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HIGGS & JOHNSON COUNSEL & ATTORNEYS-AT-LAW | VOLUME 66, ISSUE 1/2024

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Trends & Developments in Banking & Finance in The Bahamas

Christel Sands-Feaste & Julia Koga da Silva



Overall, the Bahamian economy is trending in a positive direction with the Central Bank of The Bahamas, in its Quarterly Economic Review, June 2024, reporting growth at a moderate pace, due primarily to strong performance in the tourism sector, and a decrease in average consumer price inflation, through the end of the second quarter and more recently by Standard & Poor's (S&P) reaffirming The Bahamas' B+ sovereign credit rating with a stable outlook.

The themes which have dominated the legal and regulatory framework relating to financial services in The Bahamas in 2024 include:

- ensuring compliance with

international standards;

- establishment of a new regulatory framework for the digital assets space; and
- modernisation of the regulatory framework for the securities industry.

In addition, there have been several legislative amendments to increase the versatility of Bahamian corporate and exempted limited partnership vehicles.

Establishment of a New Regulatory Framework for the Digital Assets Space

The legislation regulating the digital assets space (the "2020 Act") was initially implemented in 2020. In 2022, the Government of The Bahamas

published a Policy White Paper on The Future of Digital Assets in The Bahamas (the “White Paper”), outlining its vision and policy position on the regulation of the digital assets space over the next five years. The objectives outlined in the White Paper included growing the sector, increasing the attractiveness of The Bahamas for digital assets businesses, establishing The Bahamas as a leading digital assets hub and encouraging innovation in the fintech space.

Consistent with those objectives, the regulatory framework for the sector was overhauled entirely by the Digital Assets and Registered Exchanges Act, 2024 (the “DARE Act”), which came into force on 29 July 2024, and replaced the 2020 Act. The primary goals of the DARE Act are to (i) enhance investor protection while maintaining sufficient flexibility to facilitate innovation, (ii) ensure digital assets businesses are being conducted in compliance with international standards, and (iii) manage systemic risk associated with businesses operating in the digital assets space. The amendments contained in the DARE Act include, among other things, expanding the scope of digital asset activities which are subject to regulation, regulating the staking of digital assets, the introduction of capital requirements as prescribed by the Securities Commission of The Bahamas (the “Commission”), mandatory ongoing financial reporting which include financial statements, the mandatory segregation of client assets, the regulation of stablecoin issuers, the introduction of requirements relating to stablecoin reserve assets and enhanced investigation and enforcement powers for the Commission. In his contribution to

the debate on the DARE Act, the Prime Minister, the Honourable Philip Davis, indicated the role of the DARE Act in positioning “The Bahamas to be a leading jurisdiction for the exchange and use of digital assets, and financial services in general.”

Modernisation of the Regulatory Framework for the Securities Industry

In addition to the DARE Act, the regulatory framework for the regulation of the securities industry generally was modernised by the passage of the Securities Industry Act, 2024 (the “SIA 2024”) which replaced the Securities Industry Act, 2011. The objectives of the SIA 2024 included (i) compliance with international standards, (ii) alignment with current industry practices, and (iii) enhancement of the authority and performance of the Commission. Some of the new provisions to note are (i) the provisions which enable the Commission to monitor, mitigate or manage systemic risks in the capital markets, (ii) the new regime for trading in derivatives, (iii) the conferral of the authority on the Commission to designate a digital asset as a security (which would be subject to regulation under the SIA 2024), and (iv) the enhancement of the enforcement powers of the Commission

Amendments to Increase the Versatility of Bahamian Vehicles

As an augmentation to the toolkit of Bahamian products, amendments have been made to the International Business Companies Act, 2000 (IBCA), the Exempted Limited Partnership Act and the Investment Condominium Act, to enable (i) the demerger of Bahamian companies which are incorporated under the

IBCA, (ii) the conversion of an investment condominium (a vehicle that can be used to operate as an investment fund) to an international business company, and (iii) the continuation of an exempted limited partnership as an international business company. These changes have increased the versatility of Bahamian companies, investment condominiums and exempted limited partnerships by enabling the conversion of these entities from one form to another.

Domestic Minimum Top-Up Tax Bill

The Bahamas does not currently impose income taxes for entities or for individuals. However, in August 2024, the Government circulated a draft Domestic Minimum Top-Up Tax Bill (the “DMTT Bill”) for public consultation. The DMTT Bill contemplates a 15% effective tax rate on constituent entities (CEs) of multinational enterprise (MNE) groups that are in scope for Pillar 2 (ie, MNEs that have global revenues of EUR750 million or more) located in The Bahamas.

As currently drafted, the DMTT Bill would apply retroactively from 1 January 2024. However, this retroactive application is conditional on the MNE group or CE being subject to an Income Inclusion Rule (IIR) or Undertaxed Profit Rule (UTPR) in another jurisdiction for the financial year of 2024. MNE groups not subject to these rules in other jurisdictions will only be liable for the DMTT starting from fiscal years beginning after 31 December 2024.

The consultation period ended on 16 September 2024. The Government has indicated that it intended to finalise the draft DMTT Bill for submission to Parliament by 9 October 2024.

Conclusion

The recent legislative updates underscore The Bahamas' commitment to adhering to international best practices and sustaining a robust regulatory framework for the financial services sector, while fostering innovation and growth, reflecting the nation's commitment to evolving global standards. 



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**First published in Chambers Global Practice Guide - Banking & Finance (2024)*

Principal Procedural Obligations of a Taxpayer in The Bahamas



Alexandra T. Hall & Patricia Jackson

Taxes imposed within The Bahamas cover a range of categories, including business licence tax, stamp duty, customs and excise duties, value-added tax ("VAT"), and real property taxes. Employed and self-employed individuals are also required to contribute to the National Insurance Board on their wages, up to the insurable wage ceiling. Notably, The Bahamas does not have income tax, inheritance tax, or wealth tax.

All persons engaging in gainful employment, employers, and self-insured persons must register with

the National Insurance Board before or as soon as possible after commencing work. Contributions must be paid monthly by the 15th day of the month following the month they were due.

What are the tax obligations for property owners?

Property owners are required to declare their property to the Department of Inland Revenue ("DIR") for assessment by 31st December each year. Any changes in property usage or ownership must be reported promptly, within 14 days for

requirement for owner-occupied property changes. The DIR issues assessment notices by 15th October for the following year, with tax payments due by 31st March. Late fees are only applicable after 31st December.

What is the tax process for businesses?

Every business in The Bahamas must have a business license. The three categories are (i) occasional, (ii) temporary, and (iii) annual licenses. Applying for a license is mandatory before starting operations. Annual

licenses enjoy tax exemption in the first year. Renewal for annual licenses is due by January 31st of the following year, with taxes payable by March 31st. Business owners should be aware that annual tax estimates are initially based on prior year's turnover. Renewal filings for businesses with a turnover of \$250,000 and above must include a statement of turnover from an independent practitioner licensed by The Bahamas Institute of Chartered Accountants. Businesses with annual turnovers between \$250,000 and \$5,000,000 are required to have a report on their turnover following International Standards on Review Engagements. For those surpassing \$5,000,000 million in turnover, an audit of financial statements is mandatory. Additionally, it is crucial for businesses to maintain reliable accounting records for at least five years.

When is VAT registration applicable?



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Businesses in The Bahamas must register for VAT if they provide a taxable supply of \$100,000 or more. Registration is mandatory for certain sectors like electronic commerce, hotels, and foreign homeowners offering vacation home rentals, irrespective of turnover. A VAT registrant is required to file a VAT return detailing the total taxable and exempt supplies made and received during the tax period. Additionally, the registrant must settle the applicable VAT within 21 days of the end of the tax period, or within 14 days for large taxpayers. A tax period usually spans three (3) months, with payment due within the specified filing deadline. Businesses are obligated to retain accounting records for at least 5 years.

At this time, there are no substantial procedural obligations for customs duties and stamp duties. These taxes are payable shortly after an event (i.e. for customs duties, upon

importation of goods, and for stamp duty, within six months of the closing of a transaction which is subject to stamp duty).

Who are the Regulators?

The key regulators in the Bahamian tax system are the DIR and the Department of Customs. The DIR oversees domestic taxes, while the Department of Customs manages border taxes and fees. Taxpayers have the right to file an objection against most tax authority decisions. This internal review process provides an avenue for resolution. If dissatisfied, taxpayers can escalate their appeal to the Tax Appeal Commission and ultimately to the Supreme Court.

It is important to remain informed and compliant with these important tax regulations in The Bahamas.

**Excerpt taken from Legal 500 Country Comparative Guide - Tax (2024)*

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Enforcement of Foreign Judgments in The Bahamas

Tara Archer-Glasgow and Trevor J. Lightbourn



The Bahamas is not a party to any international conventions, treaties, or other arrangements concerning the recognition and enforcement of foreign judgments. However, two primary mechanisms that afford litigants avenues to enforce foreign judgments exist.

The first is legislative in nature and involves having a judgment

recognized in accordance with the provisions of the Reciprocal Enforcement of Judgments Act, 1924. The second mechanism is the common law, which confers upon the Supreme Court a jurisdiction to give effect to a foreign judgment if an action is commenced which "sues on the judgment" as a cause of action.

Reciprocal Enforcement of Judgments Act, 1924 (the "REJA")

The REJA empowers a judge of the Supreme Court to register foreign judgments provided they emanate from a superior court of certain foreign jurisdictions, namely: -

- Australia
- Barbados,
- Belize,
- Bermuda,
- British Guiana (now Guyana),
- Jamaica,
- Leeward Islands,
- St Lucia, Trinidad, and
- the United Kingdom.

Initially, the types of judgments capable of registration under the REJA were limited to money judgments. However, following an amendment in 1999, the term "judgment", as defined in the REJA was enlarged, and the requirement that the judgment to be registered should be for a sum of money was removed. This broadened the types of judgments available for registration under the REJA. Further, recent Supreme Court decisions, such as *The Public Institution for Social Security v Fahad Maziad Rajaan Al-Rajaan 2020/CLE/gen/00976*, confirm that it makes no difference whether the judgment sought to be registered in The Bahamas is a final judgment or

an interlocutory judgment.

However, the REJA establishes specific criteria that must be met before the registration of any judgment. For instance, in the absence of leave from the Supreme Court, the REJA requires the judgment creditor to apply for registration within twelve months after the date of the judgment. Additionally, the REJA requires the judgment creditor to prove that it is just and convenient to enforce that judgment in The Bahamas.

An application under the REJA can be heard *ex parte*, allowing for a swift resolution. However it is not uncommon for a judge to direct that the hearing be *inter partes*. The REJA also limits the circumstances in which judgment can be registered. Generally, the Supreme Court will only depart from the legislative intention of Parliament to register judgments capable of registration under the REJA if the facts give way to one of the express legislative proscriptions set out in the REJA. These arise in instances where,

- the original court acted without jurisdiction;
- the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court;
- the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or

agreed to submit to the jurisdiction of that court;

- the judgment was obtained by fraud;
- the judgment debtor satisfies the registering court either that an appeal is pending or that he is entitled or intends to appeal against the judgment; and
- the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court."

Common Law- Suing on the Judgment

In relation to foreign judgments not capable of registration under the REJA, a plethora of local jurisprudence confirms a litigant's standing to initiate proceedings and sue on the foreign judgment as a cause of action so that it may be domestically enforced. Such an action must be commenced before the expiry of six years from the date of the Judgment.

An action at common law may be disposed of summarily and expeditiously depending upon the court's calendar. Much like an action commenced under the REJA, the length of time required to register or enforce a foreign judgment may be protracted if it becomes heavily contested or the judgment debtor seeks interim relief. However, unlike REJA applications, no exclusive statutory defences are eligible to a judgment debtor concerning the corresponding common law actions suing on the foreign judgment.

Enforcement

Once a foreign judgment is registered under the REJA or is successfully sued

upon at common law, the time limit for enforcement is six years. Such means of enforcement include obtaining (i) a Writ of Fieri Facias (ii) Charging Order (iii) Writ of

Sequestration, (iv) issuing Third Party Debt Proceedings, (v) the Appointment of a Receiver, (vi) Committal; and (vii) winding up. However, the preferred enforcement

method will vary and depend on the method best suited for the particular judgment debtor. 

**Excerpt taken from Legal 500 Country Comparative Guide - Enforcement of Foreign Judgments in Civil & Commercial Matters (2024)*



Tara Archer-Glasgow is a Partner and leads the Firm's litigation practice with experience in all aspects of commercial litigation, with a particular focus on banking and compliance, employment, company law and admiralty law. tarcher@higgsjohnson.com



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Top Ranking by Chambers High Net Worth



According to the recently released edition of Chambers High Net Worth, Higgs & Johnson continues to be an "industry leader" in offshore trusts. The guide to leading professional advisers to wealthy individuals and families noted that the Firm has an "excellent group of attorneys who capably evaluate Bahamian law implications in structuring family planning and provide knowledgeable and professional services." Also praised for its "deep bench of litigators", the Guide further stated that the attorneys are "very experienced and their commercial awareness is on the forefront."

Chambers High Net Worth Commentary for Ranked Partners

Recognized for his "extensive experience in handling trust disputes and restructuring matters", Senior Partner, Philip C. Dunkley, K.C. is hailed as a "Senior Statesperson" with clients noting that "he brings invaluable experience and support to matters worked on by his colleagues and is respected among his peers."

N. Leroy Smith, Partner and Chair of the Private Client & Wealth Management practice, has been described by clients as "brilliantly agile in his ability to advise on complex matters and his attention to detail is unmatched. He has rightly established himself as a formidable force within trust litigation."

"Respected as a leading trust attorney", Of Counsel, **Earl A. Cash, Ph.D.**, is lauded "as 'the Oracle' within industry circles due to his impressive knowledge of trust and estate law, and his unmatched ability to apply such knowledge to complex matters." Commentators also noted that "both clients and practitioners value his work."

Co-Managing Partner, **Sterling H. Cooke** noted, "We are very proud of the Tier 1 ranking awarded to the Firm by Chambers High Net Worth for the eighth consecutive year. This achievement highlights the exceptional expertise delivered by our Private Wealth attorneys and underscores the unparalleled dedication and professionalism of the entire Higgs & Johnson team."

Senator Appointment



Congratulations to Partner and Deputy Chair of the Real Estate & Development and Maritime & Aviation Practice Groups, **Ja'Ann M. Major**, who was appointed to the Senate by the Prime Minister, The Hon. Philip Brave Davis, KC. This prestigious role underscores her exceptional dedication, legal expertise, and unwavering commitment to the profession and the community.

Elected to the Board of Directors

Congratulations to Partner and Deputy Chair of the Private Client & Wealth Management Practice Group, **Sharmon Y. Ingraham**, who was elected to serve on the Board of the Bahamas Financial Services Board (BFSB) for the term 2024-2026. We are certain that she will render excellent and very valuable service to the BFSB during her tenure.



40 Under 40 Awards



Congratulations to Senior Associate, **Trevor J. Lightbourn**, on his well-deserved recognition as one of the 40 Under 40 Award recipients (2024) presented by Professional Services Bahamas. His dedication to both his professional and civic endeavors has truly set him apart with this achievement being a reflection of his exceptional talent and commitment to excellence.

Gloria Bastian Excel Award (Summer 2024)

Congratulations to **Wendy Seymour** on receiving The Gloria Bastian Excel Award for Summer 2024. As a hard-working Personal Assistant, Wendy's independent work style, paired with her problem-solving attitude, makes her a valuable asset. Her attention to detail is remarkable, fostering seamless operations and enhancing efficiency within our team. Wendy's commitment to personal development is also truly inspiring! Recently graduating from the University of The Bahamas with a Bachelor of Arts Degree in Business Management and a Minor in Human Resource Management, her dedication to growth serves as a powerful model for emerging professionals.



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