

GUIDE TO DOING BUSINESS IN THE BAHAMAS

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GUIDE TO DOING BUSINESS IN THE BAHAMAS

I. THE COUNTRY AT A GLANCE

1.1 Geography

1.1.1 Location

The Commonwealth of The Bahamas is an archipelago spanning 100,000 square-miles extending southeast from Florida in the United States of America to northern Hispaniola. The Bahamas has an estimated land area of 5,400 square miles made up of some 700 islands and 2,400 cays. Its waters have remained effectively free of pollutants and are recognised as being among the most desirable in the world for swimming and diving having regard to their clarity, colour and marine life.

1.1.2 Climate

The climate of The Bahamas is generally mild which has given rise to The Bahamas being sometimes referred to as the Isles of June. Winter temperatures are rarely below 60°. Summer night temperatures may fall to 78° and summer daytime temperatures seldom climb beyond 90°. Humidity in the summer months may be considered fairly high with rainy months being May-October when records show an average of 6 ins. a month.

1.2 Physical Development - Infrastructure

The Bahamas has a relatively extensive network of modern roads allowing ease of travel through the major population centers and linking residential and business centres on the less developed islands. The island of New Providence has a privately operated bus system to meet tourist and residential transportation needs. Private and public business as well as residential building projects having mushroomed during the past decade, are constructed in accordance with high quality stringent building controls that in many instances surpass North American building code requirements. More than 50 airports of various dimensions are located throughout the archipelago; the largest being Nassau International in the Island of New Providence and Grand Bahama International on the Island of Grand Bahama. Both are 11,000' x 150'. More than 20 of the airports are also ports of entry into The Bahamas. Marinas and cruising facilities are also well positioned throughout The Bahamas, there being more than 30 marinas containing 25 or more slips. Most marinas monitor VHF channel 16 and a doctor/nurse or medical clinic is typically within close proximity.

1.3 Public Services and Utilities

The Bahamas Electricity Corporation, a government owned corporation, generates electricity in New Providence and the Family of Islands. Potable water is supplied by the

Water and Sewerage Corporation, another government owned corporation. Private corporations supply electricity and water to the residents of Freeport/Lucaya on the Island of Grand Bahama. Telecommunications services are provided by The Bahamas Telecommunications Corporation (BaTelCo) a quasi-public corporation owned by the government but operating without subsidy from it. Plans to privatise the corporation are currently underway. Postal services in The Bahamas are owned and operated under the auspices of The Bahamas Ministry of Transport. Government operated hospitals as well as privately operated hospitals and walk-in clinics are located in New Providence and Grand Bahama. Government clinics are available throughout all the islands of The Bahamas and Bahamians without adequate means may pay nominal fees at Government clinics and hospitals.

II. HISTORY

In 1492 when Columbus landed in the "new world" at the Bahamian island called Guanahani (later renamed San Salvador) he discovered a world already inhabited by Lukku-Cairi or island people. The Lucayans who were Amerindians are understood to be the original Bahamians who came to the Americas by way of the land bridge that once joined Alaska with Siberia. Artefacts from burial sites have been retrieved giving testimony to the existence of early Lucayan communities throughout The Bahamas. In 1647, after periods of occupation by Spanish and French settlers, English settlers from Bermuda seeking religious freedom would populate The Bahamas and claim them for Great Britain. A century and a half later American loyalists, many bringing their slaves and wealth, migrated to The Bahamas and with the onset of the American Civil War in 1861, New Providence became a major supply base for the American South providing munitions and medical supplies as well as generating increased economic activity to the benefit of the local economy. In the centuries following, The Bahamas would see substantial economic development as a result of its proximity to North America. On July 10th 1973 The Bahamas achieved its independence ending some 325 years of British rule. Today The Bahamas remains a member of the Commonwealth of Nations.

III. CULTURE

Influences of both the European and African cultures are found uniquely blended with North American elements to produce a unique northern Caribbean culture. This uniqueness is reflected in the music, art, cuisine and celebrations of the Bahamian people. English is the official language of The Bahamas and traces of The Bahamas' colonial past may yet be discerned in the architecture and physical layout of its older communities. Recent developments however show the powerful influences of the North American culture. By far the most imposing factor upon Bahamian life is the religion of its people. With perhaps the greatest number of Christian churches per capita, Christianity significantly influences local life including national observances, public and private celebrations and the affairs of government. Business in the context of Bahamian culture is typically operated in a manner

similar to North American enterprises with no unique prohibitions arising out of the cultural or religious influences of the society.

IV. GOVERNMENT AND POLITICAL CONDITIONS

The Bahamas is noted for being one of the oldest parliamentary democracies in the Western hemisphere enjoying peaceful and stable governance for close to 300 years. Accordingly it is one of the safest and most stable international locations for investments. In 1729 under British colonial rule, the first government assembly was established in The Bahamas. In 1964 Great Britain granted the Colony internal self-government. During the year 1972, the Bahamian people intimated their desire to become independent from Britain and on July 10, 1973 under the leadership of Lynden Oscar Pindling and the Progressive Liberal Party (PLP) full independence as the Commonwealth of The Bahamas was achieved. The PLP remained in power for the next 25 years until its defeat in 1992 by the Free National Movement party (FNM) led by Hubert Ingraham. In 2002 The PLP was returned to power under the leadership of Perry G. Christie.

There are three branches of Government:

4.1 Executive Branch

This branch of Government consists of a Cabinet of at least nine members one of whom must be the Attorney General. It is headed by the Prime Minister. The Prime Minister appoints Cabinet Ministers from the House of Assembly with an option to choose a maximum of three from the Senate.

4.2 Legislative Branch

The Parliament of The Bahamas is bi-cameral and consists of the House of Assembly and the Senate, which together constitute the law making body of the country. The House of Assembly is the elected body of Parliament consisting of 40 members who are elected representatives of the people serving five-year terms. It is considered the most powerful division of Government. The Senate is an appointed body comprised of 16 members. Appointments to the Senate are made by the Governor General on the advice of the Prime Minister and the Leader of the Opposition.

The process for the creation of laws in The Bahamas is the initial introduction of a bill to the House of Assembly which is read three times, debated and if passed forwarded to the Senate where the same procedure is followed. The bill is then sent to the Governor General for signature, and subsequent gazetting at which time it becomes law.

4.3 **Judicial Branch**

The Constitution of The Bahamas provides for an independent Bahamian Judiciary. Generally the judicial system in The Bahamas follows the English common law. Additionally, there is a large body of local statutes, which together with the common law constitute the laws of The Bahamas. There are three levels of courts in The Bahamas: the Magistrates Court which determines small claims; the Supreme Court which has unlimited jurisdiction in civil and criminal matters; and The Bahamas Court of Appeal which is the highest court sitting in The Bahamas which hears appeals from the Supreme Court. The Privy Council sitting in London is the final court of appeal. Judges in The Bahamas are appointed by the Governor General. Arbitration is an alternative method of dispute resolution and there exists an Industrial Tribunal established to hear exclusively employment and industrial relations matters.

Foreign judgments are enforceable in The Bahamas under the Reciprocal Enforcement of Judgments Act, provided they meet the requirements stipulated thereunder and the common law.

V. DIPLOMATIC RELATIONS

The Bahamas has established diplomatic relations with the United States, (“the US”) Canada, Britain, Germany and member countries of the United Nations. Similarities in ethnicity, culture and proximity to the US have fostered strong economic and commercial relations between the US and The Bahamas. Over the years The Bahamas and the US have become strategic partners in curtailing the flow of illegal narcotics and the movement of illegal immigrants from neighbouring countries, through the archipelago. The US and The Bahamas also cooperate closely in civil aviation, marine research, meteorology and agricultural issues. The Bahamas also has strong bilateral relations with the United Kingdom and is a member of the Commonwealth of Nations, a unique family of 54 developed and developing nations. This voluntary association of independent sovereign states is spread over every continent and ocean from Africa to Asia, and from the Pacific to the Caribbean. The Commonwealth's 1.7 billion people make up 30% of the world's population and are of many faiths, races, languages and cultures.

The Bahamas also holds membership in CARICOM and the Organisation of American States.

VI. GENERAL ECONOMIC OBSERVATIONS

6.1 **Currency**

The legal currency of The Bahamas is the Bahamian dollar. The US dollar is however widely accepted and treated by merchants on par with the Bahamian dollar. Within the banking system conversion of foreign currency including US dollars to Bahamian and the reverse are subject to an official rate of exchange. At March 25th 2003 the exchange rate on conversion from U.S. dollars to Bahamian Dollars was .9950 and from Euro to Bahamian dollars was 1.0580.

6.2 Inflation

Consumer price inflation, measured as the average variation in the retail price index, rose to 2.0% in 2001 from 1.6% in 2000.

6.3 Industry

Approximately 40% of The Bahamas' Gross Domestic Product is represented in its tourism industry. More than four million visitors are attracted annually to The Bahamas. Tourism directly or indirectly employs approximately 50,000 people. Second to tourism is the banking & finance industry representing 20 % of the Gross Domestic Product and employing about 4,400 persons 94.9% of whom are Bahamians. More than 300 financial institutions with domiciles in over 30 countries are licensed operators in The Bahamas. Ship Registration regulated by The Bahamas Maritime Authority has distinguished itself as a significant dimension to Bahamian Industry. By 2001 The Bahamas boasted of registering the world's third largest fleet with a gross tonnage of 32 million. Other industries of note include film and television production, manufacturing of fragrances and chemicals, ship repair, agriculture and limestone processing. Exports from The Bahamas include fruit, vegetables, crude, salt, rum, crawfish and other seafood. The Bahamas Oil Refining Co located on the island of Grand Bahama is primarily engaged in continuing terminal operations that include trans-shipment, storing and blending of oil and bunkering of ships.

6.4 Global Developments Affecting The Bahamas

At the onset of the third millennium The Bahamas sustained a forced revolution in the regulatory framework governing its financial services sector. Pressures exerted by international bodies including the Organisation for Economic Cooperative Development, (OECD), the Financial Action Task Force (FATF) and Financial Stability Forum (FSF) resulted in the passing of 11 enactments during the latter half of 2000 designed to ensure that The Bahamas operated its financial services consistent with international best standards. These enactments included re-enactments of the Banks and Trust Companies Regulation Act 2000, The International Business Companies Act 2000, The Central Bank of The Bahamas Act 2000 and the enactment of the Financial Transactions Reporting Act, 2000. An aggressive legislature, by effectively restructuring the sector, succeeded in removing The Bahamas from the FATF's non cooperative list and The Bahamas was deemed to be a fully compliant participant in the international effort to resist money laundering. An advisory issued by the United States Financial Crimes Network of the U.S. Treasury Department

was also withdrawn. The Bahamas Government continues to review the legislative and regulatory framework governing the financial services sector and is currently pursuing a series of enhanced re-enactments of existing legislation and new enactments designed to ensure that The Bahamas achieves a sustained leading edge in providing responsible financial services to a global community driven by information technology.

VII. GENERAL ADVANTAGES TO DOING BUSINESS IN THE BAHAMAS

Although global technological developments have in many instances reduced the necessity for business travel, The Bahamas continues to be an attractive offshore jurisdiction because of its proximity to North America and its relative ease of accessibility from major international financial centres. Historically The Bahamas has benefited by direct flights between Nassau its capital and destinations such as New York, Atlanta, Miami, Toronto and London.

An additional advantage to doing business in The Bahamas is the general level of literacy and expertise found within the local population. Eighty Five per cent of Bahamians are classified as literate with the potential market for employees being annually replenished with persons who have secured tertiary level certificates and degrees from local, Caribbean, North American and European higher education institutions.

With telecommunications services and facilities substantially equal to those available in the US and Canada, The Bahamas is capable of maintaining a leading position among jurisdictions of choice for international business. The Bahamas has a 100% digital switching system which makes possible direct distance dialling to more than 100 countries. High speed internet access is also available through a number of local providers using dial-up, cable connections and DSL. The Bahamas is linked to the US via fibre optic submarine cables supporting state-of-the-art telecommunications.

VIII WEALTH MANAGEMENT RELATED OPPORTUNITIES

8.1 General

For reasons identified above The Bahamas has developed into one of the world's principal international financial centres. There is a considerable range of vehicles available to the overseas investor. The Bahamas Government established The Bahamas Financial Services Board ("BFSB") in 1998 to promote and develop the financial services sector. BFSB is a joint venture between the private sector and The Bahamas Government. Members of BFSB are appointed from a cross section of the financial services industry including banks, trust, financial services, insurance, mutual fund administration companies, public accounting, legal, e-commerce, and investment advisory firms. The contact person at BFSB is;

Wendy Warren,
Executive Director,

Bahamas Financial Services Board

British American Insurance House,
4th Floor, Marlborough St & Navy Lion Rd.
P.O. Box N-1764
Nassau, Bahamas
Tel. (242) 326-76001
Fax (242) 326-7007
E-mail info@bfsb-bahamas.com
www.bfsb-bahamas.com

8.2 Banking

Banking is the pinnacle of The Bahamas' financial services industry. To date there are approximately 350 banks and/or trust companies licensed under the Banks and Trust Companies Regulation Act, 2000 to conduct business in The Bahamas. The Central Bank of The Bahamas is responsible for supervising all bank and trust companies, including licensing and compliance. Bahamian law strongly protects the right to confidentiality of bank clients. There are two operative banking systems in The Bahamas; commercial banking and private international banking. The commercial banks provide domestic services and are typically local branches, subsidiaries or affiliates of large international banks in North and South America and Western Europe. They include The Royal Bank of Canada, Scotia Bank, British American Bank and First Caribbean International Bank (a newly merged banking institution combining Barclays Bank PLC and Canadian Imperial Bank of Commerce). The Bahamas has two commercial banks which are locally owned; Commonwealth Bank and The Bank of The Bahamas. The majority of the banks offer private banking services and investment management services, including investment counselling, financial analysis, stock trading in currencies and precious metal, management of trusts, mutual funds and pensions fund assets. These banks offer both US and Bahamian chequeing and savings accounts with the average rates on savings deposits being 2.69%. The second system offers offshore banking services, operating in all markets except The Bahamas.

8.3 Trusts**8.3.1 General**

Trusts are recognized in The Bahamas and are governed by the Trustee Act 1998. A trust under Bahamian law is a relationship between parties and is not an entity with a separate juristic existence. Assets transferred to a trustee under trust cease to be legally owned by the transferee and become subject to the terms of the trust. Bahamian law allows an investor to be the grantor or beneficiary under a trust. An individual investor may also act as trustee of a trust governed by Bahamian law. There is no legal requirement for trusts to be registered or for public disclosures to be made. Exchange control regulations do not apply to non-

resident settlors, donors, beneficiaries and trustees participating in an offshore trust. An exemption exists in respect of trusts with non-resident beneficiaries in connection with the payment of taxes including stamp duty on transfers into the trusts. All trusts established after the commencement of the Trustee Act must be stamped with a \$50 revenue stamp. Other features of the Trustee Act are:

- Settlers can retain a wide range of powers without the trusts being attacked as shams;
- Subject to the trust document, trustees are given wide statutory investment and management powers;
- Indemnities;
- A wide range of trust purposes including accumulation trusts; and
- The role of protector is recognized.

The Trust (Choice of Governing Law) Act, 1998 provides an additional dimension to the law of trusts with its protection against the law of forced heirship.

The Bahamas has a sizeable and sophisticated cadre of professionals capable of advising on various aspects of trust formation and administration. Corporate trustees must be licensed and are regulated by the Central Bank of The Bahamas pursuant to and under the Banks and Trust Companies Regulation Act, 2000.

8.3.2 Asset Protection Trusts (APTs)

The operation of asset protection trusts (“APTs”) in The Bahamas is supported by the Fraudulent Disposition Act, 1991. This Act provides for the protection of financial assets of a settlor by placing them out of the reach of litigation commenced more than two years after the assets were placed under the trust. Under the Fraudulent Disposition Act foreign judgments are not recognized.

8.3.3 Purpose Trusts

Persons investing in the Bahamas may use as a purpose trust as a component to their investment scheme. The purpose trusts can be created for purposes which are not charitable and will not need an individual or corporate beneficiary.

The purpose behind a purpose trusts must (i) be possible and sufficiently certain to allow the trust to be carried out; and (ii) not be contrary to public policy or be unlawful.

Purpose trusts can be fixed or discretionary and unless otherwise expressed in the trust instrument, the trustee may distribute capital and income between different authorized purposes, individuals, corporations and charitable purposes.

There are a wide range of assets which can be the subject of purpose trusts, but land or any interest in land are excluded. Although the following is not an exhaustive list, generally, purpose trusts can be used (i) to hold shares of a private company, (ii) for philanthropic and charitable purposes, (iii) for asset purchase or financing transactions; and (iv) for the structuring of voting rights in a company.

Each purpose trust must have an “authorized applicant” appointed under the trust instrument. The authorized applicant is a person who can enforce the purpose trust and who has standing to make court applications pertaining to matters involving the purpose trust. Purpose trusts being administered for profit or reward, must appoint a trustee who is either a licensed bank or trust company, counsel or attorney, a registered accountant or any other person designated by the Minister with responsibility for the Purpose Trust Act 2004.

The rule against perpetuities or remoteness of vesting does not apply to purpose trusts.

8.3.4 Perpetuities

Pursuant to The Perpetuities (Amendment) Act 2004, the perpetuity period relevant for trusts may be 150 years.

8.4 Corporate Structures

Persons wishing to utilize a corporate structure may choose from a variety of options. These include International Business Companies (IBC's) which are typically used for offshore investments, Limited Duration Companies, companies incorporated under the Companies Act 1992 and foreign companies registered under the Companies Act 1992. These options are discussed in detail under section 9 of this Guide.

8.5 Exempted Limited Partnership (ELP)

The Exempted Limited Partnership Act 1995 allows for the creation of limited liability partnerships. The ELP is created on registration which is effected by payment of a registration fee and the filing with the Registrar of a statement in the prescribed form containing particulars of the ELP. An ELP must have one or more general partners and at least one limited partner. A limited partner shall not take part in the conduct of the business of an ELP. Any debt or obligation incurred by a general partner in the conduct of the business of the ELP shall be a debt obligation of the ELP. The general partner assumes responsibility for all obligations and debts of the partnership in circumstances where the assets of the ELP are inadequate. At least one general partner in an ELP shall be a resident

of The Bahamas (if an individual) or if a company, incorporated under the International Business Companies Act or under the Companies Act 1992 or Registered pursuant to Part VI of the Companies Act, 1992. The registration fee for an ELP is \$850.00 and the annual fee is \$475.00. An ELP is prohibited from doing business with the public in The Bahamas. It may however do business with International Business Companies registered in The Bahamas and with companies registered in The Bahamas under the Companies Act 1992. There are no tax consequences for an investor participating in an ELP and the ELP will be exempt from the provisions of the Exchange Control Regulations Act.

8.6 Investment Funds

With a view to enhancing the reputation of The Bahamas as a quality domicile for funds, the Government of The Bahamas passed the Investment Funds Act 2003 (“IFA“). The IFA protects investors and further regulates the fund industry. The Securities Commission created under the Securities Industry Act, 1999 is responsible for supervising the funds industry. The underlying structure for an investment fund (previously referred to as a “mutual fund”) may be an IBC, a Bahamian investment company, a unit trust or a partnership.

The IFA separates the investment funds into four classes: i) Professional Funds, ii) SMART Funds, iii) Recognized Foreign Funds and iv) Standard Funds.

Professional Funds are investment funds restricted to accredited investors such as banks and trust companies, registered broker-dealers, insurance companies and individuals with a net worth in excess of \$1,000,000.

SMART Funds are investment funds established by the Commission as Specific Mandate Alternative Regulatory Test Funds that satisfy certain prescribed parameters and requirements of a category, class or type of investment fund previously approved by the Commission. SMART funds allow for flexibility and creative product engineering, by enabling funds with unique structures to apply to the Commission for licensing and regulation.

Recognized Foreign Funds are investment funds in which the equity interests are listed on a securities exchange (including an over-the-counter market) prescribed by the Commission by notice in the Gazette and the fund is not licensed in The Bahamas, or licensed or registered in a jurisdiction prescribed by the Commission by notice in the Gazette and not suspended from operation.

Standard Funds are investment funds which do not satisfy the requirements of a professional, recognized foreign fund or a SMART fund. Standard Funds are designed to meet the investment needs of the general public.

An investment fund is required to have an administrator to ensure that the operations of the investment fund are carried out in accordance with the investment fund's offering memorandum, constitutive documents and Bahamian Investment Fund legislation. An operator is required to ensure that the sale, issue, repurchase, redemption and cancellation of equity interests of the investment fund are carried out. A custodian is required to take the fund property into custody or under its control and hold it in trust for the investment fund in accordance with the fund's constitutive documents. It must be independent of the investment fund administrator.

Investment fund administrators are permitted to license professional funds and SMART funds. Recognized foreign funds and Standard Funds may only be licensed by the Securities Commission.

8.7 Captive Insurance

Investors interested in the offshore insurance market may either incorporate a company under the Companies Act, 1992 or incorporate a company outside The Bahamas with registration as a foreign company under the Companies Act 1992. The captive market caters to insuring risks outside The Bahamas. Captives are overseen by the Ministry of Financial Services and Investments, through the Office of the Registrar of Insurance. The captive insurance industry is regulated by the External Insurance Act, 1983 which permits the underwriting of businesses from outside of The Bahamas. Benefits of Bahamian captive insurance are as follows:

- solvency margins
- trading in currency (except Bahamian)
- confidentiality for the policyholder
- tax exemptions for 15 years from the date of registration

For the purposes of qualifying to operate an offshore insurance business, the offshore insurer must, inter alia, prove that they would not be accepting less than \$500,000 in insurance premiums from an affiliated company. The offshore insurer is also required to operate through one of the registered underwriting managers (eight of which are in existence). The annual licence fee which is applicable in The Bahamas for an offshore insurer is \$2,500 and an underwriting manager is \$650. The Office of the Registrar of Insurance companies can be contacted at:

The Ministry of Financial Services and Investments
P.O. Box N-4849
Nassau, Bahamas
Tel (242) 328-1068
Fax (242) 328-1070

8.8 **Bahamas International Securities Exchange (BISX)**

On 30th January, 2001 BISX was registered as a securities exchange. BISX provides an added valuable dimension to the existing range of products presently being offered by the Bahamian financial sector. It is regulated by the Securities Commissions under the Securities Industry Act 1999. BISX is divided into a domestic and an international market. In the domestic market, BISX acts as an exchange for shares in local companies trading in Bahamian dollars. No trading on the international market has taken place. BISX can be contacted at:

BISX

4th Floor, British Colonial Centre of Commerce
 No 1 Bay Street
 P.O. Box EE-15672
 Nassau, Bahamas
 Tel (242) 323-2330
 Fax (242) 323-2320

8.9 **Securities Commission of The Bahamas**

The Securities Commission of The Bahamas initially established as the Securities Board under the Securities Board Act 1995 (now repealed) was preserved and continued by virtue of section 3 of the Securities Industry Act 1999. Its functions include formulating principles to regulate and govern mutual funds, securities, and capital markets, maintaining surveillance over mutual funds, securities and capital markets, ensuring orderly fair and equitable dealings as well as creating and promoting conditions to ensure the growth and development of the capital markets in The Bahamas. The Commission also has the mandate to advise the Minister of Finance generally regarding mutual funds, securities and capital markets. The address for the Securities Commission is:

Securities Commission of The Bahamas
 3rd Fl Charlotte House
 P.O. Box N 8347
 Nassau Bahamas
 Tel (242) 356 6291
 Fax (242)356 7530
 E-mail: secbd@batelnet.bs

8.10 **Ship Management and Maritime Operations**

Another important offshore service which is offered in The Bahamas is ship registration governed by the Merchant Shipping Act. The registry is administered by The Bahamas Maritime Authority. The Bahamas is also a member of the International Maritime Organization. Attraction to The Bahamas as a maritime center is due in part to:

- its location between North and South America and being a major destination for cruise ships;
- it houses one of the largest oil storage, blending and trans-shipment facilities in the region which is capable of managing the largest ships in the world; and state of the art facilities at the two leading harbours, situated at Nassau, New Providence and Freeport, Grand Bahama.

8.11 Commercial Investments – Real Estate

In 1993 the Government passed the International Person Landholding Act (“the IPLA”) which was designed to encourage non-Bahamians to acquire property in The Bahamas. This enactment effectively removed past onerous restrictions placed on the international investor with a more investor-friendly outlook. Prior to purchase of real estate the investor must obtain a permit as provided under the IPLA, if:

- the property which is being acquired is greater than 5 acres;
- the purpose of the acquisition is to rent all or a part of the property; and
- the property is to be used for commercial development.

Where the purchase of land does not require a permit, the IPLA does however require that the purchase transaction be registered with the Investments Board. Additionally, the investor must satisfy requirements relative to exchange control for his foreign currency investment in The Bahamas (see Exchange Control under section 9.2 of this Guide).

The costs involved in purchasing property in The Bahamas are as follows:

- Government Stamp Duty - payable on the instrument of transfer as follows:
 1. where the value of the consideration is less than \$20,000, the rate is 2%
 2. where the value of the consideration is equal to or greater than \$20,000 and is less than \$50,000, the rate is 4%
 3. where the value of the consideration is equal to or greater than \$50,000 and is less than \$100,000, the rate is 6%
 4. where the value of the consideration is equal to or greater than \$100,000 and is less than \$250,000, the rate is 8%
 5. where the value of the consideration is equal to or greater than \$250,000, the rate is 10%.

The portion of government stamp duty to be paid by the parties to a transaction is typically negotiated between the parties.

- The real estate agents commission fee (if an agent is involved) - for residential developed property this may be 6% of the gross sale price and 10% for undeveloped property.

- Legal fees –generally not more than 2.5% for the first \$500,000, 2% for the next \$500,000 1% for the next \$4,000,000 and thereafter 1/2%. The fees are cumulative.

IX. INVESTMENT IN THE BAHAMAS

9.1 General Business

For the purposes of this guide general business investment in The Bahamas should be distinguished from structuring an offshore investment in The Bahamas. General business investment concerns investment in the Bahamian economy with a view to making a turnover. An offshore investment involves utilising certain Bahamian financial products, financial systems or corporate structures designed to allow for managing or generating wealth in non-Bahamian currency. Certain of the structures discussed below may be used for both offshore investment and for general business investment.

9.2 Exchange Control

Exchange control is administered by the Central Bank of The Bahamas pursuant to the Exchange Control Act, 1952 and the Exchange Control Regulations, 1956. The rules, regulations and procedures govern all foreign currency transactions between residents of The Bahamas and residents of foreign countries (referred to as non-residents) and the inflows and outflows of foreign currency to and from The Bahamas.

For the purposes of exchange control, the Central Bank categorizes persons as either resident (i.e., residents of The Bahamas) or non-resident (i.e., residents of a country other than The Bahamas). Residents of The Bahamas are not permitted to purchase foreign currency or maintain foreign currency accounts abroad without first obtaining permission from the Central Bank. Non-residents doing offshore business in The Bahamas enjoy considerable freedom from exchange controls. Where the non-resident engages in Bahamian dollar investment transactions with the prior approval of the Central Bank the repatriation of foreign investment funds, foreign assets and dividends, and profits arising from foreign investment is allowed and facilitated. Further, the status of non-residents can be divided into persons who are permitted to be gainfully employed and persons not permitted to be gainfully employed. Foreign currency deposits held by non-residents are exempt from exchange control regulations. Foreign citizens who are gainfully employed in The Bahamas for one year or more are regarded as “temporary residents”. They may be

considered eligible for certain exemptions which permit them to retain all existing non-Bahamian assets, to operate foreign currency accounts and to repatriate Bahamian assets on departure from The Bahamas.

The Central Bank has designated certain institutions to act as authorised agents for the purpose of dealing in Bahamian and foreign currency securities and receiving securities into deposits. Within set parameters, banks with the “authorised agent” status are empowered to conduct foreign currency securities transactions with residents of The Bahamas. Bank and trust companies as “authorised dealers” are allowed to act as depositories of foreign currency for residents and to conduct certain transactions in foreign currency in respect of non-resident companies under their management. Foreign exchange transactions such as loans, dividends, profits, capital repatriation, foreign currency accounts, issue and transfer of shares, gift remittances, imports, emigration facilities, remittances to students abroad and investment currency are not within the purview of authorised dealers and must be referred to the Central Bank.

Where an investor makes a direct investment of non-Bahamian currency in The Bahamas the investor should secure approved investment status from the Central Bank. Approved investment status permits the investor to repatriate income and capital gains accumulated from the investment.

Persons who are designated by the Central Bank as resident for exchange control purposes may only invest in foreign currency investments by purchasing foreign currency on the foreign currency market administered by the Central Bank. Designated rates of currency conversion apply on buying and selling foreign currency.

9.3 **Import/Export Regulation**

Enterprise development has traditionally been a focus for the Bahamian economy with the aim of ultimately increasing foreign reserve earnings through increased export activity. There are no income, sales or capital gains taxes in The Bahamas, therefore government revenue is mainly generated from custom duties. The Bahamas has a liberal trade policy with there being no specific laws governing foreign trade. The Bahamas is a member of the General Agreement on Tariffs and Trade. The Bahamas has also participated in a number of preferential trade arrangements such as Caribbean Basin Initiative, CARIBCAN and the LOME Convention which provide concessionary access of goods produced in The Bahamas to major world markets.

The Customs Department (“Customs”) is responsible for valuing goods and determining tariffs for imported goods. Generally tariffs for imported goods are currently set at 35%, for clothing 25%, 45-75% for automobiles, car parts and accessories at 50% and tobacco cigarettes 210%. An additional 7% stamp duty is also payable on the foregoing items. No customs duty is payable on china, crystal, fine jewellery, leather, crocheted linens and tablecloths, liquor, perfume and cologne, photographic equipment and

accessories, sweaters and watches. Stamp duty is however payable on such items with specific percentages of their value being applicable.

The importation of all commercial goods must be processed through Customs for clearance. The importer must complete four copies of entry forms for presentation to the designated customs officer. Proper invoices are required to be submitted for the goods being imported. For the export of goods an export form must be completed and submitted to The Bahamas Customs Dept. There are no applicable export duties except a nominal stamp duty fee of \$10.00 payable on the goods.

9.4 Structures For Doing Business

A wide range of options is available when selecting a structure for doing business in The Bahamas. Certain types of investment may require the use of a particular vehicle as in the case of bank formation or insurance business, which require a corporate structure. In the case of corporate structures company names must be approved by the Registrar of Companies. Other business names must be registered with the Registrar General's Department under the Business Names Act. This process involves submitting the prescribed form with the required fee of \$50.00 and securing a certificate from the office of the Registrar General. A business name may be approved within 24hours. Government will not seek to participate in the ownership or operation of an investor's company and the investor's potential liability to third parties or other investors will be determined by agreement between the parties. There are no restrictions on capitalization and there are no investor tax consequences. Structures for doing business include the following.

9.4.1 Sole Proprietorships

Investors may be sole proprietors. Sole proprietors are not registered in The Bahamas. The Investor will however require a business licence and a shop licence if appropriate. The name of his business should be registered under the Business Names Act. There is no fee payable simply for commencing business as a sole proprietor. The investor as sole proprietor will be personally liable for expenses associated with the operation of the business. There will be no restrictions on the capitalization required to launch the business. The investor may however be required to demonstrate the ability to adequately fund the investment. The only fee payable will be the payment of the required fee for renewal of the Business licence. There will be no tax payable in connection with the operation of the sole proprietorship.

9.4.2 Limited Liability Companies

Limited liability companies are permitted under Bahamian law and may be incorporated under the Companies Act 1992 or the International Business Companies Act 2000.

9.4.2.1 Companies Under The Companies Act 1992

Companies are incorporated under the Companies Act 1992 by two or more persons signing a memorandum which satisfies the requirements of the relevant Act and by submitting it to the Registrar accompanied by required affidavits and declarations. The Registrar will issue a certificate of incorporation evidencing the incorporation of the company. Certificates of incorporation may take up to a week to be issued by the Registrar. The certificate will however bear the date on which the memorandum was submitted to the Registrar. Government fees for incorporation are \$300 upon filing of the memorandum of incorporation and \$30 on filing of articles of association. Further, on the 1st January of each year where the company has not less than 60 per cent of its shares beneficially owned by Bahamians it must pay \$350.00. Where less than 60 % of its shares are beneficially owned by Bahamians it must pay \$1,000.00. There is no requirement that a national of The Bahamas or a related state be a participant, manager or director of the Company. Further there are no restrictions on capitalization and there are no tax consequences for utilising a company incorporated under the 1992 Companies Act.

9.4.2.2 Companies Under The International Business Companies Act 2000

With special permission from the Central Bank of The Bahamas a company incorporated under the International Business Companies Act 2000 may engage in business in The Bahamas. A company is incorporated under the International Business Companies Act 2000 by two or more persons subscribing to a memorandum which satisfies the requirements of the Act. The memorandum and articles must be registered with the Registrar of Companies who will issue a certificate of incorporation certifying that the company is incorporated. Certificates of incorporation may take up to a week to be issued by the Registrar. The certificate will however bear the date on which the memorandum and articles were submitted to the Registrar. Government fees for incorporation are \$300 upon filing of the memorandum and \$30 on filing of the articles. Further, on the 1st January of each year the company must pay an annual fee of \$350.00. There is no requirement that a national of The Bahamas or a related state be a participant, manager or director of the Company.

Further, there are no restrictions on capitalization and there are no tax consequences for utilising a company incorporated under the International Business Companies Act 2000. An International Business Company may be established for a limited duration.

9.4.3 Unlimited Liability Companies

Unlimited liability companies may be incorporated under the Companies Act 1992 or under the International Business Companies Act 2000. The procedure and cost for incorporation of these companies is the same as mentioned for the incorporation of limited liability companies. The nature of shareholder's liability is detailed in the memorandum of association of the company. There is no requirement that a national of The Bahamas or a related state be a participant, manager or director of the company. Further, there are no restrictions on capitalization and there are no tax consequences for utilising a company incorporated under the International Business Companies Act 2000.

9.4.4 Segregated Account Companies

The Segregated Account Companies Act, 2004 provides for the registration of Segregated Account Companies (SAC) in The Bahamas. Commonly used by captive insurance and investment funds, a SAC is a type of company with a series of accounts with assets linked to one or more of the segregated accounts. Assets linked to a segregated account are protected from claims of creditors of other segregated accounts, to which the assets are not linked. A governing instrument evidences the rights, interests and obligations of account owners. A SAC must inform parties with whom it does business that it is a SAC.

A SAC must be incorporated under the Companies Act or the International Business Companies Act and then registered as a SAC by filing a request with the Company Registrar. Written consent of the company's primary regulator and, if the company has conducted business prior to registration, the consent of all known creditors must be received. The SAC is required to appoint a Representative to be resident and licensed in The Bahamas. Once the Registrar has approved the application and registration fees have been paid, the company is registered as a SAC and a notice of the registration is published in the Gazette.

9.4.5 Joint Ventures

Joint Ventures are also permitted under the laws of The Bahamas. There are no registration or incorporation requirements for joint ventures. Fees for establishing a joint venture will vary depending upon the complexity of the

arrangement and will usually be restricted to fees for professional services rendered in connection with advising generally on the joint venture and for preparation of documents. There is no requirement that a Bahamian or a foreign national be a participant, manager or director in a joint venture and there are no restrictions on capitalization. Further, there are no special rules which determine an investor's potential liability and under Bahamian law there are no tax consequences for participating in a joint venture.

9.4.6 Partnership, General and Limited

Bahamian law recognizes and permits both general and limited liability partnerships.

9.4.6.1 General Partnership

There is no requirement that a national of The Bahamas or a related state be a partner in a general partnership arrangement. Fees for establishing a general partnership relationship will vary depending upon the complexity of the arrangement and will usually be restricted to fees for professional services rendered in connection with advising generally on the partnership and for preparation of documents. A partner in a general partnership will potentially be personally liable for the debts contracted on behalf of the firm although as between partners his liability may be limited to the proportionate value of his share in the partnership. There are no Bahamian tax consequences to the investor for participating in a general partnership arrangement.

9.4.6.2 Limited Liability Partnership

A partnership, with limited liability, may be formed by two or more persons for the transaction of any mercantile, mechanical or manufacturing business within The Bahamas, except banking or insurance. In any such partnership one or more of the members shall be called the general partners, and shall be jointly and severally responsible, as partners now are by law; and the other members shall be called the special partners, who shall each contribute a specific amount of capital, in cash, or other property, as cash value, to the common stock; and such special partners shall not be liable for the debts of the partnership beyond the amount of the funds so contributed by them respectively to the capital; except as provided in the Partnership Limited Liability Act. The persons desirous of forming such partnerships shall make, and severally sign a memorandum of co-partnership, which shall be substantially in the form in the schedule to the Partnership Limited Liability Act. After the memorandum of co-partnership shall have been made, the general partners named therein shall

also make and sign a solemn declaration before a notary public to the effect that such portions of the capital stock as have been contributed in cash by the special partners have been deposited in a bank at Nassau in the name of the firm and produce to the notary, to be annexed to the declaration, a certificate to that effect from the manager of the bank and shall also declare that the amount in money, or other property, at cash value, specified in the memorandum has been actually and in good faith contributed for the purpose of being applied as specified in the memorandum. The memorandum and the declaration with the certificate of the manager of the bank must be recorded in the Registry of Records. Once recorded, the partners must publish the terms of the partnership in all newspapers printed in The Bahamas for at least six weeks immediately after the recording and until the publication is made for that period, the partnership shall not be deemed a partnership with limited liability under the Act. Fees for establishing a limited liability partnership will vary depending upon the complexity of the arrangement and will usually be restricted to fees for professional services rendered in connection with general advice. There is no requirement that a national of The Bahamas or a related state be a general or special partner. Further, there are no restrictions on contributions to the capital and there are no Bahamian tax consequences to the investor for participating in a limited liability partnership.

9.4.6.3 Undisclosed Partnerships

Undisclosed partnerships are permitted in The Bahamas. There are no specific regulations governing undisclosed partnerships. Undisclosed partnerships are formed by private contract and fees will vary depending on the complexity of the relationship. There is no requirement that a national of The Bahamas or a related state be a participant, manager or director in an undisclosed partnership. A partner in an undisclosed partnership will potentially be personally liable for the debts contracted on behalf of the firm although as between partners his liability may be limited to the proportionate value of his share in the partnership. There are no Bahamian tax consequences to the investor for participating in an undisclosed partnership arrangement.

9.4.7 Subsidiaries/ Branches /Representative Offices

Companies incorporated outside The Bahamas may conduct business in The Bahamas by registering as a foreign company under the Companies Act 1992. Registration may be effected by deposit of documents with the Registrar containing particulars of the foreign company. Stamp duty for a foreign company is \$600 and

the registration fee is \$50. Foreign companies registered in The Bahamas pay an annual fee of \$1,000. Investor liability will be determined by the structure of the foreign company as represented in the documents filed with the Registrar. There is no requirement that a Bahamian become a participant, manager or director. There are no capitalization requirements and no tax consequences for an investor.

9.4.8 Trusts

See Paragraph 8.3 above.

9.4.9 Foundations

As an alternative to trusts and corporations, wealth management planners may employ the use of a Bahamian foundation. The foundation is best understood as a hybrid between a trust and a company. The foundation will have beneficiaries and may have a protector. It can be established by a will and no forced heriship rules apply. It may be revoked by the founder if provided for in the charter by which it is established. Upon registration the foundation will be a legal entity, resident and domiciled in The Bahamas with the capacity to sue and be sued in its own name. It may enjoy unlimited duration. The assets transferred to the foundation will become exclusively its assets and shall cease to be the assets of the person who or which made the endowment. The foundation documents will identify its beneficiaries which may be individuals, a charity or the public at large. The foundation assets will not become the assets of a beneficiary unless and until distributed in accordance with the provisions of the foundation charter. The foundation must have assets valued not less than B\$10,000.00 or \$US10,000.00 or the equivalent thereof in another currency.

The foundation will have a stated purpose or object which may be any lawful purpose and may, but need not, be charitable. The Act describes the main purposes or objects of a foundation as including the management of its assets. This may involve the buying and selling of such assets.

9.5 **Types of Business**

The following is a list of areas of investment especially targeted by the Government of The Bahamas for overseas investors.

- Touristic Resorts
- Upscale Condominium, Time Share and Second Home Developments
- International Business Centres
- Marinas
- Information And Data Processing Services
- Ship Repair And Other Services

- Light Manufacturing For Export
- Agro Industries
- Food Processing
- Banking and other Financial Services
- Captive Insurances
- Aircraft Services
- Pharmaceutical manufacturing
- Off-shore Medical Centres
- Sea/Air Business Centres
- Film and Television recording facilities

The above list is not exhaustive and investors with other interests are encouraged to bring their interest to the attention of:

The Bahamas Investment Authority
Office of the Prime Minister
Sir Cecil Wallace Whitfield Centre,
Cable Beach, Nassau, Bahamas
P.O. Box CB 10980
Tel (242) 327 5970.

9.6 **Government Policy**

The Government of The Bahamas has indicated its commitment to building an economic environment in which free enterprise can flourish with government functioning as regulator and facilitator of economic development. Its stated economic policy expresses The Government's commitment to ideals of transparency, fair play and equality of treatment and a stable society in which all people are afforded the opportunity to realize their maximum potential. It further seeks to guarantee an acceptable level of economic security and generally foster the economic growth and the development of The Bahamas, by seeking to encourage an investment friendly climate and a complementary mix of Bahamian and overseas investments.

9.7 **Incentives**

Tax And Other Concessions

Investment in The Bahamas is and will be in an environment free from capital gains, inheritance, withholding, profit remittance, corporate royalties, sales, personal income, dividends, payroll and interest taxes. Stamp duty is chargeable at an ad valorem rate on all property transactions and a nominal real property tax is charged on real estate holdings except for land holdings in Freeport Grand Bahama. Additionally, investment incentives

under the following Acts of Parliament include exemptions from the payment of customs duties on building materials, equipment and approved raw materials and real property taxes for periods up to twenty years:

- Export Manufacturing Industries Encouragement Act – a manufacturer who exports at least 95% of manufactured products receives duty-free import of raw materials, building supplies and equipment and duty-free export of the product.
- The Freeport, Grand Bahama Act, 1993 - Exemption from payment of real property taxes were extended to August 2015
- Hotels Encouragement Act - hotel developers are exempted from paying customs duties on equipment and raw materials imported for the purpose of construction. The Act also provides for tax guarantees and concessions for improvement of guest facilities at hotels. New Hotel facilities are exempt from real property taxes for a period of 10 years from the date the new hotel opens. The exemption may be extended for further periods of up to 10 years where the hotel has been well maintained and refurbished. Hotel earnings are also exempt from direct taxation for 20 years from the opening date. To obtain the concessions provided by the legislation, hotels in New Providence and Paradise Island must have at least 10 bedrooms and adequate public space for the accommodation and entertainment of guests. A new hotel in any other island must have at least four bedrooms. Concessions apply to all amenities offered in connection with the hotel and include golf courses, harbours, marinas, roads and airfields.
- Industries Encouragement Act - exporters are exempted from import duties on equipment and raw materials and from paying business licence fees.
- Spirit and Beer Manufacture Act - spirits and beer manufacturers are exempted from import duties on equipment and raw materials.
- Tariff Act - manufacturers are exempted from import tariffs on capital equipment and raw materials needed for cottage industries, food processing, garment manufacturing and handicraft/souvenir items.
- The Bahamas Free Trade Zone Act
- The Agricultural Manufactories Act - interest free loans are provided for the purchase of supplies for agriculture - based businesses.
- Time Share and Vacation Plans Act – provides duty free concessions on building material for construction of time share facilities.

Investors may also in appropriate cases acquire, on concessionary terms, publicly owned lands for developments which have been approved. Grants, subsidies and funds have limited availability to foreign investors unless the investment is made in agriculture. Whereas there is no requirement for Bahamian participation in foreign investment enterprise, international investors are encouraged to establish joint ventures with Bahamian partners. The choice of such Bahamian partner is in the absolute discretion of the investor.

Incentives may be applied for by making application to the relevant Government department or Minister responsible for the particular area of development.

9.7.1 Freeport, Grand Bahama Island

The Island of Grand Bahama, one of the Islands of The Bahamas, comprises a land area of 530 square miles. Freeport is the capital city of the Island of Grand Bahama and it is approximately 150 miles off the coast of Florida.

Under the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act of 1955 and the amendments thereto (the Hawksbill Creek Agreement) the Grand Bahama Port Authority Limited (the Port Authority), a private company, acquired from the government of The Bahamas and private owners some 149,000 acres in Freeport (the Port Area) and in order to encourage the development of this land, the government granted to the Port Authority and its licencees certain concessions which included exemption from customs duties on manufacturing supplies and other consumable stores as defined in the Hawksbill Creek Agreement, personal income taxes, corporate profit taxes, capital gains taxes or levies on capital appreciation, real property and inventory taxes. The customs duty exemption expires in 2054 and in 1993 the other exemptions were extended until August 2015. Goods for personal use or consumption are dutiable.

Investors wishing to conduct business in the Port Area are required to become licencees of the Port Authority. The licencing procedure is straightforward and transparent. An annual licence fee is payable to the Port Authority by all licencees. The Port Authority may be contacted at:

The Grand Bahama Port Authority, Limited
Licencing Department
Port Authority Headquarters
Pioneers Way & East Mall
P.O. Box F-42666
Freeport, Bahamas
Telephone: (242) 352-6711
Telefax: (242) 352-8811
E-mail: info@gbpa.com

9.8 **Treaties**

Preferential trade arrangements established by the (i) LOME Convention, (ii) the General System of Preference (iii) CARIBCAN and (iv) The Caribbean Basin Initiative are also available to businesses located in The Bahamas.

9.9 **Immigration**

Due to The Bahamas' proximity to the United States and the pervading political and economic environment in neighbouring countries, The Bahamas has perennially been a destination of refuge or transit for immigrants migrating north. Accordingly, The Government of The Bahamas has given particular attention to the development and implementation of its immigration policy. It is also of note that Government is also preoccupied in attempts to accommodate millions of visitors annually by providing for a relatively easy process for legal entry into the country. Upon entering The Bahamas each person must complete an Immigration Arrival/Departure card, the designated portion to be retained by the visitor until departure. All visitors are required to be in possession of:

- a return ticket
- a passport or some other formal document permitting entry into the country
- visas
- in some instances visitors may be requested to furnish proof of sufficient funds to sustain them while in The Bahamas.

Citizens from the United Kingdom, the British Commonwealth and landed immigrants from Canada are allowed entry into The Bahamas as visitors without producing passports or visas for a period not exceeding three weeks. For longer stays such persons must present a passport. United Kingdom nationals are allowed up to 8 months stay in The Bahamas with a passport. United States citizens are also permitted entry, for a period not exceeding eight months without passports and visas but must produce evidence of nationality which may be a birth certificate, naturalization certificate, or a voter's card, accompanied by a photo ID.

9.9.1 Annual Residence Permit

A non-Bahamian interested in residing principally in The Bahamas may apply for an annual residence permit. The annual residence permit would enable the applicant to reside in The Bahamas for a period of one year. The permit is renewable annually. The cost for the permit is \$1,000. The permit can also be extended to cover spouses and minor children for an additional \$25.00 per person. Annual residents are not allowed to work in The Bahamas.

9.9.2 Home Owners Residence Card

A non-Bahamian who owns developed property in The Bahamas may apply to the Immigration Department for a Home Owners Residence Card. The card affords the holder, his spouse and any minor child endorsed on the card permission to enter and reside in The Bahamas for the duration of the validity of the card. Persons qualifying for the card include independent economic residents, resident home owners or a seasonal resident with an annual lease on a home or an apartment. There is an annual fee of \$500 for the card.

9.9.3 Certificate of Permanent Residence

Persons desiring to live indefinitely in The Bahamas should apply for a Certificate of Permanent Residence. The Certificate may be granted with or without the right to work. Obtaining a Certificate of Permanent Residence with the right to work would allow the applicant to work in The Bahamas in addition to conferring significant tax advantages. Applicants for permanent residence status must demonstrate that they are of good character, provide evidence of financial support and indicate the applicant's intention to reside permanently in The Bahamas. Spouses and dependant children may also be endorsed on the certificate at the time the original application is presented or at a subsequent date. The fee for a Certificate of Permanent Residence varies according to the status of the applicant. For a person who has resided in The Bahamas for at least 10 years but less than 20 years and who holds a work permit the fee may be between \$1,000-\$5,000. A person who has resided in The Bahamas for at least 20 years and also holds a work permit may pay between \$500-2,500. The spouse of a Bahamian citizen will pay \$250. Persons in other categories may pay up to \$10,000. The Government gives accelerated consideration to applicants who are major international investors or who own a residence or have investment in the Bahamas valued at \$500,000 or more.

9.9.4 Spousal Permits

The Bahamas Government will issue permits to non-Bahamian spouses upon marriage, which will allow these spouses to reside in The Bahamas for specified periods. These permits are renewable at the discretion of the Government.

9.10 **Restrictions On Investment**

In order to preserve a balance and complementary nature between Bahamian and overseas investments certain areas of business have been reserved for Bahamians. They include:

- Wholesale and Retail Operations;
- Commission agencies engaged in the import / export trade;
- Real estate and domestic property management agencies;
- Domestic newspaper and magazine publications;
- Domestic advertising and public relations;
- Night clubs and restaurants, except specialty, gourmet and ethnic restaurants;
- Security services;
- Domestic distribution of building supplies;
- Construction companies except for special structures for which

- international expertise is required;
- Personal cosmetic /beauty establishments;
- Shallow water scale-fish, crustacea, molluscs and sponge-fishing operations; and
- Public transportation.

International investors may however distribute wholesale any product they produce in The Bahamas.

9.11 **Regulatory Regime**

The National Economic Council (NEC) headed by the Prime Minister is responsible for the executive management of the Government's investment policy. The NEC is the actual approval body for foreign investment in The Bahamas. The operational aspects of the investment policy are the responsibility of The Bahamas Investment Authority (BIA) to which applications for foreign investment are submitted for government approval. The BIA is intended to be the investor's one stop shop for establishing the investment in The Bahamas. Immigration issues and matters of exchange control will however be handled directly with the Immigration Department and the Central Bank of the Bahamas respectively and the investor's legal advisors typically must coordinate securing the relevant permits and approvals in addition to the general approval for the investment given by the NEC.

X. ESTABLISHMENT OF A BUSINESS

10.1 **Attorneys**

Most investors find it prudent to engage local counsel to assist in the process of establishing the structure of an intended business and making the applications to the relevant government departments for necessary permits and approvals. Fees for services rendered may vary depending on the complexity of the proposal. Certain applications may require the services of a single attorney. Other applications may require a team of attorneys each with a particular professional emphasis. A list of attorneys is available at the office of the Bahamas Bar Association, Parliament Street, Telephone (242) 326-3276.

10.2 **Government Approvals**

Foreign Investors seeking to establish a business in The Bahamas must submit to the BIA a project proposal with supporting documents. The proposal will ultimately be considered by the NEC. The published guideline for the project proposal requires the following information:

- Name of Investor
- Address (including telephone & fax)
- Description of Proposal (an executive summary of project)

- Type of Business (i.e. share company, partnership, individual or joint venture)
- Principals
- Proposed Location
- Land or Factory Space Requirements
- Proposed Start Up Date
- Management/Personnel Requirements (years of experience, success of similar previous or current activity; work permit, if any required for key personnel and or non- key personnel.)
- Employment Projections (number of Bahamian and non-Bahamian employees)
- Capital Investment in the project
- Financial Arrangement (letter of credit from a financial institution or a net worth statement for each principal)
- Environmental Impact (toxic waste, disposal procedures: toxic input)
- Concessions Sought (Customs Duty Exemptions)

[Investors should allow a minimum of 3 months for determination of applications for investment approval. No fee is required in connection with the application for approval.]

10.3 Licences/Permits

10.3.1

After approval by the NEC of a proposed investment project, and following on the establishment of the desired structure for conduct of the intended business, the investor must make application to [the Ministry of Finance Business Licence Division] for a business licence. A business licence must be secured by any person operating a business aimed at obtaining a turnover. The initial fee for a business licence is \$10.00. The first licence may be obtained by completing the application form for a business licence and submitting it with the prescribed fee to the Ministry of Finance Business Licence Division. The licence is granted annually and renewed every year between January and April. Licences expire on December 31st of each year. Fees subsequent to the first fee are based for most business on their annual gross receipts less the direct cost of producing the turnover and range from no payment for a petty business to 1 1/2 % of turnover or \$500,000 (which ever is greater) for a very large business with a high profit. [Business licences may be secured within one to five business days].

10.3.2

Where the nature of the approved business involves a company intending to conduct the business of a bank or trust company, a licence to conduct business must be obtained from the Minister of Finance. An application for the licence will be submitted to the Central Bank of The Bahamas in accordance with the provisions of the Banks and Trusts Companies Regulation Act 2000. No

business licence fee is required in the case of a bank or a trust company. Such companies must however comply with the separate fee requirement imposed by that Act. The address for the Central Bank of The Bahamas is:

Central Bank of The Bahamas
Frederick Street
P.O. Box N 4868
Nassau, Bahamas
Tel. (242) 322 2139
Fax. (242) 322 4321

10.3.3

Investors seeking to establish an insurance company must also register their company with the Registrar of Insurance Companies before conducting insurance business.

10.3.4

In all cases where the intention of the investor is to have non-Bahamians involved in gainful employment in The Bahamas application must be made to the Immigration department for a work permit for such workers. (See Immigration Section 9.9)

10.4 **Insurance Obligations**

Employers and persons employed in The Bahamas are required to register and pay contributions under the National Insurance Act 1972. National Insurance is a system of national social insurance administered by the National Insurance Board of The Bahamas and provides a wide range of benefits including free medical care and expenses for injury or disease arising out of employment. The rate of contributions for employed persons with a weekly salary of \$400 or more is 8.8% shared by the employer and the employee. Contributions for employed persons on wages from \$60 to \$400 are shared at 5.4% (employer) and 3.4% (employee). There are no other insurance requirements imposed by law on employers although the growing trend for most business with 5 or more employees is to secure an arrangement for group medical insurance, which also involves contributions by the employer and employee.

10.5 **Environmental Issues**

Investors intending to operate a business in The Bahamas should be aware that several Acts of parliament directly or indirectly protect native species and ecosystems. Notably these include The Plant Protection Act and the Conservation and Protection of the Physical Landscape of The Bahamas Act. Land excavations and the removal of protected trees must be approved by the Ministry of Works, the Department of Physical Planning. The Bahamas National Trust also plays an integral role in protecting Bahamian plants and

may be consulted on matters relative to conservation. The Bahamas National Trust may be contacted at:

The Retreat,
Village Rd.
P.O. Box. N-4105
Nassau, Bahamas
Tel (242) 393 1317
Fax (242) 393 4978
E-mail: bnt@Bahamas.net.bs

10.6 **Anti-Trust Laws**

There are currently no anti-trust laws in force in The Bahamas.

XI. OPERATION OF BUSINESS

11.1 **Reporting Requirements**

Once established and depending on the nature of the business there will be minimum reporting requirements to public regulatory bodies by operators of businesses. Companies incorporated under the Companies Act 1992 must file an annual return with the Registrar which will include current information on the directors, officers and registered shareholders.

Banks and trust companies are subject to an increased level of reporting requirements pursuant to the Banks and Trusts Companies Regulation Act 2000. In certain cases the reporting of information to the Central Bank is now an administrative function enforceable by law.

All financial institutions are required to report transactions, which are suspicious in nature as defined in the Proceeds of Crime Act 2002. Such transactions will typically bear features that indicate the possibility of money laundering. Further, pursuant to the Financial Transactions Reporting Act 2000, all financial institutions as defined by the Act are required to verify the identity of its account holders through prescribed procedures. They must also verify the identity of a customer who does not have an account with the institution but engages in a transaction with the institution valued over \$10,000.00.

11.2 **Accounts**

It is anticipated that each business operating in The Bahamas will keep locally a proper set of accounts if only for the purpose of substantiating financial information represented on its application for renewal of its annual business licence. Generally there is no prescribed form for keeping of accounts although the Central Bank of The Bahamas and

the Registrar of Insurance will require its licensees to have annual audits by recognised auditors who will ensure that General Accounting Principles are observed.

11.3 **Business Ethics/Code**

There are no prescribed business ethics or codes imposed upon investors who operate businesses in The Bahamas.

11.4 **Consumer Protection Laws**

The Department of Consumer Welfare within the Ministry of Trade and Industry is mandated to protect the consumer against exploitation. The Department is committed to ensuring that price controls and standards are enforced. Deliberate overpricing of goods may result in a fine not exceeding \$5,000 or imprisonment for a term not exceeding 12 months along with seizure of overpriced goods for donation to charities. Information on price control and consumer protection generally may be obtained from:

The Ministry of Trade and Industry
West Bay Street
P. O. Box N 4849
Nassau, Bahamas Tel. (242) 328-2700

11.5 **Advertising**

Investors will generally be free to advertise services or products without restriction.

11.6 **Contracts**

Investors may freely enter into local contracts once all necessary approvals and permits have been obtained. Contracts may be governed by the laws of a country other than The Bahamas.

11.7 **Construction**

Where an investor determines that the construction of business premises is required he should anticipate construction costs in the range of \$70 to \$80 per sq ft. All construction projects must be approved by the Ministry of Works. Local architects and engineers will assist in preparation of required plans and will also assist in securing the necessary approvals and permits for construction. Authorization of the construction may take between 2 to 4 months depending on the complexity of the construction project. Fees for building permits vary depending on the floor area. For commercial and residential properties 1,501 - 5,000 sq ft the rate is \$15/100 sq ft. For properties 5,001 - 10,000 sq ft the rate is \$20/100 sq ft.

11.8 Product Registration

There is no requirement that products manufactured by investors be registered in The Bahamas.

11.9 Reduction or Return on Capital

Prior to converting non-Bahamian currency to Bahamian dollars for the purpose of investing in The Bahamas an Investor should make application to the Central Bank of The Bahamas for approved investment status. Once the investor has secured approved investment status from the Central Bank he is generally entitled to repatriate capital at any time. Where a company has passed a resolution reducing its capital it may apply to the court for an order confirming the reduction.

11.10 Sale of Goods

Investors may engage in the wholesale distribution of any product they produce in The Bahamas. The Public Holidays Act makes allowance for certain shops to be open on Sunday generally, and opened in the city of Nassau when cruise ships are scheduled to be in the port of Nassau. Wholesale or membership clubs and shops that sell building supplies, construction materials, electrical fixtures or plumbing fixtures are prohibited from opening after 10am on Sunday, Good Friday, Easter Sunday, Labour Day, Independence Day or Christmas.

11.11 Trade Associations

There are no trade associations, which investors are, as a matter of law required to join.

11.12 Manufacturing and Product Labelling

Products manufactured in the country are relatively requirement-free. Products produced do not have to contain ingredients or components found or produced in The Bahamas and there are no applicable labelling/packaging requirements.

XII. CESSATION OR TERMINATION OF BUSINESS

There are no Bahamian tax consequences for termination of a business in The Bahamas. The cost for liquidation may vary depending on the structure of the business and the complexity of the termination process. The voluntary winding up of a company incorporated under the Companies Act may take between 4 and 6 months where the process remains administrative without the need for contentious court proceedings. Costs associated with such proceedings may be in the range of \$2,000 to \$3,000. The winding up of a company incorporated under the International Business

Companies Act may be effected in 3 to 6 weeks and attract a fee of \$1,500. Businesses may be terminated without government approval or intervention and there are no Bahamian tax consequences on termination of a business. The liquidator of a company will be constrained to follow statutory requirements for satisfying creditor claims, making preferential payments and distributions to shareholders.

XIII. INSOLVENCY/BANKRUPTCY

Investor liability in the event of insolvency or bankruptcy will depend upon the structure of the business and the degree to which the investor exposed himself to potential liability on establishing the structure. The Companies Act 1992 provides that a company may enter into an arrangement which may be approved by the court and involve the filing of a plan of arrangement and the issue of a certificate certifying that articles of arrangement have been registered. The arrangement may include a reorganization or reconstruction of the company, and/or the separation of two or more businesses carried on by the company.

XIV. E-BUSINESS

The Government of The Bahamas has demonstrated its commitment to developing The Bahamas as a centre for e-business activities. Three pieces of e-business legislation are currently before Parliament. They are:

- The Electronic Communications Act, which would provide for the legal recognition of electronic transactions, electronic contracts, and electronic signatures, on the same footing as their paper based equivalents and the supervision of intermediaries and e-business service providers;
- The Computer Misuse Act, which would criminalize certain wrongful intervention involving computers, their systems and transmissions via computers such as hacking; and
- The Data Protection (Privacy of Information) Act, designed to guarantee certain rights to individuals in respect of the use of personal information collected in relation to them, consistent with international standards on such protection.

An E-Business Working Group for the promotion and long term development of e-business in The Bahamas has also been established, representing various groups in the financial services sector.

XV. LABOUR LEGISLATION and RELATIONS

15.1 The Employment Act

On December 31st 2001 Parliament passed the Employment Act, (the “EA”). The EA made major changes in the framework governing employment relations in The Bahamas.

The EA expressly prohibits discrimination against employees on the grounds of race, creed, McKinney Bancroft & Hughes

sex, marital status, political opinion, age or HIV/AIDS. The anti-discrimination provisions extend to the employer's consideration of job applicants. The EA also establishes minimum standards in respect of hours of work, vacation pay, maternity leave, family leave, and redundancy payments. Further the EA addresses other issues including, termination of contracts of employment, summary dismissal, unfair dismissal and the employment of children.

New to Bahamian employment law as introduced by the EA is the concept of "family leave" (a period of one week per annum) available in circumstances where the employee has been in employment for at least six months. Family leave may be granted in the event of the birth of a child, illness or death of a child, spouse or parent.

Under the EA, standard hours of work after February 1st 2003 are 8 hours in any day or forty hours in any week.

The EA provides that contracts of employment may generally be terminated on reasonable notice having been given by either party to the other, unless the contract provides otherwise. The employee has a right to a minimum period of notice in respect of his termination. The notice period is based on the length of continuous employment with the relevant employer. The following is a list of the statutory notice periods:

- six months or more of continuous employment but less than twelve months - at least one week's notice or one week's basic pay in lieu of notice and one week's basic pay for the period between six months and twelve months;
- twelve months or more of continuous employment - two week's notice or two week's basic pay in lieu of notice and two weeks basic pay (or a part thereof on a pro rata basis) for each year up to twenty-four weeks.
- where the employee holds a supervisory or managerial position the statutory requirement is one month's notice or one month's basic pay in lieu of notice and one month's basic pay (or a part thereof on a pro rata basis) for each year up to forty-eight weeks.

An employee continuously employed for one year or more but less than two years, is also required to give his employer at least two week's notice. If his period of employment is two years or more, he will be required to give four week's notice.

Generally, persons under the age of 14 are not permitted to work but the EA allows for exceptions in the case of grocery packers, gift wrappers, peanut vendors and newspaper vendors. Children are not allowed to work during school hours and outside of school hours their permitted hours of work are as follows:

- during school days, not more than three hours;

- during a school week, not more than twenty-four hours;
- on a non-school day, not more than eight hours;
- in a non-school week, not more than forty hours.

15.2 Labour Relations

Labour Relations are regulated by the Industrial Relations Act which provides for the recognition of trade unions by employers, the registration of certain industrial agreements and the regulation of trade disputes. Procedures established for determining industrial disputes include conciliation proceedings administered by Government appointed conciliators and in the absence of resolution a judicial determination by a Supreme Court judge on the hearing of the merits of the case.

XVI. INTELLECTUAL PROPERTY

16.1 General

The laws relating to intellectual property (with particular emphasis on copyright and trademarks) are under current review by the Government notably within the context of a need to ensure compliance with international standards and to address matters germane to the use of the internet. Concentration on the revision of such laws will facilitate The Bahamas' application for appointment to the World Trade Organisation.

16.2 Copyright Law

Under the Copyright Act of 1998 a Copyright Royalty Tribunal was established which has the responsibility for advising on royalty rates and receiving and disbursing payments. Additionally, the Copyright Registry ("the Registry") was formed for the purpose of receiving applications, registering claims and issuing certificates of registration. The Registry is overseen by a Registrar of Copyright.

There are five categories of creative work which are protected under the Copyright Act: non-dramatic literary works, works of the performing arts, works of visual arts, sound and recordings, and serial works including periodicals, newspapers, journals and proceedings. The Copyright Act adheres to international standard for copyright duration – life plus 70 years. The Copyright Act imposes fines on persons found in contravention of its provisions and it also allows copyright owners to sue unauthorized users of their work.

XVII. EXPATRIATE EMPLOYEES

17.1 Cost of Living and Immigration

Due to freight and customs duties being levied on goods imported into The Bahamas, food, clothing and auto equipment may be relatively expensive. The usual utility services include electricity charges which are billed monthly, water charges billed quarterly and telephone charges billed monthly. On average a deposit for electrical services is about \$200, but will depend on the size of the home and its location, and can range from \$150 to more than \$1,000. Telephone deposits range from \$50-\$500 for landlords and \$150-\$500 for tenants. A \$55 deposit is required for the provision of water to buildings with one water closet or bathroom and \$115 for those with two or more.

17.2 Drivers Licences

Drivers licences in The Bahamas are issued by the Road Traffic Department. Such licences will only be issued to Bahamians or persons who have Bahamian status, residency or permission to work in The Bahamas. The Bahamian driver's licence is recognized internationally. Persons holding drivers licences which have been issued outside The Bahamas may apply to the Road Traffic Department for a Bahamian licence. The application should be accompanied by the existing licence and a fee of \$15.00. Visitors who are not working in The Bahamas are permitted to drive with their foreign licence for a period not exceeding three months. Expatriate employees must have a valid Bahamian driver's licence once they begin work. The licence is a requirement only when employment commences.

17.3 Housing

Prices for living accommodations depend on the location. Usually apartments and homes for rent or sale have basic furnishings. Low end rent charged for an efficiency or a one bedroom apartment is \$500 and for a two bedroom is \$700-\$6,000 per month. A two bedroom house or condo can rent for \$2,500 up to \$8,000 per month. Average building costs for a three bedroom home with living room, dining room, kitchen and bath would start at approximately \$165,000. The factors determining cost include the materials used, building standards and the location.

17.4 Education

Schools in The Bahamas are either Government owned or privately controlled. Schools are available for children ranging from ages five to sixteen years old. Nursery and preschool facilities are also available. Education in Government controlled schools is free. For private institutions fees range from: \$300-\$600 per term for pre-schools; and \$1,600-6,000 for primary-secondary schools per year.

17.5 **Importing Personal Possessions**

Duty is payable on household effects, such as furniture, china and appliances. Used clothing and other used items are not dutiable if imported as accompanied passenger baggage. There is no duty charged on antiques and art work.

17.6 **Medical Care**

The Bahamas offers some of the most modern healthcare facilities in the Caribbean. There are two Government run hospitals and one private hospital, numerous government owned clinics and private clinics. Comparatively, medical and dentistry costs can be less expensive than those in the United States. At the Government owned outpatient clinics residents pay \$10 per visit and non-residents pay a fee of \$30 per visit. Visits at a specialist's office may range from \$150-\$350.

The Bahamas does not yet have a national health plan. The current Government of The Bahamas has however committed itself to implementing such a plan.

17.7 **Tax Liability**

There are no tax liabilities applicable to the expatriate.

17.8 **Work Permits**

The Government of The Bahamas is amenable to accepting applications for work permits provided the position applied for requires special skill and expertise for which there are no available qualified Bahamians. Prior to an employer seeking to hire an expatriate, he must advertise for Bahamians and consult The Bahamas Employment Exchange. If such advertising proves fruitless, the employer may then proceed to apply to the Department of Immigration for permission to recruit outside The Bahamas.

An application form for a work permit must be obtained from the Department of Immigration and be accompanied with the following:

- a letter from the prospective employer providing reasons for the application, the position being offered and period of time needed
- two passport size photographs
- a police certificate issued not more than 5 years prior to the application
- medical certificate not more than 30 days prior to submission
- references from previous employees
- copies of local newspaper advertisements with replies thereto
- certificate from the Department of Labour (Employment Exchange) indicating that there are no Bahamians available for the position offered

- processing fee of \$25.

Depending on the category, work permit fees range from \$350 to \$10,000 per year. Standard work permits are issued for one year, but the employer may request a longer period for key personnel. Renewals of work permits are not automatic and with each renewal sought the same criteria applicable to a new application must be satisfied. In the event the expatriate ceases to be employed he must return the permit to the Department of Immigration within seven days of termination of employment.