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WHAT NOW?
SURVIVAL AND ADAPTATION STRATEGIES
FOR OFFSHORE FINANCIAL CENTRES
LIKE THE BAHAMAS

by

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There is a well-known poem by T.S. Eliot that tells us to be mindful that:

"**We shall not cease from exploration**
And the end of all our exploring
Will be to arrive where we started
And know the place for the first time."

So, where did we start? And has the time come to re-visit that place to take on board some lessons we may have missed or perhaps forgotten as we made our way over the years into the big, wide world as an international financial centre.

The place that we started was The Bahamas of the early 1930s, in the interval between the two Great Wars. It was also the time of the Great Depression when the rich in many of the developed countries were finding themselves targeted for taxation of increasingly draconian tendency.

Enter stage right, a remarkable Bahamian visionary and realtor by the name of Harold - later Sir Harold – Christie. Every year, he would go on a solo trek in search of the rich and famous in the great capitols and playgrounds of the world, whether in Britain, continental Europe or North America.

Armed with a dossier of photographs depicting the natural beauty of The Bahamas and a slew of real estate listings, H.G. Christie, with his quiet charm and unassuming manner, soon inveigled his way into the salons and boardrooms alike of the titans of commerce and of industry, including such legendary figures as the Canadian gold magnate, Sir Harry Oakes; the Swedish industrialist Axel Wenner-Gren; the American tycoons, Arthur Vining Davis and Austin Levy. Later on would come the founder of Pan American Airways, Juan Trippe; the English financier from China, Sir Victor Sassoon, the Canadian industrialist and developer of Lyford Cay, E.P. Taylor, and assorted members of the European nobility.

And H.G. Christie had a simple but compelling message for these newfound clients of his, especially for the Canadians and Europeans among them: move with your money, he counselled them. Don't just buy property in The Bahamas, move with your money to The Bahamas; take up residence in The Bahamas, a jurisdiction without income tax, without inheritance tax, indeed without taxes of any kind save for customs duties on imported goods.

It bears remembering that then, as now, most revenue systems in the developed world revolved around the notion of residence as the basis of personal tax liability (with the rather singular exception, of course, of the United States whose tax system was based, then as now, on citizenship). And back then the test for tax-residency in a great many onshore jurisdictions would allow you to become non-resident for tax purposes as long as you spent 6 months or so abroad – not a bad bargain at all for those who wanted to escape the brutal winters back home anyway. Factoring climatology into the financial mix, residence in The Bahamas offered the best of both worlds.

Besides The Bahamas was a place of great natural beauty and political stability and if you got bored living on the proverbial rock, West Palm Beach and Miami were just a hop, skip and a jump away.

And so thanks to these advantages and the proseletyzing travels of Sir Harold Christie, the restless rich came, they saw, and a goodly number of them stayed, becoming "winter residents" of The Bahamas and, conversely, non-residents for tax purposes in their own home countries.

Such were the beginnings of what would come to be known as the "offshore sector" of The Bahamas. The Royal Bank of Canada was already here, and by 1937, the first dedicated trust company – The Bahamas International Trust Company Limited – had been formed to cater to the wealth management and estate planning needs of a steadily growing clientele of the very highest quality.

And the rest, as they say, is history. According its most recent (2011) report on The Bahamas as an IFC, The International Monetary Fund described us as :

"the largest sovereign offshore financial centre (OFC) in the region, and the fourth largest in the world after the Cayman Islands, Hong Kong… and Singapore……(with) offshore banks accounting for 98 percent of the Bahamas' US$598 billion financial sector".

I hope you will not think me impertinent if I say that the news that we are (or at least were) the 4th largest IFC in the world was greeted at the time with some incredulity here in The Bahamas as we had always thought ourselves to be the 6th largest offshore centre in the world, ranking behind London and Delaware, neither of which, for some curious reason, made the list….. speaking of which, I don't recall seeing Panama's name either but perhaps I read the report too quickly.

But hastening back to the mainline of my subject…….. however things may have been in "the place where we started" 80 odd years ago, there can be no denying that the world has become an infinitely more complex place in the years that have since rolled by. And it would be incredibly naïve to believe that it is somehow possible to re-set the clock to a bygone era and somehow replicate what we had back then.

We cannot. The simple days when we could essentially do as we pleased while the rest of the world either averted its gaze or gave us a wink and a nod – those days are gone forever.

The Age of Secrecy is inexorably giving way to the Age of Transparency. In the space of just 15-20 years we have moved - have been made to move - from virtually complete secrecy to mutual legal assistance treaties (MLATS) and from thence to a whole new regime of privacy-invasive KYC and transaction reporting, and from thence to TIEAS and from thence to FATCA and from thence to……well, I think we all know that the prospect of global FATCA or automatic information exchange, in one form or another, is writ large on the horizon – sooner for some IFCs than for others. Indeed there may be a certain inevitability to it but we'll see because there are still a whole lot of technological and cost-related issues to sort out not to mention the "level playing field" principle that all IFCs, in the interests of fundamental fairness and equity, are naturally concerned about. So, we'll see.

But alas, we live in a fishbowl, and the great powers of the world are applying more and more Windex to get the clearest possible view of exactly what the fish are doing inside the bowl. And if you don't facilitate this voyeurism, the threat is that they'll smash up the fishbowl and kill off all the fish. The metaphor is crude but no less accurate for being so.

But however that may be, there are still, I think, hugely important lessons to be drawn from the early, formative years of the financial services industry of The Bahamas; lessons that can perhaps help us navigate our way forward as we seek to adapt to the new world order and to not only survive but to prosper.

<u>Lesson # 1</u> – Do not be dismayed or discouraged by the state of the global economy or the turbulent waters upon which IFCs are now afloat. The offshore industry of The Bahamas was formed, as I said, during the Great Depression by intrepid men like Sir Harold Christie who saw good opportunities in bad times and exploited those opportunities with skill, ingenuity and perseverance. The same applies today. Amidst all the depressing news about IFCs and the challenges of the global economy, opportunities still abound.

Indeed it's useful to recall that not too long ago – in the year 2000 to be precise – the death knell was being sounded for IFCs all over the world, not least of all right here in The Bahamas. With the raft of legislative and regulatory changes introduced that year, many a Cassandra could be heard in the land proclaiming that the Apocalypse was at hand, and that we'd all be dead – or at least dead broke - in 3 to 5 years. As a matter of fact, one or two of these end-of-days prophets of whom I speak are, God bless them, delegates at this conference, and no worse for wear either!

Of course, the end-of-days didn't come as prophesized. The industry went through a period of shrinkage or, to use the preferred euphemism, "consolidation" but in retrospect it was not such a bad thing after all because it did bring about an internal cleansing, and what was lost in quantity was more than made up for in the superior quality of what remained, and what would come thereafter.

<u>Lesson # 2</u> : Just as Sir Harold Christie realized 80 years ago, you can't wait for the business to come to you. You have to go in search of it beyond your borders just as he did. Of course, in the great boom period of the industry, you could simply sit at your desk as the business rolled in through the door or over the telephone or fax lines. Not anymore. You need to put on the proverbial tracksuit and proceed with sprightly step into the world beyond in search of new business.

<u>Lesson 3</u> : But you need to know <u>where</u> to look for it! Or perhaps it's more accurate to say, where NOT to look for it.

When the legendary Willie Sutton was asked why he had such a fixation on robbing banks, he said with an absolutely straight face : "Because that's where the money is".

Harold Christie in his day knew where the money was too, where the monied class was. And he went in search of it in a strategically targeted way.

Now, of course, that was then and this is now. And nowadays you can't just jump on a plane and parachute into the enclaves of the rich and famous. The mega-wealthy, to be sure, are to be found all over the planet but today when it comes to private banking and wealth management the first imperative is to know your geography and, more specifically, where the no-fly zones of client-recruitment are.

North America – both the United States and Canada – and the U.K and continental Europe (at least western Europe) are increasingly off-limits to private bankers and fiduciaries alike, mainly because of the raft of tax-driven reporting measures that have been introduced in recent years; measures that are clearly calculated to make IFCs much less attractive than they once were.

And it's not going to get any better for us in these traditional markets either - at least not anytime soon.

Indeed it's likely to get a whole lot worse, especially for those who try to brave it out on the basis of clever, or perhaps not-so-clever, ways of dealing with "undeclared money" or getting round the new onshore tax reporting regimes. The institutional and personal risks in such cases are already quite extreme and they can be expected to worsen, with lawyers, client-relationship managers, investment advisors, trust administrators, bank and trust company executives, freelancing "business introducers", not to mention the clients themselves, all coming under increasing threat of mass attack in the form of John Doe summonses; and whistleblowers-turned-bounty hunters; not to mention the ultimate nightmare: the prospect of personal arrest and criminal prosecution for money-laundering, conspiracy to defraud the Revenue, and even racketeering. Increasingly, that's how they're going to be prosecuting you for facilitating tax evasion, especially in North America.

And even if such charges won't stick, they will still likely serve their purpose by scaring you out of the business and/or forcing you to sell your clients out in exchange for immunity from prosecution. Americans play hardball. The Canadians are getting pretty good at it too, and the Europeans are catching on as well. And, of course, nearly all of it is driven – or at least professed to be driven - by moral outrage over the leakage of billions of dollars in tax revenue into these supposed citadels of piracy known as IFCs.

So….. unless you're dealing with Canadians or Europeans who have effectively abandoned their tax residence back home and have moved away with their money, or who stay but are fully tax compliant and are only interested in using IFCs for tax-neutral estate planning of the type I'll mention in just a sec, the markets in these countries are pretty much dead already and will only become, as we say in The Bahamas, deader as time goes on.

So, the geographical focus has shifted big time, and will doubtless continue to shift big time to tax-neutral markets where IFCs still offer other important estate planning and wealth management benefits to clients, including:

- asset protection as a hedge against political and fiscal instability back home, and the associated risk of expropriation;
- asset protection against more directly personal risks such as kidnapping and theft;
- asset protection for succession-planning purposes, particularly as against unwanted heirs under forced heirship regimes;
- asset protection against possible future creditors;
- asset conservation and wealth management in jurisdictions that will continue to place a high premium on privacy in a tax-neutral context;
- asset management or fund administration in a jurisdiction that is well regulated but not suffocatingly so as many onshore jurisdictions are; and
- asset concentration in a neutral jurisdiction for geographically dispersed or highly mobile investors or family members.

With such tax-neutral angles in play, the geographical shift away from Europe (at least western Europe) and North America has brought Latin America, principally, Brazil and Mexico, into central focus. Such is the new geography that banks and trust companies and other wealth management enterprises in IFCs like The Bahamas will have to work with as we move forward.

I hasten to add, however, that the Far East - in particular, China, Japan, and even South Korea in the wake of a succession tax increase that now runs as high as 50%, present interesting possibilities for IFCs like The Bahamas as well. Indeed potential business in these markets is not something that we in the Caribbean should just automatically cede to jurisdictions like Hong Kong and Singapore. The same is true for the Middle East as well. We need some latter-day Harold Christies to take their ploughs into these fertile but largely untilled fields. They hold vast potential for tax-neutral business of the kind just mentioned.

LESSON 4: the future lies not in the quantity, but in the quality, of the clientele. Harold Christie understood this perfectly 80 years ago. He didn't go after a thousand clients. He set his sights on big fish that were obviously far fewer in number but in a position to do a whole lot more, as indeed they did.

We lost sight of this particular dynamic in the great expansionist era that spanned the 60s, 70s and 80s when we mass-marketed our IFCs. Mini trusts and bank accounts and shelf companies became highly commoditized and were sold in much the same way as vacuum cleaners and Amway products.

Walk-in business was in great abundance back then. Client acceptance protocols were extremely lax and dollar thresholds awfully low. Not atypically, some guy would suddenly show up on your doorstep, without introductions, looking to set up a company or trust overnight……or in would pop some tourist in shorts and flip-flops, cash in hand, looking to set up a bank account while here on vacation. Those days are gone. Nobody wants or takes that sort of business anymore. It's simply too fraught with danger.

But quite apart from the dangers involved, it just seems to make so much more sense to take a page out of Sir Harold Christie's playbook of 80 years ago and renew the emphasis on getting fewer people to do more, in much the same way that Sir Harold, for example, persuaded Sir Harry Oakes to move with his money to The Bahamas from Canada. In just a few short years afterwards, Oakes had almost single-handedly transformed the Bahamian economy with his various developmental projects - just as other high net worth immigrants would do after him, all through the years, right down to the present day, with the likes of Sol Kerzner of South Africa who created all of this you see here at Atlantis, and Joe Lewis of the U.K. who is transforming the western end of Nassau with his magnificent Albany resort and residential community. It's always been a comparatively small number of movers and shakers that have had the most economically transformative effect.

This same high quality/low numbers paradigm may be what the financial services sector of the 21st century Bahamas needs to re-aspire to. Instead of the mass marketing of yesteryear, the emphasis must now be fixed on the quality and worth of the clients we attract and the added value they bring with them for the lareger economy of The Bahamas.

That's why we really do need to encourage the establishment of family offices here in The Bahamas, a place where our clients can live and work, managing their investments, operating their own command centre, utilizing a range of structures from PTCs to Executive Entities to specially structured IBCs to SMART Funds to foundations and trusts, while entering into outsourcing arrangements with locally licensed entities for administrative and back office support and, where applicable, regulatory compliance support as well.

Of all the things on the horizon, this one, the family office concept, offers, I think, the brightest prospects of all. It may not be as labour-intensive as we would like but that's one of the new realities we're going to have to adapt to anyway as we pursue higher quality over higher quantity.

Which brings me to:

Lesson 5: – we really have to roll out the red carpet. Just as Harold Christie appreciated 80 odd years ago, you can't be extolling the virtues of The Bahamas and preaching about what a great place it is unless you actually do roll out the red carpet to your investors – and not trip them on it as they make their way in. This applies as much to financial institutions and family offices that set up here as the individual persons that re-locate here with their families. The day-to-day reality has to be in sync with the rhetoric.

The Bahamas has been too insular for too long, and way too protectionist in too many ways for too long. A change in mindset, a change in attitude is therefore needed if we are to successfully adapt.

If we want to encourage family office-type business to come to The Bahamas, we need to re-calibrate our immigration policies and protocols accordingly, and pay even closer attention to how they're actually executed.

That's why I'm delighted that the Government is committed to a special, dedicated unit within the Immigration bureaucracy for the expeditious treatment of residency and work permit applications for high net worth individuals and their families and for the key managerial personnel they may need to bring with them to manage their family offices. Already the nucleus of this is operational and already there is evidence that it's producing positive results.

But the Government needs to do more, a lot more, and it needs to do it now. In particular, the special Immigration unit needs to be expanded and equipped with the necessary resources to ensure that applications are processed to finality within the shortest possible time and with the minimum of pain for the applicants. The special unit also needs to be re-located to more hospitable premises – perhaps premises that it can share with a reinforcing support-unit from the Ministry of Financial Services.

In the meantime, however, I really do want to publicly commend the Minister of Immigration, the Hon. Fred Mitchell; the Minister of Financial Services, the Hon. Ryan Pinder; the Director of Immigration, William Pratt, and the one-and-only, the indefatigable Billy Nottage, all of whom are already making an important difference.

This improvement in the immigration bureaucracy is going to become even more crucial if we join the bandwagon and introduce an "investor residency" programme. My own view is that we should but that, again, it should be focused on high quality rather than high quantity. Investment thresholds would therefore need to be rather high.

It is, however, vitally important that we settle on one thing : the granting of citizenship, on the basis that the recipient never has to step foot in your country is not a credible, sustainable approach. Moreover, it's a red flag to the OECD, as witness the recent experience of Malta which, under pressure from the OECD had to introduce a longer qualifying residency period under its Investor Citizenship programme.

Indeed any country that offers to sell citizenship without extracting any kind of commitment for actual residence is not likely to stay in business for very long. They'll be shut down if the Schengen visa is withdrawn and/or the US stops giving visas to holders of passports from such citizenship-for-sale countries.

A far more credible approach to an Investor Citizenship programme would be to offer Permanent Residence at first instance with a guarantee of citizenship once the prescribed period of residence has been satisfied.

But however we configure the programme, we really do have to ensure that the immigration bureaucracy is not only accommodating but welcoming. If we want high net worth immigrants to be an integral part of the national family, we need to treat them like family not only when they come but before they come.

But we have to go further because it's not just Immigration reform we need.

We also need to crack the door open on the legal profession and not only allow but encourage Bahamian law firms to partner or structurally associate with foreign law firms such that there can be a far freer movement of specialist lawyers from abroad into the financial services sector of The Bahamas.

The Bahamas Bar can no longer continue to be the closed shop cartel it has always been. We simply don't have the lawyers to sustain, much less to grow, the industry. Consider, for example, that there are close to 1400 lawyers in The Bahamas – per capita one of the highest population of lawyers in the world – but of this number the trust specialists at private bar can be counted on your fingers, possibly on one hand even. And when one looks at securities lawyers, the numbers are not significantly different.

How, in the world, we can realistically expect to grow our trust business or our funds-and-securities business with such ridiculously thin legal resources on the ground is quite beyond me. To maintain this exclusionary status quo is simply an open invitation to send the business elsewhere; to send it to other jurisdictions where the required legal skills are to be found in adequate supply; or nearly as bad, to bring the business here but farm out the legal work for a Bahamian product to lawyers in other jurisdictions.

We therefore need to open up, and we need to stop looking at foreign lawyers as predators who are only interested in stealing our lunch away from us. We need to view them instead as collaborators and as ever-replenishing sources of new business for The Bahamas.

The old exclusivity, the old sense of entitlement must therefore give way to a new and more pragmatic liberalism that encourages closer structural relationships and operating synergies between Bahamian lawyers and their foreign counterparts, supported by a liberalization of immigration policies such - and this is important – such that the Government should be prepared to take the lead in opening the doors to foreign lawyers in strategically important areas of the financial services sector if the local Bar can't shake off the parochialism and cartel-type self-protectionism that have been the bane of the profession for so many years. It's crippling us. It's keeping us back. It can't go on like this. We have to change course and open up.

And while I'm at it, we need to recruit more specialist judges for trust and financial services-related litigation in our jurisdiction too. And we may end up having to import them. We should not be reluctant to do so. The long-term credibility, nay, the viability, of the jurisdiction as an international financial centre depends upon it.

And while on the subject of skills and expertise, let us not delude ourselves into believing that this is only a problem for the Bahamian legal profession. It most certainly is not. As the markets are shifting more and more to Latin America, we need to ask ourselves whether we are adapting and preparing ourselves appropriately? Are our language skills, for example, being diversified? For example, how many Bahamian trust officers and account managers and fund administrators have bothered to personally invest in the study of Spanish or Portuguese? And how many have indicated a preparedness to work in affiliated offices abroad?

We talk a great deal about getting to the next level but just being a Bahamian can no longer be relied upon as a sort of bail-out option when all else fails. We have to equip ourselves to go eyeball-to-eyeball with our counterparts anywhere else in the world, without coming up short. Excellence, not nationalist entitlement, must be our primary watchword.

<u>Lesson 7</u> : We have to sell the jurisdiction, not just the products the jurisdiction has to offer, and certainly not just the banks, trust companies and other institutions within the jurisdiction. Again, Harold Christie appreciated this well. He marketed The Bahamas, not just his own real estate inventory. He was able to see beyond the immediate product and beyond the salesman of the product to understand that at the end of the day what he was really selling was The Bahamas as a place to invest in, a place to live in, a place to believe in. He was selling the complete package, the whole experience.

Unlike the Cayman Islands which have always done such a superb job of marketing themselves as a jurisdiction, we in The Bahamas are arriving rather late for this particular party. Apart from the commendable efforts of BFSB and STEP and the Ministry of Financial Services, we have historically tended to place marketing emphasis on our own separate and distinctive individual or institutional identities rather than on the sum of our parts.

Happily, however, this mindset is now changing more broadly. This augurs well for our future success because it enables us to transcend our inter-institutional rivalries to find a common ground to promote our collective strengths as a jurisdiction and to do so in a way that will ultimately lift all our boats.

<u>Lesson 8</u>, and this is the last of the lot : although the promotion of the jurisdiction as a whole must be paramount, our products have to be cutting edge too. Selling the jurisdiction is key but that does not mean that that we can afford to slack off from intellectual creativity and innovation. On the contrary, we have to up our game in this department too.

Happily again, however, we have a good track record to enlarge upon in The Bahamas. Indeed the Trustee Act, the SMART Fund, the PTC, the Executive Entity and soon the condominium fund all stand as testimony to the success of the private sector-led public/private partnership we have developed here in The Bahamas for product innovation. But we need to build upon this even more vigourously as we move to adapt The Bahamas to the rapidly changing international environment and the evolving needs and expectations of the markets we serve.

Such then are the eight lessons that I commend to you today; eight lessons that I have drawn, in no particular order, from the formative period of our financial services industry 80-plus years ago; lessons that continue, I believe, to be relevant to our present experience and our future planning as an international financial centre; a centre that must continue to be well regulated in accordance with international norms and best practices; but a centre that must also seek to leverage its national sovereignty as best it can, and as far as it can, and as long as it can to ensure that we pursue a path that is genuinely reflective of what we in The Bahamas honestly believe to be in the best interests of The Bahamas.

Yes, these are challenging times. For some it may be time once again to don the flowing robes of the prophets of old to proclaim that the end of days is at hand. But as for the rest of us, we would do well to hearken back to Sir Harold Christie and his trailblazing example. When he set out on his maiden voyage, many of his compatriots must have considered him mad or felt that he was on a fool's errand. History shows, however, that he was neither, and in the end his efforts and his belief in himself and in The Bahamas were not only vindicated but crowned with great success.

80 years on, we the legatees of the original vision, are called to carry that vision forward, adapting it to new times while preserving its core-wisdom and the lessons that have been there for us to learn from the very start, reminding us once again that:

“**We shall not cease from exploration**
And the end of all our exploring
Will be to arrive where we started
And know the place for the first time."

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