

The effective estate plan

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With more than 200 banks and trust companies, 700 investment funds and 50 fund administrators in the Bahamas, the jurisdiction has created and updated much legislation in recent years to foster stability.

Despite continuous talk about the COVID-19 pandemic, a 'crypto winter', the EU list of non-cooperative jurisdictions for tax purposes and the FTX crypto-scandal, the Bahamas has rapidly digitised its services and encouraged hybrid working. Bitcoin's price rose over 100 per cent year-to-date.

During the pandemic in 2020, the government of the Bahamas passed the *Financial and Corporate Service Providers Act*, the new *Banks and Trust Companies Regulations Bill*, the *Arbitration (Amendment) Act 2023* and the *International Commercial Arbitration Act 2023*. In the brief years since, the jurisdiction has reformed laws surrounding economic substance in line with new international standards and quickly pressed on with automatic exchange of tax information (AEOI) following EU and OECD compliance? standards.

Looking to the future, the Bahamas aims to become a hallmark of seamless intergenerational estate planning following the *Bahamas Powers of Attorney Act*, a well-drafted model from the 1990s, and the *Digital Assets and Registered Exchanges Bill, 2023*. The central theme here remains a constant mindfulness of the stable and

foundational basics. Estate plans entail very long-time horizons, which are best served by at least some 'risk-on' investing.

Many acts, one nation

Effective trust and financial services legislation continues to be at the forefront in the Bahamas' parliament. This legislation comprises:

1. *Arbitration (Amendment) Act 2023*
2. *International Commercial Arbitration Act 2023*
3. *Fraudulent Dispositions Act (1991)*
4. *Trustee Act (1998)*
5. *Banks & Trust Companies Regulation Act (2000)*
6. *Purpose Trust Act (2004)*
7. *Banks & Trust Companies (Private Trust Companies) Regulations (2007)*
8. *Commercial Entities (Substance Requirements) Act 2018*
9. *Investment Funds Act (2019)*
10. *Banks & Trust Companies Act (2000, 2020)*
11. *Financial and Corporate Service Providers Act (2000, 2020)*
12. *Digital Assets and Registered Exchanges Act (2020, 2023; DARE Act).*

Each has a thoughtful framework for compliant financial services, prioritising a global outlook, inclusive of entrepreneurs seeking to responsibly expand into fiat- and crypto-oriented opportunities.

The *Commercial Entities Act* establishes the requirements for relevant entities engaging in income-generation activities within the Bahamas. The *Investment Funds Act* improves the regulatory framework for Bahamian investment funds, notably enabling the appointment of international funds administrators. The *Banks & Trust Companies Act (2020)* comprehensively modernises the previous Act of the same name, at the same time as providing the Central Bank of the Bahamas with enhanced and effective powers. The *Financial and Corporate Service Providers Act* performs the same essential update and the DARE Act supports the Bahamas as a jurisdiction for digital asset entrepreneurship.

The 2023 Bill of the DARE Act specifically highlights minimum requirements for ensuring investor safety in the daily operations of a digital asset exchange, whether for trading or staking. Such standards are not novel as they were mentioned in the

2020 version, but they seek to clarify beyond any doubt the requirements expected by the government of the Bahamas. Staking, which rose to prominence after many years of low interest rates, had received implicit and wide acceptance as a smart method of passive income, but did not receive commensurate explicit regulations on staking protocols and investor protections.

At the heart of all this legislation remains investor protection, investor growth and sustainability. The Bahamas ensures compliance with international standards, whether with economic substance, AEOI or management of an asset class wholly new to financial services. The Bahamas therefore also upholds the highest expectations when fighting against money laundering, terrorist financing and other known financial crime risks. The Bahamas is only the second jurisdiction in the region to be largely compliant with all 40 of the Financial Action Task Force's (FATF) recommendations.

But why is any of this necessary for estate planning? What does crypto have to do with it?

The changing inheritance

According to Cerulli Associates, over USD70 trillion in the US alone is set to move between generations within the next 25 years. According to a Forbes survey, more than 70 per cent of inheritors immediately fire their parents' financial advisor and, according to the Williams Group, 70 per cent of wealth transfers fail. Putting it together, wealth advisors – no matter where they are – have an expensive problem.

Intergenerational estate planning cannot happen if there is no second generation. Wealth advisors lose trust alongside their clientele, perhaps for a variety of reasons, but one key detail from another Forbes report states that 60 per cent of inheritors simply don't know their advisors. Others described them as 'out of touch.' Our goal as advisors is to keep 'in touch' and adapt to the preferences and concerns of the incoming generation. This also requires a broad brush of wisdom, to know the family legacy and the direction in which things are going.

Effective means holistically innovative. The question is: are we able to holistically serve each and every family, treating them as unique? Can we avoid the 'cookie cutter' approach? There are two elements to the holistic approach: embracing both certainty and volatility.

Embracing certainty

Certainty here refers to legal certainty. Wills, gifts, structures and philanthropy all form essential components of a greater whole, although no two wills or gifts will be the same. Structures have different meanings and uses for different families. Poor drafting can result in severe unintended consequences. Here lies the 'wisdom' element inherent to estate planning.

It is vital to provide certainty for the generations on both sides of the wealth transfer. The will should account for three generations, gifting should remain aware of tax thresholds and although structures can come in more colours than the rainbow, they should all have specific purposes. For example, irrevocable trusts are distinct from charitable trusts. Philanthropy, when done right and in a legally organised manner, avoids waste.

Embracing volatility

Volatility here refers to market volatility. Without volatility, little stands in the way of growth – since nothing is moving – so the objective then becomes how to use volatility to your advantage. This is where understanding time horizons, expense requirements and portfolio composition comes into play.

The more time given, the more risk that can be allocated and the more expense planning becomes necessary. As an example, the Yale endowment fund returned 0.8 per cent in 2022 when the Standard & Poor Index fell by 19.6 per cent. Yale publicly documents its eschewing of 'traditional' asset classes in favour of leverage buyouts, venture capital investment and absolute return strategies, among others. What do all these strategies require? Time.

The art of volatility feels like a difficult one to master, yet it remains entirely possible as long as there is a stable structure underpinning growth. This is where crypto and blockchain can enter the frame, given the immense potential their future holds. Whether you love or hate it, the five-year performance of Ethereum currently stands at over 800 per cent.

On future-proofing

The Bahamas quickly updated its legislation concerning digital assets in the wake of unprecedented and resilient growth. For example, Boston Consulting Group predicts that tokenised digital assets will form a USD16-trillion market by 2030. That means growth. It also means volatility.

The Bahamas' first law firm opened its doors in 1903, and its first foreign bank in 1908. As we embrace responsible innovation and connect entrepreneurs with eager investors, there is no reason for the jurisdiction's success to change – just the opposite.

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