding vehicle.
- **SFM005:** An Investment Fund with a maximum of 5 investors holding equity interests and operating as a private investment structure for individuals/families. Each investor must be a person to whom a Professional Fund may be offered, permitting same day launch by a unrestricted fund administrator or 72-hour response through the Securities Commission of The Bahamas.
- **SFM006:** A special purpose vehicle designed to hold the illiquid or "hard-to-value" assets of another Bahamas investment fund which offers a significantly lighter administrative and

cost effective environment for the assets whilst respecting the ownership rights of the investors and creditors (if any) of the original fund.

Licensors

A SMART Fund must be licensed by one of:

Unrestricted Fund Administrator: Same day once all documents approved by relevant parties (sponsors, lawyers, administrators) and due diligence is complete.

Securities Commission of The Bahamas: SFM002, SFM005 and SFM006 SMART Funds within 72 hours of a complete application and letter from the Bahamas administrator or legal counsel indicating the Investment Fund is in compliance with Bahamian law. SFM001, SFM003 & SFM004 SMART Funds 6 – 8 weeks upon filing of a completed application.

Structures

Company (incl. Segregated Accounts Company), Limited Partnership, Unit Trust.

Requirements

- Bahamian Administrator – delegation to foreign subadministrator is acceptable.
- A SFM005 SMART Fund must appoint an administrator which must be a financial institution
- SFM004 and SFM006 SMART Funds do not require an administrator. The operators may administer the fund but this will not be treated as a self administered fund.
- SFM001 and SFM006 SMART Funds are not required to have financial statements audited but the annual unaudited statements and the semi annual performance statements must be filed with the Securities Commission.
- The financial statements of the SFM002, SFM003, SFM004 & SFM005 SMART Funds shall be audited annually unless unanimously waived by the holders of equity interests in the SFM002, SFM003, SFM004 & SFM005 SMART Funds and where there is such waiver a performance report shall be filed with the Securities Commission within six months of the waiver and every six months thereafter as long as the waiver exists.

A term sheet is not required for a SFM001, SFM004 or SFM005 SMART Fund, however if a term sheet is prepared it must contain prescribed disclosure requirements. A term sheet is required for a SFM002, SFM003 or SFM006 SMART Fund and must contain the prescribed disclosure requirements.

INVESTMENT TOOLS

Key Highlights of the Standard Fund

Snapshot

A recognized legal structure in The Bahamas that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains from the acquisition, holding, management or disposal of investments. This type of fund does not fit the definition of a Professional Fund, a SMART Fund or a Recognized Foreign Fund.

Equity Interest

- Equity Interest held only by Investor.
- No Minimum Investment by the Investor.
- A share, trust unit or partnership interest that carries an entitlement to participate in the profits or gains of the issuer and is redeemable or subject to be repurchased at the option of the Investor.
- Does not include closed-end issuers.
- Closed-end issuers may elect to be licensed as an Investment Fund.

Licensors

A Standard Fund must be licensed by the Securities Commission of The Bahamas. The Licensing process should take 6- 8 weeks after submitting a completed application.

INVESTMENT TOOLS

A Focus On The Bahamas Recognised Foreign Fund

Snapshot

A recognized legal structure in The Bahamas that issues or has equity interests the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains from the acquisition, holding, management or disposal of investments.

Where: -

(a) the equity interests are listed on a securities exchange (including an over-the-counter market) prescribed by the Securities Commission by notice in the Gazette and the fund is not licensed in The Bahamas;

(b) it is licensed or registered in a jurisdiction prescribed by the Securities Commission by notice in the Gazette and not suspended from operation; or

Structures

Company (incl. Segregated Accounts Company), Limited Partnership, Unit Trust.

Requirements

- Bahamian Administrator – delegation to foreign sub-administrator is acceptable.
- Accounts prepared in accordance with International Accepted Accounting Standards (or other recognized GAAP).

Prescribed Disclosure Requirements in the Offering Memorandum. These are in line with best industry practices.

Open Architecture

- No local auditor requirement.
- No local custodian requirement.
- No restrictions on investments or investment style.
- No restrictions on leverage.
- No direct taxation. Therefore no tax on income, capital gains, dividends earned by the fund or the investor.
- No stamp duty on transactions.
- No public disclosure of Investors or the Accounts.
- No exchange controls.

(c) it is incorporated or established and is in good standing in a jurisdiction prescribed by the Securities Commission by notice in the Gazette.

Licensors

No licensing requirements. The Investment Fund is to be registered in The Bahamas with the Securities Commission upon filing the required application with prescribed the documents.

Structures

Company (incl. Segregated Accounts Company), Limited Partnership, Unit Trust.

INVESTMENT TOOLS

Key Highlights of The Securities Industry Act, 2011

Overview

The Securities Industry Act 2011¹ (the “New Act”) repeals the Securities Industry Act, 1999 (the “Previous Act”). The New Act’s objectives are to modernize and update the law governing the regulation of securities in The Bahamas, enhance the powers of the Securities Commission (the “Commission”) and promote confidence and efficiency in the capital markets of The Bahamas, making them a more attractive prospect to domestic and foreign investors alike.

HIGHLIGHTS

Part I – Definitions

Most notably, the First Schedule of the New Act is dedicated to defining securities and the activities giving rise to the obligation to register and has fundamentally changed and simplified the definitions therein. Part 1 of the First Schedule sets out the definition of “securities”. Part 2 of the First Schedule sets out four types of activities which would constitute “securities business” and includes i) dealings in securities; ii) arranging deals in securities; iii) managing securities; and iv) advising on securities. Part 3 of the First Schedule exempts a number of activities from registration, e.g. trading for one’s own account and Part 4 lists exempt persons, e.g. receivers, executors or lawyers where such activities are incidental to their profession.

Part II – Securities Commission

The Commission’s powers remain essentially the same; however, the New Act provides for more comprehensive powers along with greater clarity, independence and accountability as discussed in more detail below.

Part III – Assistance to Domestic & Foreign Regulatory Authorities

The New Act allows for the Commission to provide any information already on file and to obtain information from anyone in the jurisdiction in response to a request from an overseas regulatory body. Said information may also be passed on to another person in the overseas authority’s jurisdiction if certain preconditions are met. The powers of the Commission to require a person to provide information are written to overrule the provisions of any other law regarding secrecy and recognize a person’s right not to have compelled statements used against them in criminal matters or the right to claim legal privilege on the appropriate documents.

Part IV – Investigations & Inspections

The New Act has expanded, substantially, the powers of the Commission to investigate a regulated person or firm to determine whether the person or firm has contravened, is contravening or is about to contravene any provision of Bahamian securities laws. An investigation may also be initiated for the administration of Bahamian securities laws or to assist in the administration of securities laws of another jurisdiction.

The Commission is not required to give notice of these inspections nor does the Commission have to suspect a breach of the New Act, however, the regulated person or firm bears the expense of said inspection.

Part VI – Registration of Persons Carrying on a Securities Business

Pursuant to Part VI of the New Act and the Securities Industry Regulations, 2011 (the “New Regulations”), entities formed under the International Business Companies Act, 2000 (the “IBC Act”) who conduct securities business are now eligible for registration as broker-dealers (“Registered Firms”). The Previous Act only permitted entities formed under the Companies Act, 1992 to register.

Furthermore, Registered Firms will no longer be required to be licensed to undertake specific types of securities business as provided for in the Previous Act. Registered Firms may now carry on one or more categories described in Part 2 of the First Schedule of the New Act, including i) dealings in securities; ii) arranging deals in securities; iii) managing securities; and iv) advising on securities. Registered Firms with licenses so classified will now be afforded expanded powers of dealing, i.e. Class I Registered Firms may now carry on all categories of securities business. Class II may now carry on all categories of securities business except those set out in Section 1(b) of Part 2 of the First Schedule of the New Act, which include buying, selling, subscribing for or underwriting securities as principals. Former securities investment advisors will be also authorized to engage in the managing and advising of securities.

Previously Registered Firms will not be required to re-register.

The categories of registration for individuals have changed as well; the current categories of broker-dealer, trader, broker, stock-broker and securities investment advisor with overlapping permitted activities have been replaced with a single requirement: any person carrying on securities business must be registered with the

Commission. Furthermore, under the New Act, an individual may only be registered to carry on a securities activity for which the firm is authorized to undertake and does not contemplate an individual being registered other than in association with a Registered Firm.

Part IX – Distributions & Prospectuses

The New Act will require an issuer to submit both a Preliminary Prospectus and a Prospectus to the Commission for consideration in connection with the distribution of a security, i.e. a trade in a security of an issuer not previously issued; a trade in a previously issued security of that issuer that has been redeemed, purchased or donated to that issuer; a trade in a previously issued security of an issuer by a control block holder; or a trade within a prescribed class of trades.

Upon issuance of a receipt for the Preliminary Prospectus, the issuer may distribute and solicit the Preliminary Prospectus, however, not until a receipt has been issued for the Prospectus may a binding agreement be entered into with prospective purchasers for the purchase of the security.

There are several exemptions in the New Act which do not require the submission of both a Preliminary Prospectus and a Prospectus; these include the distributions of: securities issued by the Government of The Bahamas, securities issued by a private company, securities of an investment fund registered under the Investment Fund Act 2003 or exempt from registering under that Act, an issuer of its own securities that are distributed to holders of its securities as a dividend and offerings by approved foreign issuers.

A distribution of securities issued or to be issued by an issuer under the laws of The Bahamas that is made outside The Bahamas shall be made in accordance with the laws of the country in which the distribution is made.

Part X – Continuing Obligations of Public Issuers

The New Act has tightened obligations to ensure public issuers inform the public of any material changes, filing annual and interim financial statements, annual reports and on proxy solicitation. It also introduces the requirement that public issuers send financial statements and annual reports to their security holders.

Furthermore, the New Act has modified the definition of public issuers to no longer include investment funds.

Part XII – Take-Over Bids

A long-standing gap in the securities industry's laws has been the lack of legislative control over take-over bids. It is intended that the New Regulations will set out a framework of controls and guidelines for the industry, including a road-map for the conduct of take-over bids to ensure all security holders are treated in a fair and equitable manner upon change of control.

¹ *This summary was prepared based on the New Act being passed in the House of Assembly on 18th April 2011 with debate currently underway in the Senate. The Securities Industry Regulations 2011 are currently in final form, and due to be tabled in Parliament.*

INVESTMENT TOOLS

Overview of The Bahamas Investment Fund Framework

FUND CATEGORIES

Professional Fund:

See *“A Focus on The Bahamas Professional Fund”*.

Specific Mandate Alternative Regulatory Test (“SMART”) Fund:

An Investment Fund that satisfies the parameters and requirements of a category, class or type of Investment Fund previously approved by the Securities Commission.

SMART Fund #1: Is an Investment Fund limited to the discretionary managed clients of Bahamian regulated financial institutions or financial institutions licensed in approved jurisdictions. This could be used to provide an investment vehicle for client funds managed under a discretionary management service.

SMART Fund #2: Is an Investment Fund with a maximum of 10 sophisticated / accredited investors. This could be used to provide an incubator structure to generate performance history prior to upgrading the license in anticipation of a public offering.

SMART Fund #3: Is an Investment Fund that has no more than 15 investors holding equity interest in the Investment Fund, the majority of whom have the power to appoint or remove the operators of the Investment Fund.

SMART Fund #4: Is an Investment Fund with a maximum of 5 investors. This could be used as a credible, licensed holding vehicle for a small group of related persons, perhaps under a Family Office structure.

SMART Fund #5: Is an Investment Fund with a maximum of 5 investors holding equity interests and operating as a private investment structure for individuals/families. Each investor must be a person to whom a Professional Fund may be offered.

SMART Fund #6: A special purpose vehicle designed to hold the illiquid or “hard-to-value” assets of another Bahamas investment fund which offers a significantly lighter administrative and cost-effective environment for the assets whilst respecting the ownership rights of the investors and creditors (if any) of the original fund.

Recognised Foreign Fund: An Investment Fund, which is not licensed but rather registered in The Bahamas, whose equity interests are listed on a prescribed securities exchange or an Investment Fund established or incorporated in a prescribed jurisdiction and in good standing.

Standard Fund: Any Investment Fund not meeting the criteria of a Professional or SMART Fund.

Licensors

An Investment Fund with sophisticated (‘eligible’) investors only may be licensed either by an Unrestricted Fund Administrator or the Securities Commission of The Bahamas (“SCB”). A Standard Investment Fund must be licensed by the SCB.

Unrestricted Fund Administrator: Same day once all documents approved by relevant parties (sponsors, lawyers, administrators) and due diligence is complete.

Securities Commission of The Bahamas: Where the Investment Fund is limited to eligible investors, SCB will license within 72 hours. Where the Investment Fund is of a retail nature, SCB will license within 6 – 8 weeks.

Key Requirements

- Annual Audit (foreign auditors acceptable, as approved by the Securities Commission). This is not a requirement in the SFM 001 or SFM 006 SMART Funds. Investors may waive the requirement for SFM 002, 003, 004, & 005 SMART Funds.
- Administrators licensed in The Bahamas (except for self-administered Investment Funds). This is not a requirement in the SFM 004 or SFM 006 SMART Funds.
- Foreign Custodians are permitted, if assets are of the type that requires safekeeping.
- Offering Document and Constitutive Documents require certification by either Administrator or Bahamian Attorney that they are in compliance with Bahamian law. This is not a requirement in the SFM 001, 002, and 003 SMART Funds.
- Term Sheet is required for SFM 002, SFM 003 and SFM 006 SMART funds, and must contain the prescribed disclosure requirements; a term sheet is not required for the SFM 001, SFM 004 or SFM 005 SMART funds; however, if a term sheet is prepared, it must contain prescribed disclosure requirements.
- Ongoing filing obligation with the Securities Commission.

INSURANCE

Captive Insurance Licensing Requirements

Summary

The establishment, licensing and business operation of captive insurance companies in The Bahamas are governed by the External Insurance Act, 2009 and the External Insurance Regulations, 2010.

Principal features of the external Insurance regulatory requirements are:

- Captives must be registered as External Insurers under the Act – registration renewable annually
- Company name subject to approval of the Commission
- Minimum of two directors
- Captives must appoint an insurance manager
- Annual audit of all captives to be submitted to the Commission
- Actuarial valuation of life insurers at least every 3 years
- Every insurer must appoint and appoint a Resident Representative in the Bahamas. This person must be able to represent the insurer
- Financial statements must be submitted to the Commission 4 months after the fiscal year end.

Capital, Solvency And Fees

A Restricted External Insurers' Licence (single parent captive) may be issued where that company has capital as approved by the Commission. The Commission applies the minimums applicable to Unrestricted Insurers.

- Insurers carrying on long-term insurance business
US\$200,000
- Insurers carrying on general insurance business US\$100,000
- Insurers carrying on both long-term and general insurance
\$300,000.

Note: There may be additional regulatory capital requirements depending on the business plan submitted.

Insurers must maintain a positive net worth (assets in excess of liabilities). General insurers are required to maintain a net worth based on its net premium income as follows:

NET PREMIUM INCOME	MINIMUM NET WORTH
Up to US\$5,000,000	20% of net premium income
Over US\$5,000,000	US\$1,000,000 plus 10% of net premium in excess of US\$10,000,000 in the preceding year

Fees

Fees are payable to The Insurance Commission of The Bahamas as follows:

- Application fee (non-refundable) US\$100
- Annual registration fee (including Registrar General Department fees):

Restricted Insurer (Captive)	US\$2,500
External Insurance Manager	US\$1,000
Unrestricted Insurer	US\$3,500
External Insurance Broker	US\$1,000

Application

Applicants should allow approximately 30 days for a restricted (Captive) licenses or 60 days for unrestricted licenses after a complete application package (including business plan and projections) has been received by The Insurance Commission of The Bahamas.

For complete details of application requirements visit The Insurance Commission of The Bahamas webpage: www.icb.gov.bs

BUSINESS ENVIRONMENT

The Arbitration Laws of The Bahamas

Snapshot

Arbitration is a voluntary alternative dispute resolution mechanism. It is used to privately resolve disputes between parties by one or more impartial arbitrators, known as the tribunal.

Two statutes govern arbitration in The Bahamas:

1. The Arbitration Act, 2009 (“AA”), and
2. The Arbitration (Foreign Arbitral Awards) Act, 2009 (“AFAA”).

The AA is the legal framework for arbitration procedures in The Bahamas. It incorporates significant features of the United Kingdom’s Arbitration Act 1996, and the UNCITRAL Model Law on International Commercial Arbitration 1985, as amended in 2006.

The AFAA came into force with the AA, in order to give effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards 1958 (“the Convention”), which The Bahamas acceded to in December 2006. The Convention requires jurisdictions to recognise and enforce arbitration awards made in other contracting states.

The newly enacted statutes pave the way for The Bahamas to position itself as an international arbitration hub in the Americas.

Key Highlights of The Arbitration Act, 2009

Purpose

- to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense
- to provide parties with greater autonomy in managing their disputes
- to limit court intervention in the arbitration process

Application

- regulates both domestic and international arbitrations
- applies when a written arbitration agreement exists between parties, which can take the form of electronic communication, such as email

Separability

- any decision that holds the contract to be null and void will not affect the validity of the arbitration clause

Confidentiality

- arbitration proceedings must be held in private
- information in relation to proceedings is protected from disclosure by the parties or the tribunal, except in limited circumstances

Parties

- can agree on the number of arbitrators to comprise the tribunal, the procedure for selecting the tribunal, and the qualifications, if any, of members of the tribunal
- can determine any procedural or evidential matters
- powers exercisable by the tribunal in relation to proceedings are subject to any agreement reached by the parties
- have a duty to do all things necessary for the proper and expeditious conduct of the arbitral proceedings

Tribunal

- arbitrators have immunity, unless an act or omission in bad faith is made
- can dismiss a claim, where a claimant is found to have caused inordinate and inexcusable delay
- can continue proceedings in default of defence or appearance by either party
- has the power to grant interim measures and preliminary orders
- has a duty to act fairly and impartially, give each party a reasonable opportunity to put their case, adopt suitable procedures and avoid unnecessary delay and expense

Court

- can remove an arbitrator who is found to be impartial or has failed to properly conduct proceedings
- interim measures can be ordered irrespective of whether the arbitration is seated in The Bahamas, i.e. the retention of security where admiralty proceedings are stayed when referred to arbitration

Awards

- the tribunal decides the dispute in accordance with the substantive law chosen by the parties
- more than one award may be made by the arbitral tribunal
- a party can challenge an award in the court on the ground of serious irregularity affecting the tribunal, the proceedings, or the award
- the court can remit an award for the tribunal’s reconsideration, set the award aside, or declare the award to be of no effect

Remedies

- tribunal can order the payment of a sum of money in any currency
- tribunal has the same powers as a court to order a party to do or refrain from doing anything, order specific performance, of a contract, or to order rectification, setting aside or cancellation of a deed or other document

Costs

- parties can agree how the tribunal should allocate the cost of the arbitration
- parties can agree what costs of the arbitration are recoverable
- in the absence of an agreement between the parties, the court may determine the recoverable costs

Key Highlights of The Arbitration (Foreign Arbitral Awards) Act, 2009

- awards made in contracting states are enforceable in The Bahamas under the AA
- awards granted under the AA, are enforceable in any of the contracting countries to the Convention
- arbitration proceedings can be adjourned when an application for the setting aside or suspension of a convention award is made
- limited discretion is available to courts in contracting states to refuse the recognition and enforcement of a Convention award

INFORMATION EXCHANGE

Overview of the Mechanisms for Information Sharing

Summary

As a well-regulated and responsible international financial centre, there exist mechanisms (“gateways”) pursuant to various statutory measures by which financial information in The Bahamas may be accessed by foreign judicial and/or regulatory authorities, subject to appropriate safeguards.

Judicial Gateways

- **Evidence (Proceedings in Other Jurisdictions Act, 2000 (EPOJA)):** Under the EPOJA, an application from a foreign court may be facilitated by the Supreme Court of The Bahamas to obtain evidence in The Bahamas for purposes of foreign civil proceedings which either have been instituted or is contemplated to be instituted (and for which investigations have already commenced) before the requesting foreign court. The EPOJA contains provisions to prevent wide-ranging discovery.
- **Criminal Justice (International Co-operation) Act, 2000 (CJICA):** Under the CJICA, an application from a foreign court may be facilitated by the Supreme Court of The Bahamas to obtain evidence in The Bahamas for purposes of foreign criminal proceedings and investigations. In each case, the Attorney General of The Bahamas shall make applications on behalf of the requesting foreign court. Where the Supreme Court is satisfied that the request is an appropriate one, it may make an order for the relevant evidence to be produced to or taken in deposition by the Supreme Court. The evidence obtained by the court would thereafter be provided to the Attorney General of The Bahamas for transmission to the requesting court.
- **Mutual Legal Assistance in Criminal Matters Act, 1988 (MLA):** Pursuant to the MLA, The Bahamas has treaty arrangements with the United States of America, Canada and the United Kingdom of Great Britain (“the requesting countries”), respectively, by which The Bahamas will facilitate requests of the requesting countries to obtain and to provide evidence in/from The Bahamas for use in criminal proceedings. Fiscal offences are outside of the scope of the MLA.

Regulatory/Administrative Gateways

Banks & Trust Companies

- Central Bank of The Bahamas Act, 2000 (“CBA”); and
- Banks & Trust Companies Regulations Act, 2000 (“BTCRA”)

The CBA and the BTCRA enable the Central Bank of The Bahamas respecting Bahamian banks and trust companies with information gathering powers and authorizes the Central Bank to disclose information in specified circumstances.

Per the CBA, the Central Bank may require the production of specified information or documents from entities it regulates and their officers, employees and agents for its own regulatory purposes or to facilitate a request of an overseas regulatory authority. An overseas regulatory authority means an authority in a foreign country that exercises powers in that foreign country corresponding to that exercised by the Central Bank within The Bahamas. As a pre-requisite to disclosing information to an overseas regulatory authority, the Central Bank must: be satisfied as to the confidentiality and restrictions on further disclosure by the overseas regulatory authority; have received an undertaking against further disclosure without the Central Bank’s consent; be satisfied that disclosure is required for a regulatory function (including civil or administrative investigations or proceedings) to enforce laws administered by the overseas regulatory authority; and be satisfied that the information will not be used for criminal proceedings against the person providing the information.

The BTCRA also facilitates cross border supervision by foreign banking regulators of branches or subsidiaries in The Bahamas of entities that are regulated by that foreign regulator. Except in special circumstances authorized by the Bahamian Inspector of Banks & Trust Companies, the foreign regulator may not access information relating to assets under management or deposit operations of individual customers. The BTCRA permits disclosure (“exceptions to a duty of confidentiality”) of banking information in the following circumstances: (a) to enable/assist the Central Bank Governor in functions conferred by Bahamian law; and (b) for the institution of (i) criminal proceedings in The Bahamas; or (ii) disciplinary proceedings in The Bahamas or abroad relative to a lawyer, auditor, accountant, valuer or actuary or public officer or employee of the Central Bank.

Securities Industry

- *Securities Industry Act, 2011 (“SIA”)*
Per the SIA, the Securities Commission of The Bahamas has authority (similar to that granted under the CBA to the Central Bank) to disclose information in the course of facilitating a request of an overseas regulatory authority. Under the SIA, an overseas regulatory authority means an authority in a foreign country that exercises powers in that foreign country corresponding to that exercised in The Bahamas by the Securities Commission of The Bahamas.
- *Investment Funds Act, 2003 (“IFA”)*
In relation to investment funds, the IFA provides exceptions to a duty of confidentiality comparable to that provided under the BTCRA relative to banks and trust companies.

Financial Intelligence

- *Financial Intelligence Unit Act, 2000 (“FIUA”)*
The FIUA established a Bahamian financial intelligence unit (“FIU”). The FIU is a central agency to receive, analyze and disseminate to competent authorities disclosures of financial information concerning the proceeds of crime respecting offences under the Proceeds of Crime Act, 2000.

In addition to receiving financial intelligence originating from suspicious transaction reports made to the FIU by financial institutions and other persons, the FIU is empowered to issue, administratively, an order for the production of information by persons.

Information in the possession of the FIU is subject to a duty of confidentiality, however, the FIU is authorized to disclose such information to the Commissioner of Police or to a foreign FIU, subject to conditions as may be imposed by the Director of the FIU.

Tax Information

The above-mentioned gateways to Bahamian information are not used for purposes of international cooperation in tax matters. The Bahamas would facilitate the provision of information for purposes of foreign revenue laws where a tax treaty has been entered between The Bahamas and the relevant foreign jurisdiction.

In compliance with the OECD standard for transparency and cooperation in tax matters, The Bahamas has a number of these treaties, often called Tax Information Exchange Agreements. The Bahamas has long sought a level playing field on tax information exchange. Its decision to endorse and meet the OECD Standard when a level playing field was achieved reinforces The Bahamas’ unwavering commitment to be a trusted jurisdiction for clients and to be a responsible member of the international community.

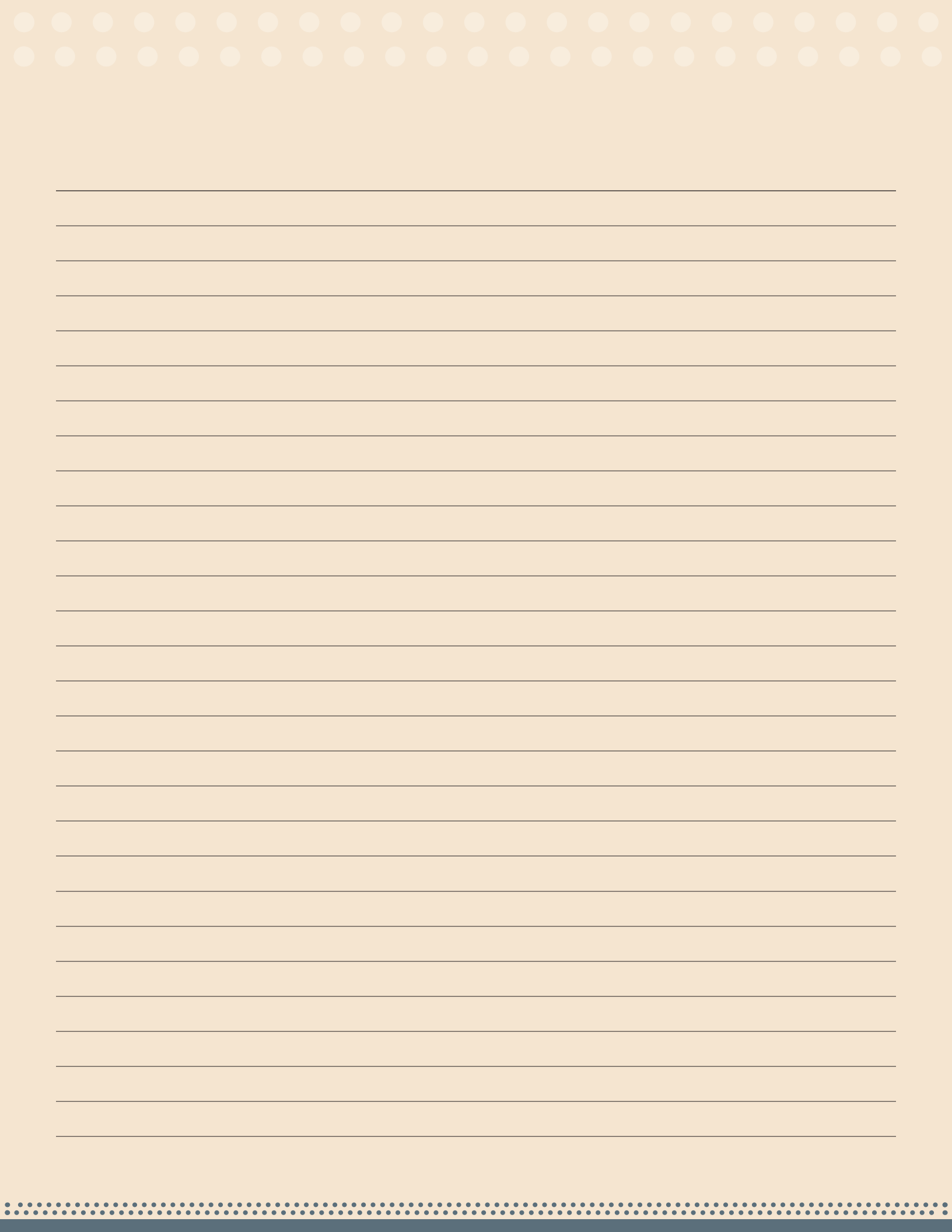
All of the agreements signed by The Bahamas are in accordance with the OECD model TIEA and Double Taxation Agreement. As such, the basis on which The Bahamas will cooperate with countries is the same as all countries that adopt Article 26. In particular, through the agreements, The Bahamas commits to cooperate only upon requests where specific information is provided. This requirement for specific information is critical in furtherance to The Bahamas’ stated position to prevent so called “fishing expeditions”.

Conclusion

The Bahamas remains strongly committed to the principle that persons have a right to privacy with respect to the conduct of their affairs. Moreover, respect for the rule of law always has been fundamental to the success and strength of the financial services industry in The Bahamas. As such, clients can be assured that The Bahamas will only exchange information on agreed and transparent protocols.

NOTES

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