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Sustaining business longevity

By A. Paris

In the face of the current uncertainty and volatility across global markets, the financial industry in The Bahamas has been making changes to refine and strengthen its position as an international financial centre. This is being done to buttress its international standing and help sustain business longevity for all players involved.

A raft of regulatory changes introduced by the Bahamian government last year has created a number of opportunities, bolstering the country's financial infrastructure and broadening its potential for further progress, while also removing it from the EU's adverse listing. The changes have included an overhaul of the investment funds regime, the introduction of economic substance rules and reporting requirements, the removal of preferential regimes and the implementation of a beneficial ownership register.

The primary changes found within The

Bahamas Investments Fund Act 2019 (IFA) and Investment Fund Regulations, 2020 (IFR) have raised the standard of the jurisdiction and placed it on a more competitive footing. Antoine Bastian, managing director, Genesis Funds Services comments: "They have catapulted The Bahamas' investment fund product on the same pitch as Cayman, Luxembourg and the likes. I believe the IFA will continue to enhance The Bahamas' product offering for a very long time."

The legislation introduces crucial enhancements to the industry. The first is the removal of onerous governance burdens on fund administrators previously under the Investment Fund Act, 2003. These are now the duty of funds directors (or trustees or general partners) and fund managers under the IFA. Further, under the IFA, the role of fund managers has been clarified and they have been made accountable.

The new regulation also includes language for the cooperation of Bahamian domiciled funds and fund managers with regard operating in the context of the European Union of Alternative Investment Fund Managers and Directives (AIFMD), Alternative Investment Funds Managers (AIFM), Alternative Investment Funds (AIF) and AIFMD Custodians.

“As collective investment vehicles become even more relevant for investing, financial planning and cross border business, the IFA and IFR are necessary pieces of legislation to keep The Bahamas’ investment funds industry relevant and growing,” Bastian, from Genesis Funds Services adds.

According to Linda Beidler-D’Aguilar, partner at Glinton Sweeting O’Brien: “The updated legislation has been anticipated with great interest for some time, since it more carefully aligns service providers’ responsibilities and obligations with international norms and best practice in this area. We anticipate that this will make The Bahamas more attractive to fund administrators in particular, but promoters and investment managers should also find an enhanced and positive environment.”

New opportunities

The legislative updates have also led to the eradication of marketing barriers which open the door to considerable potential expansion. Kevin Moree, partner at McKinney Bancroft & Hughes, explains: “As the investment fund legislation in The Bahamas is now fully compliant with the Alternative Investment Fund Managers Directive of the EU, there should no longer be any restrictions for marketing Bahamian investment funds to investors in the EU. It is now also possible for Bahamian companies to manage alternative investment funds established in a member state of the EU, subject to obtaining the appropriate licence from the Securities Commission.”

Given the jurisdiction’s alignment with international standards, the industry expects more investment funds to be set up in The Bahamas going forward. In terms of the types of funds these will be, Bastian at Genesis, identifies a fund manager focus on alternatives and private assets: “When speaking to fund managers across the globe, resources are seemingly being heavily bent towards private equity and real estate structures. We also see the trend in terms requests for various for alternative investment structures.



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“The Bahamas SMART Funds and Professional Funds will continue to grow in these areas of alternative investment simply because compliant, regulated structures are essential for fund managers to make an offering to clients. In The Bahamas the container port development was set up as a fund structure and the new tourist cruise port terminal will also be offered under a fund structure.”

Beidler-D’Aguilar of Glinton Sweeting O’Brien says the firm is also witnessing continued interest in structuring: “We see this both on the private client and institutional sides of the financial services business. Structuring is definitely an area ripe for additional development and innovation.”

Substance and resilience

Another key change to the Bahamian legislative framework was the Commercial Entities



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(Substance Requirements) Act, which came into force on 31 December, 2018. This now requires certain Bahamian entities to have substantial economic presence in The Bahamas.

Christel Sands-Feaste, partner at Higgs & Johnson, outlines the prospects this created: “An opportunity for growth is related to the establishment by certain Bahamian entities of full physical presence in The Bahamas to comply with recently introduced substance requirements.”

Beidler-D’Aguilar agrees: “We are cognisant that our clients are much more likely to have a physical presence in The Bahamas and as such we are looking to be prepared to integrate our financial services offerings with broader commercial, real estate and lifestyle assistance and advice.”

The introduced and subsequent implementation of the substance requirements helped the jurisdiction be taken off the Europe Union’s ‘greylist’ in February 2020. Moree, McKinney Bancroft & Hughes, says: “This move evidences the jurisdiction’s compliance with international best practices with respect to tax practices, exchange of information and the prevention of financial crime. Such a development is indicative of The Bahamas’ established position at the forefront the international financial centres.”

“Getting off the greylist has shown that The Bahamas is continuing to develop a truly transparent and compliant financial services industry in all areas of AML, KYC and fair global tax structures,” adds Bastian.

Sands-Feaste further explores the effect increased regulatory scrutiny is having on the jurisdiction: “From a positive perspective, many institutions in The Bahamas have demonstrated considerable resilience and been able to adapt to the new operating reality of a regulatory maze. Such institutions have demonstrated to the world that The Bahamas is a world class international financial centre that is able to comply with the enhanced requirements.

“On the other hand, the more complex regulatory framework has resulted in a heavier regulatory compliance burden, increased operating costs and in some instances contraction in the Industry. Regrettably some institutions are simply unable or unwilling to operate in this environment.”

From Beidler-D’Aguilar of Ginton Sweeting O’Brien’s perspective: “In some ways the larger focus on regulation has made it easier to onboard many of our clients. As the requirements are becoming increasingly uniform across countries, clients are now getting accustomed to the regulatory requirements for establishing relationships with service providers – we aren’t outliers any longer.”

Improved International standing

According to Sands-Feaste, the Bahamian financial industry faces three primary challenges: “The continued pressure from international organisations such as the OECD and the EU, the complexity and cost of doing business in The Bahamas and the country’s aging infrastructure.”

Bastian, from Genesis Funds Services discusses the cost issue in further detail: “Less expensive labour in other international financial centres allows firms in those jurisdictions to invest in more technology. To justify the cost, if at all justifiable, the problem has to be fixed in The Bahamas via focused education.

“Employees of Bahamian institutions will have to become global experts in all manner of financial services and not only in Trust and Funds. While we have been leaders in the trust sector for decades, our competitive advantage will have to be ensuring that not only is The Bahamas’ human capital continuously developing and learning new skills and becoming experts in all areas products offered, but that the labour force becomes true global experts and is analytically superior to all of our competitors.”

In addition to upskilling, some have highlighted clarification of tax residency rules as an area of opportunity. A codified and internationally compliant regime would serve the jurisdiction well. Moree elaborates: “The tax residency programme is a highly anticipated opportunity for a particular set of individuals. It will benefit people who have their home in The Bahamas, pay taxes here and have a centre of economic influence here, but have challenges confirming positively by way of a certificate, their tax residence because their lifestyle is such that they are constantly travelling around the world and own assets in numerous jurisdictions.”



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Linda Beidler-D'Aguiar, Glinton Sweeting O'Brien



Elements of future success

Technology is expected to be one of the cornerstones in the foundation of innovation for The Bahamas as it continues building on its success as an international financial jurisdiction.

“While each company in the sector makes its own business decisions regarding technology, it is critical as a collective unit we can compete with any other jurisdiction. As a jurisdiction, The Bahamas has recently spent millions investing in power supply and generation. Now we boast world class power supply to ensure technological advancements implemented by industry stakeholders can actually work.

“Further, technical support is available through numerous hardware and software technicians and professionals therefore, the implementation, development, training and

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Kevin Moree, McKinney Bancroft & Hughes

execution of all types of technology is doable in The Bahamas,” says Genesis.

According to Beidler-D’Aguilar of Ginton Sweeting O’Brien: “The integration of state of the art technology and technological solutions into the industry will be essential to providing the level of service, not only in terms of speed, but also highly tailored, that sophisticated clients expect.”

Sands-Feaste, at Higgs & Johnson, agrees: “Technology is critical in order to meet client expectations, to comply with the maze of regulatory requirements, to operate more efficiently and to keep pace with our international competitors.”

In addition, the local economy is still recovering from the impact of Hurricane Dorian and in view of this Moree, McKinney Bancroft & Hughes, points out: “Using technology and innovation to increase the jurisdiction’s resilience to natural disasters is vital. Many of the world’s international financial centres are in areas which are susceptible to natural disasters, such as hurricanes and typhoons, and it is only a matter of time until a devastating event occurs. The Bahamas is working to ensure that the infrastructure is in place to allow businesses to react rapidly and seamlessly in the event of a natural disaster so as to avoid any prolonged disruption to commerce.”

More broadly, Sands-Feaste, at Higgs & Johnson, stresses: “As a jurisdiction, we must focus on removing the impediments to doing business in The Bahamas, overhauling outdated practices and infrastructure, modernising and fully digitising the Registrar General’s Department and reviewing and overhauling relevant legislation.

“In addition, the tax system in The Bahamas should be evaluated holistically with a view to both domestic and international considerations, in order to demonstrate to the international community that The Bahamas is not a zero tax jurisdiction.”

Beidler-D’Aguilar of Ginton Sweeting O’Brien added: “It will be key to monitor and test compliance with new legislation, and also to assess whether and how any changes would assist whether in terms of clarity or functionality. It’s also important to assess and point out unintended consequences as we work with the legislation, to ensure we aren’t inadvertently creating bottlenecks which impede smooth operations.” ■



The Bahamas Financial Services Board (BFSB) is a multidisciplinary body that embraces active contribution from individuals within government, banking, trust and investment advisory services, insurance and investment fund administration as well as interested legal, accounting and management professionals.

BFSB represents and promotes the development of all sectors of the industry, including: banking, private banking and trust services, mutual funds, capital markets, investment advisory services, accounting and legal services, insurance, and corporate and shipping registry. In addition to its coordinated programmes to increase confidence and expand knowledge of The Bahamas among international businesses and investors, the private sector-led BFSB will continue to consult with government to develop new initiatives to meet the rapidly changing demands of international financial markets.

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