

Lion's Roar



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THE BAHAMAS

Committed to The Fight Against Financial Crime

[➡ The following are excerpts from remarks by Senator The Honourable **Carl W. Bethel** Q.C., The Bahamas' Attorney General in May 2020 during a virtual symposium for financial services stakeholders in The Bahamas.]

IN AN ARTICLE posted on a website maintained by the International Consortium of Investigative Journalists (ICIJ) on May 11, 2020, the Secretary General of the **Financial Action Task Force (FATF) David Lewis** is quoted as saying that governments were failing to stop organized criminals and corrupt regimes from washing vast sums each year. Noting that most countries have dedicated laws and regulations to combat money laundering, he is quoted as saying, "they are rarely being used effectively, or to the extent that we would expect."

The article continues by pointing to a tendency for countries to display a "last-minute commitment" to tackling money laundering because they faced an upcoming FATF evaluation: "You see a sudden uptick in money laundering investigations and activity as they prepare to compensate for [past inaction] or to tell a good story to the assessors." The article ▶ **2**

Resilience Marks The Bahamas' Financial Services Industry

THE BAHAMAS is the leading international financial centre in the Latin America and Caribbean region, respected for its expertise in fiduciary services. The financial services sector has been impressively resilient and progressive in the face of events such as Hurricane Dorian, the current Covid-19 pandemic, international initiatives, and in midst of the continued and sometimes challenging evolution of the global industry.

None of these challenges have impeded the country's financial services industry from conducting business and delivering bespoke solutions to meet changing diverse client needs. Robust business continuity plans that are in place with all financial institutions have allowed business to continue during Hurricane Dorian last fall and now as the world deals with Covid-19. The far sightedness of business continuity measures have clearly been in play in cushioning the implications of these events and reinforces why The

Bahamas is seen by many as an ideal location for financial institutions and the services they provide to their international client base.

This adaptability has been especially evident in the Bahamas' response to international initiatives which has ensured adherence with the highest standards of compliance with all inter-

nationally agreed standards of conduct.

The Bahamas has evolved over the years from being an "offshore" centre, with all that the word connotes, to the world's premier



international banking and trust business centre in the Caribbean and Latin American region. The jurisdiction has been and remains demonstrably and effectively unwelcoming to those seeking to engage in questionable and illegal activities. Further, The Bahamas is a cooperative and transparent partner in tax and related matters. Acknowledgement of this commitment was the news earlier this year of The European Union's Economic

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Hon. Carl W. Bethel

attributed to him a suggestion that “some countries were said to only be concerned not to be placed on the FATF Grey List.”

In 2015, when the last Mutual Evaluation of

The Bahamas took place; which evaluation led to our placement in the FATF ICRG process in 2017, even that assessment mentioned above, if applied to The Bahamas in 2015, would have been extremely generous. Quite frankly, as a nation we had failed to keep up to date on the evolving FATF standards.

Yet, by the hard work of all concerned, both government and industry, we were able to right the ship, pass a host of new enabling laws, strengthen the regulatory and supervisory framework governing financial services; and to commence the long and hard road, once again, to prove our resilience and worth as a financial services jurisdiction. Our progress to date has been considerable, and we are now poised to make that last great effort to show the effectiveness of all the efforts we have made together to address the need for change and improvements.

What is the lesson in all of this for us as a jurisdiction? Simply that we cannot afford to let our guard down

again. If we wish to remain relevant and effective, we must strive every day to stay abreast of evolving standards and expectations. It is an easy thing to slip, take the easy road and end up being listed. Experience shows that it is easy to be listed, but a far more difficult thing to repair the damage.

We must all develop a firm resolve to work assiduously and in a mutually supportive manner, firstly to keep abreast of all initiatives and developments as they arise, and secondly, to seek to prepare ourselves to meet all impending challenges, even before they are made, and certainly before the World decides to impose the same.

For far too long we have adopted a passive approach, trying to lag behind so-called “competitors,” and each time have felt the brunt of international disdain, and criticism.

We cannot continue doing the same things the same way and expect any different results than those experienced in the past. So, I enjoin each of you to see all approaching storms and to adopt an attitude of engagement with each other, with your regulators and indeed with the World.

This has been our posture and is the posture we now embrace as we move towards the possibilities of the FATF ICRG on-site review.

Although a date for the on-site cannot yet be set, due to travel restrictions imposed by the Covid-19 pandemic, we are pushing forward as though it were

imminent.

In an era where vigilance is golden, during the Emergency Orders issued worldwide for lockdowns, we have become aware that there are

those organizations and groups that are taking advantage of the Covid-19 pandemic to carry out scams and illicit activities. Accordingly, all regulators and enforcement agencies were issued copies of the FATF statement on emerging Covid-19 related financial crime risks and the FATF’s policy paper on Covid-19 related ML/TF risks, for review and necessary action.

The remarks of FATF Secretary General **David Lewis** included his summing-up, which hearkens back to a famous conclusion in George Orwell’s book *Animal Farm* that “all animals are equal, but some are more equal than others”; where Mr. Lewis is reported as saying: “everyone is doing badly, but some are doing less badly than others.”

We must positively seek to *do better* than others, lean forward, and continue to strive to attain and maintain the highest standards of practice, oversight, supervision and enforcement, in order to have a healthy, wealthy and respected financial sector. ■



David Lewis, FATF

► Continued from front page

RESILIENCE

and Financial Affairs Council’s complete removal of The Bahamas from its List of Non-Cooperative Jurisdictions for Tax Purposes. Against this background The Bahamas joined more than 108 countries in the OECD’s Global Forum in formally acceding to The Multilateral Convention on the Mutual Administrative Assistance in Tax Matters. The legislative framework for implementation of The Common Reporting Standard was also put in place by The Bahamas in 2016.

In addition to CRS implementation, signing MCAA and entering BEPS the integrity of the jurisdiction is evidenced by the following:

- A strong anti-money laundering and counter financing of terrorism regime; and
- US Foreign Accounts Tax Compliance Act implemented (FATCA Compliance).

FATF has acknowledged that The Bahamas has remediated the issues identified in its assessment of its anti-money laundering framework and agreed to an on-site inspection as a part of the formal process of exiting the FATF “Grey List.”



SAMANTHA KNOWLES-PRATT

Equity Bolsters Legal Expertise

Equity Group International Limited, the parent company to Equity Bank And Trust Bahamas Limited, has bolstered its senior executive team with the hiring of **Samantha Knowles-Pratt** as its Director of Corporate and Legal for the Equity Group.

Ms. Knowles-Pratt is an experienced lawyer, specializing in financial services, corporate and securities laws, having served as a senior attorney and partner with a few of the country's major law firms as well as with the Securities Commission of The Bahamas.

"In this age of tightened compliance and transparency it is critical that our in-house legal capabilities meet and exceed ever evolving international standards," said **Ivlyln Cassar**, Equity's Chairman. "This is not only vital for the growth and development of all our companies in the Equity Group but also for the interests and expectations of our clients who expect nothing short of

excellence in the counsel and services we provide to them. Samantha gives us this depth of expertise and experience and we are delighted to have her as an integral part of our senior management."

Samantha's broader range of experience will provide a mirror into Equity's product offerings. She has in the past advised on complex issues particular to corporate and commercial law, including shareholders' agreements, the sale of shares in a company, sale of a business and related issues, including regulatory and governmental approvals. She has been involved in setting up and structuring/re-structuring investment funds, including SMART funds, ICONS

and funds structured as segregated accounts companies.

She has provided counsel on the Securities Industry Act, the Securities Industry Regulations, associated

Guidelines and reporting obligations as well as on the Investment Funds Act and Regulations, SMART Fund Rules and reporting obligations under each one.

She also has considerable experience with private wealth management structures, inclusive of IBC's, trusts, purpose trusts and private trust companies. She is a member of The Bahamas Bar and also a member of the Society of Trust and Estate Practitioners (STEP).

Samantha joined Equity on July 1. ■



This on-site visit was scheduled for April 2020 but had to be postponed as a result of the Covid-19 pandemic. The Bahamas remains buoyed by that announcement notwithstanding later conflicting news of the EU's intention to include The Bahamas on the list of high-risk countries which would take effect in October 2020.

The Bahamas is engaged with EU officials at the highest diplomatic and political level to demonstrate the strength of The Bahamas' AML/CTF regime. The Bahamas maintains that it is attaining the highest standards in the fight against money laundering, terrorist financing and other identified financial crimes risks.

A SHARED COMMITMENT

Financial services is the second most important industry in The Bahamas after tourism. As such, successive govern-

ments have recognized the importance of the industry to the country's continual economic and social development. The financial sector's viability is therefore a priority for both public and private sectors alike.

This level of importance is indicated by the responsiveness of the legislature and regulators to the needs and demands of the market, as well as the swiftness with which these processes can take place. It is also demonstrated by the balance that regulators strike between ensuring that the financial services industry keeps its integrity, while still encouraging lively competition. What's more, The Bahamas has a government ministry dedicated solely to financial services, and a shared commitment exists between the public and private sectors to help promote and develop the industry.

TRANSPARENT ENVIRONMENT

With a history of financial services dating back to the 1930s, The Bahamas ranks among the world's most significant international financial centres. The jurisdiction is one of the world's leading international banking centres, alongside New York City and Miami in the United States, London, Switzerland, Toronto, Dubai, Hong Kong and Singapore; and it is the preeminent banking jurisdiction of the Caribbean region. The centre comprises several sectors, including banking, private banking and trust services, mutual and investment funds, capital markets, investment advisory services, accounting and legal services, insurance and corporate and shipping registry; while providing the largest offering of international banks – US, Europe, Asia and Latin America – in the region, including South and Central America. ■

Changes to The Investment Funds Landscape of The Bahamas

New investment funds legislation was recently enacted in The Bahamas which repealed and replaced the Investment Funds Act, 2003 and its accompanying Regulations. The Investment Funds Act, 2019 (the Act) and the Investment Funds Regulations, 2020 (the Regulations) are now in force.

This article discusses the main changes to the investment funds landscape of The Bahamas. The complete Act and Regulations may be found on the website of the **Securities Commission of The Bahamas** (the Commission) – http://www.scb.gov.bs/acts_regs.html.

Requirement to appoint an investment fund manager registered with the Commission

Arguably the most significant change to the investment funds landscape of The Bahamas is the requirement now for all funds (existing funds and new funds) to appoint an investment fund manager which is required to be registered with the Commission.

For a standard fund, the investment fund manager must be either:

- Registered with the Commission under the provisions of the Securities Industry Act, 2011; or
- Licensed or registered in a prescribed jurisdiction* AND registered with the Commission under the Act.

In the case of a professional or SMART fund, the investment fund manager must be registered with the Commission under the Act.

Existing investment fund managers are strongly encouraged to take note of the transitional period under the Act and ensure that they bring themselves in compliance with the registration requirement under the Act before the expiry of same.

Prior approval of the Commission for delegation of duties by the investment fund manager

The primary duties of an investment fund manager are stated in section 62 of the Act and include, inter alia, to act honestly and fairly with due skill, care and diligence, and to act in the best interests of the fund and its investors. Any delegation by the investment fund manager of any of its duties has to be approved in advance by the Commission before such delegation may take place.

Licensing regime for Alternative Investment Fund Managers (AIFM)

As per the Act, any Bahamian entity intending to market an investment fund or an alternative investment fund in the European Union is required to be licensed with the Commission as an AIFM. Those that were doing so prior to the enactment of the Act and continue to do so, are required to notify the Commission in the prescribed manner.

New operators of existing investment funds to be approved in advance by the Commission

Subsequent to the initial licensing of an investment fund, any new operators or any change in the existing operator must be approved in advance by the Commission.

Accountant's confirmation respecting unaudited financials

In addition to the existing requirement

for investment funds (save for SMART funds which can waive the requirement for an annual audit) to make its annual audited financial statements available to investors and to file same with the Commission within the time frames prescribed by the Act and Regulations.

Once every three years, all investment funds, inclusive of SMART funds, are required to have an accountant confirm that its unaudited financials have been maintained in accordance with the standards set out in the Regulations.

Changes in the definition of a Professional Fund


The revisions to the criteria for a Professional Fund include:

- Any institutional investor or a financial institution;
- Any pension fund where a registered investment manager has been appointed to manage the Fund's assets;
- Any trust with total assets in excess of \$5,000,000 where a licensed trustee or investment manager is responsible for investment decisions;
- Any entity with net assets in excess of \$5,000,000 which has appointed a licensed investment manager to make investment decisions on its behalf.

Changes to ongoing obligations

There are also a number of additional ongoing obligations of note, including:

- An investment fund administrator, on behalf of each investment fund which it administers, must maintain a record of all complaints and the investment fund must establish and maintain an effective complaints handling system and procedures;
- An annual declaration for investment



fund managers must be submitted to the Commission.

Recognized Foreign Funds

The concept of a “Recognized Foreign Fund” which existed under the repealed Act no longer exists. The position under the Act is that any investment fund regardless of where it is incorporated, registered or established, must be licensed under the Act if it intends to offer its equity interests in The Bahamas to non-accredited investors.

Equity Investment Funds Services Ltd. has the expertise and experience to assist with the interpretation and application of this new Act and its accompanying Regulations, as well as to guide clients on the implications of the new Act and the Regulations to its business or its investment fund. We also have the expertise and experience to assist clients with determining appropriate alternative strategies based on the client’s needs.

In particular, we are able to assist investment fund managers with:

- Completing the application process;
- Gathering the relevant due diligence;
- Providing administrative support;
- Preparing the financial statements, if necessary; and
- Assisting with ongoing filings and obligations.

In addition, one of our shareholders, Equity Bank And Trust Bahamas Limited, is a registered firm registered with the Commission and is able to act as the investment fund manager to investment funds.

For more information, contact

L. Michael Dean. ■

*The SCB has issued a list of “prescribed jurisdictions” – refer to the Investment Funds (Prescribed Jurisdictions) Rules, 2020.

Digital Waves: An Integrated Banking System

Increasingly, crypto assets are being accepted as a commonplace constituent of the asset mix. Therefore, many customers are in pursuit of professional services to underpin their investments and transactions based in crypto assets.

In congruence with this, there are actions that have been taken by authoritative bodies to provide comfort to the banking system in supporting crypto assets within its traditional framework.

On July 22, 2020, the Officer of the Comptroller of the Currency (OCC), issued Interpretive Letter #1170 making it clear that “national banks and federal savings associations [have the] authority to provide cryptocurrency custody services for customers.” This has resounded as a significant reinforcement to banks harkening to the beat of US approvals. As an objective independent bureau of the US Department of the Treasury, the OCC provides supervision, oversight and regulation to federal savings associations, and federal agencies and branches of foreign banking institutions. This announcement suggests that the crypto industry has matured signifi-

cantly beyond its first alien appearance to many regulators and banks alike; that crypto assets are better understood, accepted and manageable with respect to compliant on-boarding, risk rating and Know-Your-Client (KYC) protocols.

The OCC is tasked with ensuring that the banking institutions it has oversight over provide services in a sound and innocuous way in the best interest of consumers, while providing nondiscriminatory equitable access to financial services and adhering to applicable laws.

The accessibility and sophistication of crypto KYC tools has provided the practical means for banks to offer crypto services. In this regard Equity Bank And Trust currently uses tracing software from one of the leading companies specializing in crypto compliance, Chainalysis. With the crypto AML tools that are now at hand, **Jonathan Levin**,

Co-Founder and Chief Strategy Officer of **Chainalysis**, makes an important point regarding the transparency of crypto assets beyond fiat: “Every cryptocurrency transaction is recorded on a public ledger, making it inherently transparent. This enables us to quantify how much of all cryptocurrency activity is associated with crime ... that just isn’t possible with cash and other traditional forms of value transfer.”

Statistics released by **Statistica**, an advanced analytics software package, assist with portraying the momentum of blockchain wallet growth. The published analysis notes that the sheer number of worldwide blockchain wallet users between the third quarter of 2016 and the second quarter of 2020 (June 30), has escalated from 8.95 million blockchain wallet users to 50.71 million users, representing a 467 percent increase. This upward trend is a challenge for banks as they grapple with compliant means to streamline effective onboarding of crypto clients. Consistent with these statistics that unveil the reality of the blockchain wallet adoption rate, the Acting Comptroller of



Jonathan Levin, Chainalysis



the Currency **Brian P. Brooks** noted that "This opinion clarifies that banks can continue satisfying their customers' needs for safeguarding their most valuable assets, which today for tens of millions of Americans includes cryptocurrency."

The letter from the OCC has clarified that not only can banks provide crypto custody services but can also provide traditional fiat accounts to any lawful company, including crypto currency businesses. Moreover, it has noted that

// Equity continues to adhere to best practices while being agile and responsive to the evolving needs of its clients

banks may actually store the crypto keys of customers securely on their behalf. As a customer's unique private key provides access to the customer's wallet contents, customers have been wary about passing away without an effective means of transfer. In such situations a fiduciary trust relationship would assist.

Equity continues to compliantly adhere to international best practices while being agile and responsive to the bespoke evolving needs of its clients and prospective customers. Complementing its private banking toolkit, Equity's suite of crypto asset services includes crypto custody services, fiat accounts for crypto businesses, trusts for crypto assets, crypto transactions (buy, sell, trade, options), cold storage alternatives, crypto real estate purchases, and liquidations (including over the counter). Irrespective of your asset mix of preference, Equity is fiercely committed to your success. ■



Tax Residency Coming to The Bahamas

THE BAHAMAS is making substantive progress on tax residency certificate legislation according to **Hon. Elsworth N. Johnson**, Minister of Financial Services, Trade and Industry and Immigration.

"The issue of residency is an important matter given global developments on tax transparency," said the Minister. "In this regard, the concept of 'residency' and specifically 'tax residency' in The Bahamas has to be carefully defined, especially if The Bahamas is to remain progressive and ahead of the changing global dynamics in international financial services."

The OECD recently released its Standard for Automatic Exchange of Financial Account Information, which has a self-certification process for establishing residency for tax purposes, as the basis of information sharing.

The Minister said the Tax Residency Certificate will be issued with a unique NIB TRC number. "To be eligible for a tax residency certificate, the resident must pay the relevant fees and make an annual payment towards National Insurance at the rate and maximum wage ceiling for that particular year or be subject to another applicable tax," he said.

Dillon Dean, Equity Group CEO, said the availability of tax residency has positive competitive implications for The Bahamas. "We know despite the current Covid-19 crisis that there continues to be great interest by wealthy individuals and families to establish roots in countries offering political and social stability, economic opportunity and an idyllic lifestyle," he said. "The Bahamas checks all these boxes and the tax residency program greatly adds to our appeal."

Further updates are expected shortly. ■

Equity's Corporate Social Responsibility 2020 [as of July 31, 2020]

ON THE HEELS of Hurricane Dorian, the Bahamas, and indeed the world, has been dealt a significant blow economically from the Covid-19 pandemic. The trickle-down effect of the economic slowdown has increased joblessness with a detrimental effect on the personal finances of many households. Businesses were also impacted to various extents, affecting their customer base, which drove unfortunate layoffs within many industries, financial services inclusive.

Amidst this environment, in solidarity with the Bahamian people and our customers, Equity Bank And Trust is proud to report that it retained all of its employees without reduced salaries. This provided great relief to many and sustained the level of exemplary service and leadership you have come to expect from Equity.

Assistant Vice-President of Human Resources, **Kayla Johnson** says, "Given the global pandemic we are currently experiencing, we are overjoyed and proud that we kept all our staff intact and we continue to recruit to fill appropriate positions moving forward."

Kim Thompson, Director of Human Resources, adds, "It is the brilliance of our employees that enables Equity to weather every storm, and to create peaceful waters for our clients. We remain a united front as a preeminent organization, as a community and as a country."

Additionally, Equity has continued its commitment to hiring interns for



From left to right: Kim Thompson, Janae White, Alexis Knowles, Megan Thompson, Eden Bethell, Denning Graham Cassar, Kayla Johnson

summer employment, providing them the opportunity to hone their skills with real world experience. "Amidst Covid-19 I am really grateful for the opportunity to have a learning experience at Equity Bank And Trust," says **Janae White**, Banking Intern.

In support of the Bahamas' robust workforce of highly trained and experienced financial services professionals, Equity has employed four intelligent summer interns from the Bahamas whom are undertaking undergraduate studies abroad in business disciplines predominantly. They are:

- **Eden Bethel**, Corporate Intern, currently undergoing a Bachelor of Science at York University, Ontario, Canada.
- **Denning Graham Cassar**, Banking Intern, currently undergoing a Bachelor's of Commerce degree with a specialization in accounting and a minor in economics at the Rotman School of Management at the University of Toronto in Ontario, Canada, and a Jamaine McFall EY Scholarship recipient.

- **Alexis Knowles**, Administration Intern, currently undergoing a Bachelor of Arts degree in Business and Accounting at Mount Saint Vincent University, Halifax, Canada.
- **Megan Thompson**, Administration Intern, currently undergoing a Bachelor of Science degree in Accounting at Nova Southeastern University, Fort Lauderdale, Florida, USA.
- **Janae White**, Banking Intern, currently undergoing a Bachelor's degree in Banking and Finance with a foreign language at Francis Xavier University in Antigonish, Nova Scotia, Canada.

Equity continues to foster community and national pride among its staff reflected in its team building Independence Day exercises as a fun day for staff to include prizes and surprises.

Building on its contributions to Hurricane Dorian efforts via the **Bahamas Financial Services Board** and the **Hurricane Dorian Private Sector Pledging Conference**, and several other initiatives captured in earlier publications, Equity presses forward to host its fourth annual **Charitable Art Exhibit** to be scheduled during Q4 of 2020 in support of local artists.

The company is thankful for the resilience of the nation, its employees and the world at large as efforts are made to responsibly restore and reopen economies during this new normal environment. Equity is happy to do its part and is committed to continue being a force for professional excellence, preeminent bespoke financial and corporate services, and community upliftment – it is in the company's DNA. ■

Fiercely committed to your success.



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