

Bahamas

Chamber of commerce:

Bahamas Chamber of Commerce
PO Box N-665
Nassau
Bahamas
Tel: +1 242 322 2145
Fax: +1 242 322 4649
Website: www.bahamasb2b.com/bahamaschamber

Professional body:

Bahamas Bar Association
PO Box N-4632
Nassau
Bahamas
Tel: +1 242 326 3276
Fax: +1 242 328 4615
Email: bba@batelnet.bs

Michelle Neville-Clarke

Lennox Paton

Nassau

The Bahamas is an independent member of the British Commonwealth, with a long history of political stability. Bahamian law, and its legal system, is grounded in English common law. There are 10 resident Justices appointed to the Bench of the Supreme Court, including the Chief Justice, and five resident Justices appointed to the Court of Appeal, including the President. The final court of appeal is the Privy Council, which is seated in England.

The Bahamian judicial system is well respected, and The Bahamas has a professional infrastructure dedicated to serving the financial services industry. The Bahamas also continues to introduce new legislation to stimulate further growth and to maintain its attractiveness as a well-established financial services jurisdiction.

Some of the noteworthy pieces of legislation recently passed in The Bahamas have been the Purpose Trusts Act, the Segregated Accounts Companies Act and the Foundations Act. These new pieces of legislation, in conjunction with recent amendments to the International Business Companies Act and the Investment Funds Act, should further develop The Bahamas' financial services industry.

Purpose Trusts Act

The Purpose Trusts Act 2004 (the PT Act) represents a departure from the generally accepted principles of trust law, under which trusts require a settlor, a trustee and beneficiaries, and would be invalid if they do not have ascertainable beneficiaries and/or charitable objects. Under the PT Act it is now possible to set up a valid trust for specific purposes, even if the trust does not have charitable objects or ascertainable beneficiaries. An authorized purpose trust (Purpose Trust) is, as its name suggests, one set up for the achievement of a particular purpose authorized by the trust instrument. Purpose Trusts are not subject to the rule against perpetuities. Furthermore, there is no requirement that beneficiaries be appointed, although authorized applicants may be appointed to ensure the trustees are fulfilling their obligations under the trust.

A Purpose Trust may be declared by a trust instrument for a non-charitable purpose, including, exclusively or otherwise,

holding or investing in shares in a company or any other assets constituting the trust property, provided that:

- the purpose is possible and sufficiently certain to allow the trust to be carried out;
- the purpose is not contrary to public policy or Bahamian laws; and
- the trust instrument specifies the event upon which the trust terminates, and provides for the disposition of surplus assets of the trust upon its termination.

Foundations Act

The Foundations Act 2004 provides for the formation of foundations and heralds the introduction of a civil law concept into the traditionally common law system in The Bahamas. Foundations are familiar to continental Europeans and Latin Americans in civil law jurisdictions.

A foundation must have a charter containing the name and address of the founder, the purpose of the foundation, the initial assets, the designation of the beneficiary(ies) or identification of the body by which the beneficiary is to be ascertained or a statement that the foundation is established for the public, the period of time for which the foundation is created (there is no applicable perpetuity period), the registered name and address of the secretary, and an initial statement of the minimum assets of the foundation – an amount that must be maintained throughout the life of the foundation.

A foundation is not subject to business licence fees, income tax, capital gains tax or any other tax on income or distributions accruing to, or derived from, the foundation, or in connection with any transaction to which that foundation is a party. Also, no estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by a founder or beneficiary with respect to any interest given to or received from the foundation.

Unlike trusts – where the assets are held in the name of the trustee – a foundation's assets are held in the name of the foundation and are managed by the foundation. A beneficiary does not have any interest in the assets of a foundation until a distribution is made to the beneficiary. A foundation is required to maintain minimum assets of not less than \$10,000.

Investment Funds Act

December 2003 saw a new legislative regime for Investment Funds, aimed at creating a more attractive risk-based regime

based on four classes of funds. The Investment Funds Act 2003 (the IFA) encompasses a regulatory system for Professional, SMART, Standard and Recognized foreign funds. The IFA maintains the existence of a dual licensing system whereby the Securities Commission of The Bahamas (the SCB) is authorized to license all classes of funds, and Investment Fund Administrators (IFAs) with unrestricted investment fund administrator's licenses are authorized to license Professional and SMART funds. IFAs are subject to continuous SCB supervision to ensure that they adhere to regulatory and industry guidelines and standards. The SCB has created guidelines for the licensing of Investment Funds (Professional Funds and Smart Fund model SMF 002), whose investors meet certain eligibility requirements, within 72 hours of submitting the relevant applications.

International Business Companies Act

The International Business Company Act 2000 was once again heavily amended in August 2004 by the introduction and passing of the International Business Companies (Amendment) Act 2004 (the IBC Amendment Act).

Key features of the IBC Amendment Act include: (i) an expressed statutory mechanism for creating and enforcing the mortgage or charge of shares of an IBC; (ii) the option of registering at the office of the Registrar of Companies its register of mortgages or charges and any document creating a mortgage, charge or encumbrance over some or all of the assets of an IBC; and (iii) the legal means of restoring a dissolved IBC to the Register of Companies. While the registration of an IBC's register of mortgages or charges is not mandatory, once an IBC elects to submit a register of mortgages or charges to the Registrar, the list of mortgages or charges must be a complete list, and must include all current mortgages or charges of the IBC.

Segregated Accounts Companies Act

As a result of the introduction of the Segregated Accounts Companies Act 2004, an IBC or a Company incorporated under the Companies Act 1992 (a Domestic Company) (together referred to as a Company) engaged in the business of: (i) investment funds, with the written consent of the SCB or an investment fund administrator with an unrestricted investment fund administrator's licence, where applicable; (ii) issuing securities, with the written consent of the SCB; (iii) insurance, with the written consent of the Registrar of Insurance; (iv) if it is a subsidiary of a bank or trust company and not licensed by the Central Bank with written consent of the Central Bank; or (v) any other business with the written consent of the primary regulator who may be prescribed by the Minister, may be registered as a segregated accounts company.

A Company in The Bahamas registered as a segregated accounts company may set up accounts containing assets and liabilities that are legally segregated from the assets and liabilities of the Company's ordinary account, thus allowing the assets of one account to be protected from the liabilities of another account.

The ability to segregate accounts removes the need to use

separate companies for each investment strategy, and affords each segregated account the same limited liability that would be obtained if separate companies were used. A Company may also be structured whereby each investor has its own segregated account.

This overhaul of The Bahamas' financial services legislative regime, and the continuing review of legislation and consultation by the government of The Bahamas with members of the industry, should prove to keep The Bahamas at the forefront of the financial services industry.

Corporate and commercial

Recommended firms

Tier 1

Higgs & Johnson

Lennox Paton

McKinney Bancroft & Hughes

Tier 2

Callenders & Co

Graham Thompson & Co

Higgs & Johnson

Founded in 1948, Higgs & Johnson is universally recognized as one of the leading firms in the Bahamas. It now boasts over 100 staff working out of the firm's three offices in Lyford Cay, Freeport and the island's capital, Nassau. The corporate and commercial practice is headed by Philip Dunkley, and comprises three partners and one associate.

In one of the biggest deals to reach the Caribbean market in recent times, Higgs & Johnson was involved in the creation of FirstCaribbean International Bank, the result of the merger of Barclays Bank and CIBC Caribbean. As well as the partners leading on the deal, rising star Christel Sands-Feaste was also involved. Sands-Feaste was mentioned by several peers as being an "extremely talented younger lawyer" that will "be a major personality in a few years' time".

Like rival firm McKinney Bancroft & Hughes, Higgs & Johnson enjoys close ties to local banks, and these well-developed relationships result in a steady flow of instructions on matters involving mortgages, loans and other banking products. The firm also handles a fair amount of offshore commercial work, especially in the banking and trusts sphere (the firm has the biggest trust practice in the Bahamas). It also boasts a large and well-respected shipping practice, and is a prominent advisor on resort development projects. Higgs & Johnson is a member of the Terralex international network of independent law firms.

Leading lawyers

Philip Dunkley

Christel Sands-Feaste

Key contact partner

Philip Dunkley

Lennox Paton

Lennox Paton is a younger firm than its rivals, but it has certainly made its mark on the local legal market. Comments from the market are positive, one peer commenting that “Lennox Paton is the firm I see the most on deals.” The firm is expanding through the hire of additional lawyers, and its London office makes it the only Bahamian firm with a presence outside the Caribbean.

Among recent highlights, Lennox Paton was involved in a high-profile case involving the alleged theft of \$800 million from the Qatar Office of Investment, the culprit putting the money in a trust in Bahamas.

Thanks in no small measure to finance expert Michael Paton, securitization is another area in which Lennox Paton specializes. Under Bahamian law, the parties can select the governing law of their choice yet benefit from the Bahamas’ status as a tax-neutral jurisdiction. The firm itself regularly advises on setting up securitization structures, while the firm’s affiliate company, Lennox Paton Corporate Services, offers administrative, management and fiduciary services to the relevant special purpose vehicles set up for securitization purposes.

From among the strong team, as well as Paton, Brian Simms and Roy Sweeting were most frequently named as leading lawyers by peers and clients.

Leading lawyers

Michael Paton
Brian Simms
Roy Sweeting

Key contact partner

Michael Paton

McKinney Bancroft & Hughes

McKinney Bancroft & Hughes has developed excellent relationships with various Bahamian and Caribbean banks, and this means that these banks often turn to the firm for advice on the full range of banking and finance law matters. The firm is one of the largest and oldest firms in the Bahamas, and boasts a far-reaching international and domestic practice that provides top-quality advice from its two offices in Nassau and Freeport.

Brian Moree, Hartis Pinder, Brenford Christie and younger lawyer Diane Stewart are all considered to be leading lawyers, although the entire team at the firm is described as “extremely reliable and knowledgeable.” The firm is the exclusive Bahamian member of the Lex Mundi international network of leading independent law firms, and as such is able to access the expertise of numerous foreign firms through the network.

Leading lawyers

Brenford Christie
Brian Moree
Hartis Pinder
Diane Stewart

Key contact partner

Brian Moree

Callenders & Co

Callenders & Co celebrates its 100th anniversary this year, making it the oldest firm in the Bahamas. It has a broad and sophisticated international financial service practice, and the team’s lawyers have a wealth of experience advising on a variety of matters. The firm advises on the incorporation of many trusts, insurance companies and mutual funds, and has acted on various private and public offerings in the Bahamas.

According to the market, Callenders & Co is “not as prominent as it used to be,” which might be because it has lost some lawyers over the past year. It will be interesting to see whether this affects the firm’s position in the market. However, in name partner Colin Callender the firm retains one of the island’s leading insolvency and restructuring experts.

Leading lawyer

Colin Callender

Key contact partner

Colin Callender

Graham Thompson & Co

Like Callenders, Graham Thompson & Co has also “lost a few people” according to the market, although it seems that these losses were at the junior level. The firm retains a solid core of 15 partners who are frequently sought after for their expert advice on the full range of corporate and commercial matters. Many of the partners are also active outside the firm, having served on the board of (among others) the Central Bank of The Bahamas, as members of the Bar Council and as president of the Bahamas Bar Association.

Founded in 1950, Graham Thompson & Co operates out of two offices (in Nassau and Freeport) and has played a leading role in almost every major transaction involving hotel purchases, sales and financings in the Bahamas over the past 10 years. The firm also boasts a top-flight finance practice, especially in respect of the offshore arena and trusts work.

Leading lawyers

Michael Barnett
Sean McWeeney
Craig Roberts

Key contact partner

Judith Whitehead