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The Bahamas cements its role as a leading IFC

By James Williams

Four words spring to mind when discussing the evolution of The Bahamas as a leading international financial jurisdiction: regulation, location, expertise and innovation.

Collectively, they provide a multi-layered value proposition that is helping The Bahamas cement a reputation for not only committing to a regulatory framework that embraces and, indeed, reflects international best practices, but which encourages tangible innovation. In other words, The Bahamas is a jurisdiction that gets things done, rather than just talking about it.

One only has to see the incredible success of the SMART funds series to appreciate this. First introduced in 2003, there are now more than 500 SMART funds licensed and registered in The Bahamas. Each of the seven SMART Fund templates has been developed to meet the particular needs of investors.

SMART Fund 002, for example, is limited to 10 investors, SMART Fund 004 can have a maximum of five investors operating as a private investment company, whilst SMART Fund 007 may be offered to up to fifty “super-qualified investors” who must each make a minimum initial subscription of USD500K.

“Agriculture, transportation, real estate, Formula 1 marketing; basically anything you can imagine. People are taking advantage of SMART Funds to hold these assets,” says Michael Dean, Vice President, Investment Fund Services, Equity Bank and Trust Bahamas Limited.

Tanya McCartney is the CEO and Executive Director, Bahamas Financial Services Board (‘BFSB’), a private sector body which works closely with the Bahamian Government to provide the right environment to foster growth in its financial services

industry. Speaking about the four aspects of The Bahamas' value proposition, she comments: "The word that first springs to mind is 'deliberate'. We don't want to be reactive in terms of responding to changes in the operating environment. Rather, we want to leverage what we believe are our strengths as we build out our financial services industry. The public-private sector partnership characterises that approach; it will be deliberate, and will involve both government and industry in terms of moving the sector forward."



"We like to think of ourselves as a 'near-shore' jurisdiction rather than an 'offshore' jurisdiction."

Tanya McCartney, Bahamas Financial Services Board

Gateway to the Americas

The one thing that any successful jurisdiction needs is good access to major cities. In that respect, The Bahamas is ideally situated just 50 miles off the coast of Florida. Lynden Pindling International Airport lies approximately 16 kilometres west of Nassau, the capital and commercial centre of The Bahamas on the island of New Providence.

Its location is something that perhaps The Bahamas doesn't trumpet loud enough.

"When people think of The Bahamas there might still be an initial response to think of us in a tourism context but beyond that, we are strategically placed. You can be in Miami in 30 minutes, and in New York in 90 minutes.

"With respect to Latin American family offices with connections in the US - maybe their children study there - but who don't necessarily want to live in the US, we are seeing an increasing number of them relocating here because it's safe yet still in close proximity to the US. The Bahamas is a beautiful place to work and enjoy a good quality of life for those looking to relocate their family offices, or set up fund management businesses," says McCartney.

"We like to think of ourselves as a 'near-shore' jurisdiction rather than an 'offshore' jurisdiction."

In recent years, The Bahamas, with its tropical environment, has become the preferred choice for those wishing to combine an excellent quality of life whilst simultaneously managing their financial affairs. Few competitive jurisdictions can claim - or duplicate - the business and lifestyle combination, which exist naturally in The Bahamas.

Regulation

To succeed as an international funds centre requires not just a proactive regulator but a willingness to respond to the changing needs of the global industry. In that regard, The Bahamas became the first independent country in the region with IOSCO "A" Status, which it received on December 27, 2012.

Having a robust regulatory framework in tandem with a commitment to meeting international standards is something that The Bahamas prides itself on. Being viewed as a responsible jurisdiction requires, according to McCartney, the evidenced demonstration of committing to best practices. In other words, not just saying that such a commitment is in place but acting on it.

This means adhering to, and implementing, the structures to support international cooperation and transparency.

FATCA & Common Reporting Standards

Over the years, The Bahamas has shown its commitment by establishing robust AML and KYC regimes, not to mention the fact that it has now entered into 33 Tax Information Exchange Agreements ('TIEAs') to meet international standards on transparency and tax cooperation.

On 3rd November 2014, The Bahamas and the US signed their Agreement to Improve International Tax Compliance (the Agreement) and to Implement FATCA based on the Model I IGA. As an IGA partner jurisdiction, Bahamas-based Financial Institutions will not be subject to a 30% withholding tax on US source income, unless they fail to meet the requirements set out in the IGA and in Bahamas domestic implementing legislation.

Under the terms of the Agreement, Bahamas Financial Institutions will provide the Bahamas Competent Authority with the required information. The Bahamas

Competent Authority will forward that information to the Competent Authority in the US.

The Bahamas is currently building upon its FATCA platform to move forward with the implementation of Common Reporting Standards ('CRS').

"We are largely compliant according to the OECD, we've stated our commitment to a bilateral approach for the implementation of the Common Reporting Standards, and both industry and government are working hard to ensure we are putting legislation in place to meet our commitment to implement CRS in 2017," confirms McCartney.

"To the extent that we see regulation as a core component of our value proposition, I think that the changes in global regulation are working to our advantage. We are able to say to institutions that want to establish here, as well as to those who already operate here, that we adhere to the same standards that their home jurisdictions adhere to."

Investment Funds Act under review

One of the next steps for The Bahamas is to attract more institutional fund managers, in addition to family offices. The Investment Funds Act in The Bahamas is highly flexible and currently supports four classes of funds: Standard Funds, Professional Funds, Recognised Foreign Funds and SMART Funds.

McCartney is confident that jurisdiction will attract more fund managers because its Investment Fund legislation is currently under active review.

"There is a taskforce in place, as well as a legislative consultant, to review Bahamian legislation, make sure it is robust and, importantly, competitive with a view to attracting more fund business to the jurisdiction. We'd like to see amendments to the legislation by early 2017.

"The first step is to ensure that we have in place a legislative and regulatory framework that will attract business. We need to make sure all the fundamental pieces are in place, and, where necessary, being enhanced," says McCartney.

The Securities Commission of The Bahamas (SCB), led by Executive Director Christina Rolle, is taking a sound approach to applying the right level of regulation



whilst at the same time remaining open to the views and concerns of the Bahamian funds industry.

"We welcome managers from Europe and the US with a proven track record who can bring their expertise to The Bahamas to build out their client base in Latin America, Africa and Asia under the auspices of the SCB's regulatory regime. We want to attract talent, just like any other fund jurisdiction," notes McCartney.

A New Fund to Attract Institutional Investors...?

One way to achieve this could be to introduce an institutional fund product like the Cayman exempt fund. At the end of the day, SMART Funds were not designed for large institutional market, or for that matter the retail market, but more the private wealth/family office market.

Fund legislation, therefore, perhaps needs to be introduced into The Bahamas that is more targeted at the institutional investor.

The rules are clearly different for dealing with institutions in the UK, for example, compared to private wealth and retail investors, where there are proper controls and monitoring processes in place. Having a fund product along the lines of an Irish QIAIF or a Luxembourg SIF could work very much to The Bahamas' advantage.

The ICON structure and the SMART Fund series have piqued interest in The Bahamas as it relates to fund business. While it's confined primarily to the private



wealth space, it has opened the door for the conversation to extend to institutional fund business, says McCartney.

“We believe that we have the infrastructure and the talent to support more institutional funds and hence, we are focusing more on this area of the market. This is why we are looking at the current legislation.

“Our plan is to create an environment that attracts institutional funds to The Bahamas. I cannot emphasise this enough. The approach that The Bahamas Government, the SCB and the funds industry take is highly collaborative,” states McCartney.

The BFSB was established in 1997, as a private sector group (with government support through funding) to promote the jurisdiction. Over the years this has evolved beyond promotion in the narrow sense to working and collaborating on the creation of new products.

The ICON, for example, took 18 months to move from concept to creation. That was only possible because government and industry both sat at the same table.

“The environment here supports growth and anybody who is thinking about doing business in The Bahamas would be supported by institutions such as the BFSB,” adds McCartney.

Innovation

One could very easily combine regulation and innovation as two parts of the same value proposition as it relates to The Bahamas.

Taken on its own, with respect to product innovation there has been a concerted effort to introduce compliant structures to meet individual needs. The ICON legal structure, for example, was introduced specifically to cater for the Brazilian market.

McCartney says that because of the changes in the global operating environment “we have to be responsive. Any financial institution looking to establish itself here in The Bahamas will want to be in an environment that is responsive and one where industry impediments, as they arise, are addressed within international standards.”

Innovation is important in a Bahamian funds context, especially when one considers the SMART fund. These can be easily established, even without the SCB needing to get involved in the approval process – this is because fund administrators can be appointed as a delegated authority to license a SMART fund. “That is just one example of innovation,” says McCartney, who continues:

“The reality is, financial services is the second largest contributor to The Bahamian economy. It contributes anywhere from 15 to 20% of our annual GDP. Everyone here understands the value of the financial industry in terms of job creation and the positive impact it has on the economy.

“We have to look for opportunities to innovate so that we can grow and thrive. Hence the push to ensure that we are competitive in terms of the framework we have in place to support the funds business.”

An incubator for ideas

Innovation is ingrained in the psychology of the jurisdiction. One could almost think of the BFSB as creating an incubator for ideas and the sharing of ideas through its various working groups that are dedicated to various aspects of financial services. There is one for funds, for example, and it was in the context of this particular working group that the concept of the SMART fund was nurtured.

“We engaged with the Bahamian government to make sure it became a reality,” confirms McCartney. “There is a desire across industry and government to remain cutting edge, to remain viable and I

believe that is what breeds innovation. We have to keep improving and consider new products and opportunities for our long-term survival.”

In McCartney’s opinion, the mix of local talent and international expertise that can be drawn upon within the jurisdiction supports that spirit innovation. That expertise is another of The Bahamas’ key strengths and value propositions. Not only does it encourage local talent to gain experience overseas, at the same time it supports professionals who have experience and a well-developed network with the banking and financial services sector.

“We have the framework to ensure that we will continue to build talent and attract talent. We have internationally accredited schools for families who are thinking of relocating to The Bahamas, not to mention excellent medical facilities,” states McCartney.

Over the years, The Bahamas has nurtured a stable and predictable business environment anchored by a highly trained and qualified cadre of Bahamian professionals who work side-by-side with expatriate colleagues. Together, they bring experience and a vast network for business development in the more than 250 financial institutions that call The Bahamas their home.

Future innovation

The BFSB has identified certain market opportunities to continue its march towards innovation. There are plans afoot to look towards Asia as well as to expand the jurisdiction’s footprint in Latin America.

“We have already made excellent strides in Brazil. Now we are focusing our attentions on Mexico. The ICON, as a concept, worked in Brazil but the same product will not work in Mexico. There will need to be enhancements. We are tailoring products to suit the markets that we are targeting.

“We understand what is needed with product innovation to meet the needs of these different markets. Therefore, we want to ensure that whatever new products we offer, going forward, are compliant and transparent. That will continue to be our focus,” says McCartney.

In addition to product innovation, McCartney expects to see more business



innovation in order to improve the ease of doing business in the jurisdiction.

“We recently rolled out an end-to-end online corporate registry service. It is for company incorporations currently but the plan is to expand that to all aspects of the registry including the recording of deeds and documents etc.

“What I am referring to here is business innovation; solutions to create a more business-friendly environment where it will be easier for institutional funds to be established and where commerce, as a whole, can thrive. That’s what we are working towards,” concludes McCartney.

Conclusion

There are many facets to The Bahamas that collectively are helping to position it as a prominent international financial centre. With a robust, yet flexible regulatory framework, and a forward-looking approach to introduce new products based on collaboration, the jurisdiction appears to be thriving in this new era of global regulation.

If, as is hoped, an institutional fund product is introduced, The Bahamas would be well placed to attract institutional fund managers and investors and go one step further to cementing its position on the global stage. ■