



**SEAN McWEENEY QC**  
**AML/CFT CONFERENCE**  
**BAHA MAR**  
**SEPT. 18TH, 2018**

**Some Reflections on**  
**The Reality and the Vision for Bahamian Financial Services**

My time is short, so let me get to my subject without delay.

I begin with a few observations on the Reality we face.

First, the bad news - not all of it, just some of it; just four things that I regard as being among the more worrisome realities that confront us today.

Firstly, in terms of aggregate dollar volume, we are a much smaller industry now than we were just a few years ago. The IMF, in its 2017 report on The Bahamas as an offshore financial Centre, estimated that the assets of offshore banks and trust companies in The Bahamas had declined from about 500 billion dollars in 2011 to just 175 billion dollars in the space of just 5 years. That's a massive drop. That's the first bit of bad news.

Secondly, accelerating digitization and the rising level of online banking combined with the outsourcing of a whole range of support-services to other jurisdictions, whether for

cost- reduction reasons or operational efficiency, are factors that will continue to depress the prospects for both labour-intensive growth and physical infrastructural growth in the industry, both domestic and offshore. That's the second bit of bad news.

Thirdly, external correspondent banking relationships continue to be the source of stress and worry, particularly for smaller, licensed financial institutions. Here you're talking about the lifeblood of your business. Without it, you're dead. And while the problem seems to be largely contained at the moment, some institutions here have had some really close-calls, with doubtless more to come.

Fourthly and finally under this head, there is an almost palpable uncertainty in the industry as to whether the offshore sector has a future at all having regard to what sometimes appears to be the determination of some onshore jurisdictions, and some of their various groupings, to not only make us repent of our wicked ways – I speak proverbially, of course - but to put us to the sword; to do us in, once and for all. For some, that may savour of paranoid delusion but for others it is fast becoming an article of faith, spawning in the process, increasing pessimism and doubt as to whether the offshore industry will be alive, much less viable, even in the near term.

Driving that particular concern is the fear, nay, the anxiety that the coup de grace will soon be administered to us in the form of stepped up demands for open, publicly accessible registers of beneficial owners of companies, foundations, trusts and the like. I'll come back to that one a little later.

So that's my take on the bad news for now.

But there's good news too.

Firstly, even though we may have lost a great deal in terms of absolute dollar-volume, the IMF still has us ranked the same as we were in 2011. Despite all the consolidation and shrinkage, we are still ranked as the 4th largest offshore financial centre in the world,

after Hong Kong, Singapore and the Cayman Islands. And we're number 1 in the region for real, flesh-and-substance trust companies, and number 2 in the region for International Business Company registrations.

Secondly, although we may have lost a great deal of dollar-volume in recent years, we have diversified ourselves a whole lot better and this augurs well for recovery, even expansion, in the future. Indeed I think we are beginning to reap the harvest from the wonderful product innovation that has distinguished us as an offshore financial services industry over the years, especially in recent times.

Whether it's the SMART Fund, or the Investment Condominium (ICON), or the Executive Entity, or the PTC, or the Purpose Trust, or the Foundation, or the Directed Investments/Reserved Powers regime, or, going back even deeper into the past, the Exempted Limited Partnership, or going back even further, to what is arguably the best trust legislation anywhere to be found, as enshrined in the Trustee Act of 1998, or going back still further to that most versatile of workhorses, the IBC - when one looks at these Bahamian products, individually and in their totality, one cannot fail to be impressed by what a marvelous testament this all is, not only to the intellectual creativity of our industry but to the great collaboration there has been - and continues to be - between the public and private sectors in product innovation. In this regard, it would be remiss of me if I did not pay particular tribute to BFSB, to AIBT, to STEP, and to successive Ministers of Financial Services for their outstanding work in bringing these new products into being and taking them to the market both here and abroad.

Thirdly, the product innovation and diversification that I just mentioned has been accompanied by major geographical diversification as well. Gone are the days of concentration in Europe and North America. Instead the LATAM market is now firmly in the ascendancy. It is a huge and still largely untapped market for us, and the fact that that is where our primary focus has shifted is again something that augurs well for our future. It demonstrates our adaptability and our preparedness to venture into new

territories to develop new lines of business to either replace or supplement old lines that may no longer be viable.

Fourthly - still on the good news front - we can pride ourselves in still having a unique combination of other attributes that make us an attractive place for international financial services. Of special note under this head are the following six special advantages to which we can justifiably lay claim:

- Firstly, we are an exceptionally well-regulated jurisdiction. Our Central Bank, our Securities Commission and our Insurance Commission have each done a superlative job of making this a reality. The international credibility of each of these regulators is something that we can really be proud of.
- Secondly, we have a stable political environment with an unbroken record of peaceful transitions from one government to the next, unmarked by fundamental ideological shifts. This means that stakeholders in the offshore sector can be assured of continuity in the major policies that affect them. We are moreover, a sovereign, independent nation. There is no mother-country that can potentially legislate for us or stuff treaties down our throat.
- Thirdly, we have a centuries-old commitment to the rule of law, the guardian of which is a completely independent judiciary – independent both in constitutional theory and historical practice; an independent judiciary whose final court of appeal - the Judicial Committee of the Privy Council - is physically based outside the territorial limits of The Bahamas. Again, that is something that inspires confidence in stakeholders from abroad.
- Fourthly, we are no Johnny-come-lately. We have been in this business continuously for more than 80 years, long before just about everybody else in the offshore world. The accumulated knowledge and experience entrained in that record of longevity is something that inspires great confidence as well. Of special note in this regard is a work force that offers an impressive range of multi-lingual capabilities, specialist skills and support services for private banking, trust, estate and company administration, investment fund management, insurance, and family office administration. There is one

exception to what I have just said concerning the legal profession but I'll come back to that in just a bit.

- Fifthly, this is a place of environmental enchantment with a multi-cultural, cosmopolitan society that consistently scores high on most quality-of-life indices, making it a good place to take up permanent residence; a good place to live and work in one's own business for the management of one's own money; a place whose proximity to the North American continent places it just 30 minutes away.
- Sixthly and finally under this head, we provide a tax neutral regime for international stakeholders and Bahamian residents alike; a regime marked by the absence of income tax, capital gains tax, and inheritance tax. And let us be clear: this regime has been the hallmark of the Bahamas going back to the Arawaks. We have never had any of these taxes. They have been alien to the economic culture of The Bahamas from the get-go, centuries before anyone ever dreamt of the EU or the OECD or any other groupings of nations.

This raises a critically important point that is all too often overlooked or, more accurately perhaps, simply ignored, and it is this:

The Bahamas offers private wealth conservation and management benefits, utilizing Bahamian products, that have absolutely nothing to do with tax. These include

- asset protection as a hedge against political and fiscal instability in the client's home country, and the associated risks of expropriation and devaluation;
- asset protection against more acutely personal risks and such as kidnapping, or even worse;
- asset protection for long-term, multi-generational succession-planning purposes;
- asset protection as a bulwark against claims from unwanted heirs under forced heirship civil law regimes;

- asset protection against possible future creditors;
- asset concentration for geographically dispersed families;
- asset conservation and wealth management either through a wide choice of world-class licensed, fully regulated financial institutions or through the more hands-on medium of the family office; and finally
- wealth management and preservation in a jurisdiction that places a premium on privacy that is not tax-driven.

This last point, this last advantage, spans the entire length of all the other advantages that I mentioned before. It undergirds them all. And as I foreshadowed earlier, this is one that I need us to take a closer look at today.

Let's be clear: an open, public beneficial ownership register is an industry-killer. There is a no other way to put it and there is no way around it. I don't care how many advantages you can count off on your fingers and toes, if we ever capitulate to that, we might as well hand in the keys at the same time. It will be game over.

I think we can live with a register of beneficial owners of companies that is accessible, on an as-needed basis, to local regulators in a controlled and properly legislated framework. But an open, publicly accessible register is an absolute no-no. If we consciously serve up the privacy of clients as the price for open, public BO registers, we are finished. We will be deader than a doornail in no time flat. Anyone who tells you we could survive that, is talking out of the back of his head.

And make no mistake about any group that insists on an open public register of beneficial owners is demanding that you close up shop. It is not a demand for reform but a demand for closure. One would have to be incredibly naive or incredibly thick not to see that.

Believe me, nobody is going to fool with The Bahamas if we cannot assure them that their privacy will, at the very least, be protected from voyeurs, from information-pimps, from disgruntled spouses and relatives; from business competitors; from the muckraking media, from those who simply have nothing better to do than go snooping about to see what they can; and from those who are outright criminals whose purpose would be to mine the register for information that could then be parlayed into kidnapping or blackmail plots.

So, open, publicly accessible registers of beneficial owners must be resisted at all costs, and the strongest possible diplomacy will have to be brought to bear to repel this threat. Public BO registers represent a line in the sand that simply cannot be crossed.

There are two final points I want to make and then I will be done:

Firstly, I renew the call that I made at the annual STEP Caribbean Conference in 2014 for the Bahamas Bar to open itself up. I was put in the pillory for saying it back then but be that as it may, my message was as pressing then as it is today.

We simply don't have the specialist lawyers to sustain, much less to grow, the financial services industry. There are close to 1200 lawyers in The Bahamas but of this number, the trust specialists can be counted on your fingers. And when one looks at securities lawyers, the numbers are equally few.

We simply cannot grow our trust business or our investment funds and securities business with such thin legal resources on the ground. It is an open invitation to send the business elsewhere; to send it to other jurisdictions where the required legal skills are to be found in abundance; or nearly as bad, to bring the business here but then outsource the heavy-duty legal to lawyers in other jurisdictions.

We need to stop looking at foreign lawyers as predators that are only interested in stealing our lunch. We need to view them instead as collaborators and as an ever-

replenishing source of new business for The Bahamas. The bar is too closed. We have to open it up a lot more.

The final point I want to touch on today has to do with upping our game as Bahamians – not just the lawyers but the CEOs, administrators, client relationship managers, and the regulators too, indeed all stakeholders in the financial services industry.

We talk a great deal about getting to the next level but just being a Bahamian can no longer be the litmus test for getting ahead or just getting by. We have to equip ourselves to go eyeball-to-eyeball with our counterparts anywhere else in the world. The thirst for excellence, not some sense of nationalist entitlement, must be at the apex of the value-system that propels us forward.

As the markets are shifting more and more to Latin America, and in time, possibly to Asia as well, we have to look in the mirror and ask ourselves whether we are really preparing ourselves for the next level up? Are our language skills, for example, being diversified? How many Bahamians in the industry have bothered to personally invest in the study of, say, Spanish or Portuguese or, farther afield, in Mandarin? And how many Bahamians are prepared to pull up stakes for a while and work abroad to get the exposure and the experience needed to climb the ladder?

It's time for personal stock-taking and candid self-assessment : are we doing all that we can to make ourselves fit for the elevation to which we aspire. And this call is no less applicable to those in the private sector as for those in our public regulatory bodies.

I end with this:

The offshore industry of The Bahamas first took shape amidst the Great Depression, driven by visionaries like Sir Harold Christie. They saw good opportunities in bad times and exploited those opportunities with ingenuity and perseverance. The same holds true today. Amidst all the depressing talk – depressing talk that I myself may have contributed

to in some measure this morning – there is still a way forward into a brave new world for the financial services industry. Opportunities still abound.

As we contemplate that prospect, we should perhaps remind ourselves that 18 years ago, in the very first year of the new millennium, when the first major raft of blacklisting-driven reforms came crashing down upon, the death knell was sounded loud and long for the offshore financial services industry of The Bahamas. Many were the prophecies back then that we would be out of business in less than 5 years time.

But the rest as they say is history! It simply didn't happen. Instead we rebounded.

So, too, this time around, with renewed determination to get the better of the new challenges that face us, and with a freshened resolve to leverage our strengths and to make sensible decisions, and with lots of prayer and a little bit of luck, I am confident that we shall not only survive but prosper. And just possibly, we may do so more abundantly than we ever have before.



<b>NASSAU</b> P. O. Box N 272 Nassau, N P The Bahamas T: 242.322.4130 F: 242.328.1069	<b>LYFORD CAY</b> P. O. Box N 272 Nassau, N P The Bahamas T: 242.362.4020 F: 242.362.4810	<b>FREEPORT</b> P. O. Box F 42451 Freeport, G B The Bahamas T: 242.351.7474 F: 242.351.7752	<b>PROVIDENCIALES</b> P. O. Box 965 Providenciales Turks & Caicos Islands T: 649.339.4130 F: 649.339.1069
--	--	--	--

[info@gtclaw.com](mailto:info@gtclaw.com)  
[www.grahamthompson.com](http://www.grahamthompson.com)