

The Bahamas – Overview of Legal, Supervisory and Regulatory Landscape

Introduction

Good morning ladies and gentlemen,

I would like to thank the Group of Financial Services Regulators (GFSR) for hosting this timely conference on managing the risks of Money Laundering and Terrorism Financing. I would also like to thank the executives of the GFSR for inviting me to speak on this topic this morning.

History of the Bahamas

The Caribbean island nations and territories are, without exception, former or current colonies of Great Britain, Spain, France or the Netherlands. The Bahamas' history as a former colony of The United Kingdom of Great Britain & Wales is rich in farming (cash crops, sugar cane, bananas, sisal and cotton), sponging and fishing. The Bahamas' path to finding its way in the world of economics differed from its Caribbean neighbours as the struggle to deepen the economic activity in our country and provide a better way of life for our peoples were foremost goals. Some Caribbean nations were encouraged to establish international financial centres by that esteemed body – International Monetary Fund (IMF), as a growth pillar for the emerging economies while other islands gravitated towards this opportunity. Others focused on the development of their natural resources such as oil, natural gas, aluminium or developed their agricultural base.

The Bahamas, long before the IMF advised the move towards a the financial services industry, had organically developed its international financial centre with

roots as far back as early 1900s when Canadian Banks began to establish a presence in the islands. Today, The Bahamas has emerged, after 80 plus years in the financial services business, as a premier international financial services centre in global financial network. Financial service providers hailing from Europe, North and South America offer a diverse set of products to international clientele.

Beginning with United Nation's Conventions of the late 80s and the emergence of the Financial Action Task Force 40 Recommendations, The Bahamas – much like other countries, endeavoured to enshrine in the local law, the requirements to prohibit money laundering, in the first instance, with an emphasis on drug trafficking proceeds, and in the second instance, broadening the scope to capture all illicit proceeds originating from human trafficking, cybercrime and other identified risks. The development of the legal, regulatory, supervisory and enforcement frameworks to monitor, identify, deprive and prosecute illicit proceeds has been costly for island nations like The Bahamas which are required to provide the basic necessities for their populace. However, The Bahamas has done a creditable job in implementing measures to comply with international best practices and standards for supervision, regulation, enforcement and prosecution of money laundering, terrorist financing and other identified risks.

Initial initiatives began to roll out fast and furiously in the late 1990s beginning with the Organization Economic Cooperation and Development's (OECD) corporate governance principles and its work on Non-Cooperative Jurisdictions in Tax Matters and has not stopped since. The problem and frustration facing the country and many others evolve around the never ending pushing of the envelope with more and more initiatives being rolled out by the International Agencies. Most topical is the initiative developed around availability and accessibility of beneficial

ownership information of legal persons being pursued by the OECD's Global Forum on Tax Matters using the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Over the last 20 years the goal post has been moving with the cost / benefit analysis tilting into a negative posture. The financial services industry of The Bahamas has had to be creative in controlling compliance costs with the assistance of technological tools. The country's stakeholders have seen compliance costs increased disproportionately to the risk posed by this jurisdiction as when used in any illicit scheme, the financial centres are middle-men with the final stakeholders being located in the developed countries of Europe and the Northern America.

The Bahamas' 2012 IMF Financial Sector Assessment Program (FSAP) results verified the progress of the nation to address gaps in its AML/CFT and reflected the substantial enhancements to its legal framework, supervisory, regulatory and enforcement regimes. The IMF FSAP Report noted that "since the 2004 Offshore Financial Centre assessment, there has been clear and material progress in key areas of financial sector oversight. Most importantly, the approach to regulation and supervision, including with respect to AML/CFT supervision, has been shifting to risk-based approaches, with some agencies already having implemented risk sensitive global best practices".

The Bahamas was found to be "Largely Compliant" in the Global Forum's Phase 2 and Phase 3 Peer Review Reports published in 2013 and 2018. These Peer Reviews focused on availability of beneficial ownership information, access to beneficial ownership information and information exchange. The Global Forum Report (GFR) reflected the examiners' statements that the ownership and identity information requirements in The Bahamas to retain relevant information in respect

of companies, partnerships, trusts, foundations, etc., were sufficiently robust to meet international standards.

Over the last 20 years the regulatory, supervisory and legal frameworks in The Bahamas has been greatly enhanced and strengthened –

1. In 2000 several existing laws were repealed and replaced with several new laws being enacted in a compendium of regulatory and financial sector legislation -

- **The Banks and Trust Companies Regulation Act, 2000**
- **The Central Bank of The Bahamas Act, 2000**
- **The Financial Intelligence Unit Act, 2000**
- **The Proceeds of Crime Act, 2000**
- **The Financial and Corporate Service Providers Act, 2000**
- **The Financial Transactions Reporting Act, 2000**
- **The International Business Companies Act, 2000**
- **The Evidence (Proceedings in other Jurisdictions) Act, 2000**
- **Criminal Justice (International Cooperation) Act, 2000**

2. Bearer shares were eliminated, and IBCs were prohibited from issuing same with those companies having already issued such shares mandated to recall and cancel them;

3. The financial institutions mandated to Know their Clients and to carry out effective due diligence procedures and instituting Counter Financing of terrorism processes.

4. Regulators have issued AML/CFT guidelines, codes of practice and rules to industry stakeholders outlining best practices for verifying customer identity and for developing anti-money laundering procedures and measures to prevent terrorist financing.

5. The Financial Intelligence Unit was established by statute enacted in 2000 and is charged to collect reports of suspicious transactions and to investigate them;

6. Regulators developed independent inspections and regulatory examinations programs and have been conducting onsite reviews of financial service providers including corporate service providers for compliance with AML/CFT laws / best practices and prudential requirements;
7. The financial sector governing laws created avenues for international cooperation by Bahamian financial sector regulators with their foreign counterparts.
8. The introduction of the Evidence (Proceedings in Other Jurisdictions) Act and the Criminal Justice (International Cooperation) Act created avenues for international cooperation by Bahamian courts in civil matters while the latter regulates such cooperation in criminal matters.
9. In 2003, amendments to financial sector laws allowed for risk-based supervision by regulators nine years before the FATF Recommendations regarding AML/CFT regimes recognized the benefits of such a system and incorporated it into its standards.

Recently, in December 2017, The Bahamas joined more than 108 countries in the OECD's Global Forum in formally acceding to The Multilateral Convention on the Mutual Administrative Assistance in Tax Matters ("The Multilateral Convention"). The Bahamas has since implemented CRS using the "wider approach" with FIs required to collect and retain the CRS information for all account holders - ready to report, in relation to all non-residents with international partners of The Multilateral Convention.

The Government in its quest to keep the country ahead of the curve and agile in addressing pressures and challenges from international agencies over the last year, developed an aggressive legislative agenda for the 2017 and 2018 Parliamentary

terms to enhance the financial sector's legal, supervisory, regulatory and enforcement regimes. The Government's agenda primarily addressed the legal, regulatory, supervisory and enforcement framework gaps identified in the CFATF Recommendations of the 2017 Mutual Evaluation Report, the National AML/CFT Risk Assessment, OECD Global Forum on Tax Matters and the European Union Code of Conduct Group's concerns. As a direct result of this agenda, legislations were enacted to establish the Independent Office of the Director of Public and amendments made to the – a) Automatic Exchange of Financial Account Information Act, 2016, b) Automatic Exchange of Financial Account Information Regulations, 2017, and c) International Tax Cooperation Act, 2010 in the last quarter of 2017.

A further compendium of legislation was passed in 2018 which included –

- **Proceeds of Crime Act, 2018**

This Act replaces and repeals the Proceeds of Crime Act, 2000 and seeks to legislate a “risk based approach” to Law enforcement efforts, coupled with a distinct effort to consolidate, strengthen and modernize the provisions relating to prevention, prosecution and cross-border cooperation in the fight against money laundering, terrorism financing, corruption, human trafficking and the proliferation of weapons of mass destruction.

- **Financial Transactions Reporting Act, 2018**

This Act replaced and repealed the Financial Transactions Reporting Act, 2000 and introduced an administrative fine regime and additional requirements consistent with The Bahamas' obligations under the FATF Recommendations, including requiring – (a) FIs and DNFBPs to carry out risk assessments, (b) FIs and DNFBPs to ensure that all subsidiaries, branches or representative offices adhere to AML/CFT/CPF requirements on par or higher than that of the parent entities, and (c) to

oblige group entities of Bahamian licensees to ensure that internal control procedures are implemented.

- **Anti-Terrorism Act, 2018**

This Act replaces and repeals the Anti-Terrorism Act, 2004 and introduced provisions covering (a) proliferation offences, (b) domestic listing of terrorist individuals or entities, (c) implementation of United Nations Security Council Resolutions (UNSCR) 1373 and 1267 and successor UNSCRs, expanding terrorist offences, and (d) providing for enhanced international cooperation.

- **Travellers' Currency Declaration (Amendment) Act, 2018**

This Act amends the Travellers' Currency Declaration Act, 2015 regarding offences and penalties, seizure and forfeiture of negotiable instruments, precious metals and stones. The amendments further introduced the revised Customs Declaration Form that will be required to be completed by the head of each household when entering or leaving The Bahamas for a foreign port except for those travelling through the United States of America.

Several regulations were also approved and issued to the financial sector and non-financial sector constituents –

- **Financial Transactions Reporting Regulations, 2018**

These Regulations replaced and repealed the Financial Transaction Reporting Regulations, 2000 and advise of thresholds for – (a) occasional transactions, (b) gambling patrons and (c) jewelers and other dealers in precious stones or metals. The Regulations also enhanced the customer due diligence obligations of FIs and DNFBPs and introduced suspicious transactions reporting obligations on General Insurers.

- **Financial Transactions (Wire Transfers) Regulations, 2018**

These Regulations replaced and repealed the Financial Transactions (Wire

Transfer) Regulations, 2015, and maintained the original provisions for wire transfers while increasing the penalties for offences to two hundred thousand dollars and introducing an administrative fine regime to bolster the enforcement tool kits of the supervisory and regulatory agencies.

- **Multinational Entities Financial Reporting Act 2018**

This Act enabled The Bahamas to partially meet its obligations of The Bahamas under the Base Erosion and Profit Shifting (BEPS) Project to discourage non-resident entities from holding

profits which do not reflect real economic activity that occurred in The Bahamas.

The Act provides for the reporting of entities in this jurisdiction that are apart of an MNE Group to the Authority where such entity is the ultimate parent entity or the surrogate parent entity of that group. That entity is required to file a country by country report which contains aggregate accounting information for the group and the identification of each constituent entity of the MNE Group and the jurisdiction of its tax residence and related information.

Other legislation being considered include –

- i) **The Non-Profit Bill,**
- ii) **The Register of Beneficial Ownership Bill,**
- iii) **The Gaming House Operators Regulations,**
- iv) **The Financial and Corporate Service Providers Bill,**
- v) **The Commercial Enterprises (Substance Requirements) Bill and**
- vi) **The Integrity Commission Bill.**

The strengthening of the legal, regulatory and supervisory framework is of paramount importance which evident from the Government's robust legislative agenda. The financial sector regulatory fraternity has been meeting with my office,

as a Task Force, every week over the last 12 months to keep the pressure on to accomplish this critical goal of ensuring that the country is complying on all levels with AML/CFT/CPF international best practices (implementation, and enforcement). Regulatory, supervisory, and enforcement agencies are completing their review and amendments to their supervisory frameworks - inclusive of monitoring (onsite and offsite surveillance), enforcement (administrative penalty regimes), and guidance – AML/CFT/CPF for issuance. These amendments address the gaps and deficiencies identified by CFATF and the NRA. The Bahamas has placed great emphasis and importance on, and remains committed to maintaining a suitable and progressive legal, regulatory and supervisory framework ensuring that the country meets and complies with international standards and practices regarding financial and prudential supervision, and combatting money laundering, terrorist financing, proliferation financing and other identified risks.

Notwithstanding the continual program of enhancements being carried out by The Bahamas' government, we have noted that the goal post continues to move but we are determined to preserving the reputation of The Bahamas as a financial services centre, while addressing any deficiencies that may be brought to our attention to avoid any negative pressure from international and regional initiatives. Staying on the cutting edge of addressing international initiatives and evolving international best practice and standards is crucial to the country's survival in the global financial framework. The Bahamas remains committed to international best practices, cooperation in the administration of justice, international tax transparency, anti-money laundering and the countering of financial terrorism and proliferation initiatives including satisfying recommendations coming out of the Financial Action Task Force.

The Government ensures that there is effective collaboration with the private sector stakeholders to guarantee that the Bahamas remains a well-regulated, blue chip international financial centre.

It is our hope that this first Bahamas AML/CFT Conference will yield meaningful dialogue on recent global trends impacting AML/CFT, as well as focus on risk management issues within specific industries.

I bid you Good Morning.