

The Bahamas: *Meeting International Standards*

THE BAHAMAS has a long-standing commitment to be a responsible member of the international community. This commitment extends to having a responsible financial services centre, complying with international standards for the conduct of business that are applicable to all financial centres. During the March 25th, 2009 sitting of the house of Parliament, The Prime Minister of The Commonwealth of The Bahamas, the Rt. Hon. Hubert A. Ingraham reaffirmed The Bahamas' position that it will not allow The Bahamas to be used for harmful financial practices.

The myriad developments occurring in The Bahamas in the past 10 years reflect this commitment to create a financial services sector that is well equipped to compete and succeed in the increasingly regulated environment in which the industry now operates. (See list of developments charting major commitments at the end of this article.)

These measures were designed to:

- protect the reputation of The Bahamas as both a responsible and reputable international financial centre;
- prevent the use of the banking system for criminal purposes;
- prevent de-stabilization of the domestic economy while promoting legitimate economic activity;
- anticipate and implement effective counter measures to new/emerging trends in money laundering, terrorism financing and related activities; and
- assist relevant authorities in other countries in fighting money laundering and terrorism financing through the timely sharing of information.



Anti-Money Laundering (“AML”) & Regulatory Overview and Developments

The Bahamas operates in a globally integrated market for financial services. As a result the country's counter-money laundering legislation meets global best practices and standards.

The Bahamas' excellent track record in the fight against money laundering dates back to 1987 when it criminalized the proceeds of drug trafficking through legislation. Two years later The Bahamas became the first country to ratify a UN Convention against the illicit trafficking of narcotic drugs, and in 1996 also became the first international financial centre to criminalize money laundering. Prior to this time self-regulatory professional organizations and financial firms had appropriate customer due diligence as a focal point of their work. The comprehensive Money Laundering Act in 1996 expanded the offences covered to encompass proceeds of other crimes besides drugs.

A comprehensive self-assessment of all bank, trust, and brokerage facilities for compliance with the FATF 40 recommendations; the elimination of bearer shares; the establishment of the Financial Intelligence Unit and many other legislative developments in 2000 served to transform the industry.

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These legislative initiatives created a superior AML regime, formally enacting industry best practice policies for due diligence and know-your-customer principles. Taken together with the speed of implementation and a strong compliance culture, the Financial Action Task Force confirmed The Bahamas' status as a cooperative country for purposes of AML and the United States Treasury recognized The Bahamas as a cooperating country with respect to all relevant international efforts to counter money laundering activities.

This compliance culture has been the key to prioritizing counter money laundering measures and driving the requisite vigilance at national, regulatory and institutional levels. This can be measured by the relative size of expenditure to implement an effective regulatory and AML regime, capable of contributing to financial stability. One such example is the Financial Intelligence Unit (FIU). The FIU, an active member of the Egmont Group, is The Bahamas' administrative arm to prevent and detect money laundering and the financing of terrorism. An FIU is a specialized governmental agency that has been created as countries around the world developed systems to assist in dealing with the problem of money laundering and terrorism financing. Only one such entity is allowed per country and/or territory; in the United States, for example, it is the Financial Crimes Enforcement Network (FinCEN). Financial Intelligence Units may differ from country to country, but their core functions remain the same.

In The Bahamas, the FIU is one of a number of agencies charged with the responsibility for the policing of financial systems. However, while each of the regulatory agencies is responsible for a specific sub-sector within financial services, the FIU's mandate empowers the agency to deal with all financial institutions. The agency is responsible for receiving, analyzing, obtaining and, in defined circumstances, the dissemination of information which relates to or may relate to the proceeds of offences specified in the Proceeds of Crime Act. In its intelligence role, the agency is fully committed to the more than 100 member Egmont Group's "statement of purpose" which incorporates "principles for information exchange between financial intelligence units for money laundering and terrorism financing cases." Indicative of the agency's commitment was the appointment of The Bahamas' Deputy Director to chair the Implementation Committee, tasked with the responsibility of overseeing the transition of Egmont into a permanent international organization. It was also responsible for successfully sponsoring Egmont membership of the majority of the Caribbean FIUs.

Legal Assistance

The International Legal Cooperation Unit (ILCU) in the Attorney General's office is responsible for dealing with all requests for legal assistance from foreign jurisdictions. Several pieces of legislation allow ILCU to deal with requests:-

- The Mutual Legal Assistance (Criminal Matters) Act 1988, governs requests for legal assistance in criminal matters from the United States of America, Canada and the United

Kingdom, all of whom have entered into Mutual Legal Assistance Treaties (MLATS) with The Bahamas.

- The Criminal Justice (International Cooperation) Act 2000 allows the Attorney-General to render assistance to courts or tribunals exercising criminal jurisdiction, prosecuting authorities, or any other authority, which carries out such functions in countries that do not have a Mutual Legal Assistance Treaty with The Bahamas.
- The Proceeds of Crime Act, 2000 (which replaced the Money Laundering Act, 1996), criminalizes the concealment of the sources and ownership of ill-gotten gains, provides for its forfeiture and for international cooperation in the prevention of money laundering. The Supreme Court of The Bahamas is empowered by the Act to make restraint orders and forfeiture orders in respect of the proceeds of crime, which may have been found within The Bahamas. As a result, financial institutions are required to strictly apply their KYC provisions, in order to ensure that undesirable persons do not have access to the country's financial services sector.
- Financial Transaction Reporting Act 2000, imposes obligations on banking officials and other financial operators, to make reports of suspicious transactions to a special investigative body set up for the purpose of receiving such reports, the Financial Intelligence Unit. As a statutory body, the FIU is empowered to conduct its own investigations and to take certain actions as a result, including the pro-tem freezing of accounts to enable it to complete its investigation.
- The International Obligations (Economic and Ancillary Measures) Act, allows The Bahamas to give effect in domestic law to economic sanctions such as those required by the Security Council. For example, an order pursuant to this Act was executed in 2001, which resulted in the freezing of US\$32 million in The Bahamas, though the money was later released as no suspected links to terrorism were found. This example illustrates the fact that The Bahamas has put in place the legal infrastructure that allows it to respond to its international obligations, but in a way that does not prejudice the rule of law.

Regulatory Agencies

Central Bank of The Bahamas

With more than 200 banks and trust companies operating in The Bahamas, and the banking industry itself the cornerstone of the country's financial services industry, the Central Bank plays a lead role among the country's regulatory agencies and enjoys full autonomy. Its stature within The Bahamas is reinforced by its longstanding presence in the jurisdiction; The Bahamas in fact has been regulating banks and trust companies in The Bahamas since 1965.

The Central Bank fills the traditional roles as issuer of legal tender, banker to both domestic banks and the government, and regulator and supervisor of the banking sector.

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As supervisor of banks, the Central Bank promotes the soundness of banks and trust companies through the effective application of international regulatory and supervisory standards. The Central Bank is a member of various regional and international agencies, including the Association of Banks of the Americas (ASBA); Offshore Group of Banking Supervisors (OGBS); Caribbean Group of Banking Supervisor (CGBS); and also serves on the Financial Expert (Mutual Evaluations) Committee of the Caribbean Financial Action Task Force (CFATF). The OGBS has worked closely with the Basel Committee on the supervision of cross border banking, as well as with the Financial Action Task Force (FATF) on anti-money laundering initiatives.

Continued vigilance is required to secure an effective regulatory environment. Legislative initiatives have been designed to provide products relevant to the international market place, to enhance the regulatory oversight and supervision of the financial service sector, and to further its counter money laundering regime. These initiatives include the introduction of modernized frameworks for Private Trust Companies, a focus on risk management, and continually updated AML / Counter Terrorism Financing guidelines following the publication of revised FATF 40 plus 9 special recommendations.

The elimination of licences for managed banks took place in 1998. The Central Bank requires that all banking institutions maintain adequate corporate governance in The Bahamas itself and that books and records are kept in the country, ensuring full accountability to KYC requirements. With clarity as one of the important hallmarks of good regulation, the series of guidelines published by the country's major regulator has been welcomed by the financial services industry as a number of practical matters were addressed including "A Guide to the Central Bank's Ladder of Supervisory Intervention", first published in 2006, and the Group of Financial Service Regulators Information Sharing Arrangements in The Bahamas, published in 2005.

The results have been evident both in terms of the Bank's approach to licensing new financial institutions, as well as in a more enhanced supervisory framework for financial institutions. Important features of the regulatory regime include broader and more uniform supervision of bank and non-bank financial activities, and stronger mechanisms for international cooperation among Bahamians and similarly placed foreign supervisory and law enforcement agencies. In all, the Bank's overall policy objective is the promotion of a stable economic environment conducive to high levels of domestic production, employment and growth.

Securities Commission of The Bahamas

The Securities Commission (SCB) was established in 1995. As part of its endeavour to keep abreast in an ever-changing global regulatory environment, and to ensure a Bahamian contribution toward improving the efficiency and conduct of international markets, SCB became a member of the International Organization of Securities Commissions

(IOSCO) and the Council of Securities Regulators (COSRA) in 1996 and 1997 respectively. SCB's mission is to effectively oversee and regulate the activities of the securities and capital markets, and to protect investors, while strengthening public and institutional confidence in the integrity of those markets.

The principal areas of focus are the securities industry, including the oversight of broker dealing and securities investment advisory services, and the growing investment fund administration.

Bahamas Compliance Commission

The Bahamas Compliance Commission was established in 2000. The Compliance Commission, an essential part of the jurisdiction's rigorous anti-money laundering efforts, is a supervisory body for non-traditional groups of financial institutions such as lawyers, accountants and other professionals where these institutions hold funds on behalf of clients.

International Recognition

The jurisdiction's commitment to meet internationally agreed regulatory principles was evident with the significant legislative changes that occurred in 2000. In 2001 the FATF noted "The Bahamas environment was in accordance with its 40 Recommendations". The United States, through its treasury department, arrived at similar conclusions as it "recognized the efforts on the part of The Bahamas to ensure that the same financial standards apply in The Bahamas as apply in other recognized international financial centres."

This independent assessment proved useful as Bahamian based financial institutions saw the adoption of the USA PATRIOT Act with minimal impact on their internal procedures. The IMF also commended The Bahamas' implementation of an effective regulatory regime in the Fund's offshore financial centre ("OFC") assessment. In 2005, the IMF reported that compliance levels for OFCs are, on average, better than in other jurisdictions assessed under the Financial Services Assessment Programme; and with respect to The Bahamas in particular, it confirmed the existence of a banking and securities market regulatory environment in compliance with international standards.

The United States

The 2002 Tax Information Exchange Agreement (TIEA) between governments of The Bahamas and the United States demonstrated recognition by both countries that self-interests can be satisfied in an even-handed fashion. Under the agreement, The Bahamas made a commitment to provide as of 2005 (i.e. for taxable years which began in January 1, 2004) information that may be available in The Bahamas that is relevant to a particular case, where the United States Government has exhausted all measures within the United States, and the Ministry of Finance in The Bahamas is of the opinion that sufficient evidence exists to support criminal tax evasion of United States federal tax.

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It is noteworthy that any information obtained through this agreement cannot be shared with other countries. Further, in addition to the burden to prove wrongdoing, strong anti-fishing provisions are an integral part of the agreement. Similar arrangements began in 2007 (i.e. for taxable years which begin in January 1, 2006) with respect to civil tax offense of United States Federal tax laws.

The agreement also led to the granting of Qualified Jurisdiction status for The Bahamas. In February 2004, the US Department of Justice, in a communication to the Bahamas Office of the Attorney General, stated it was pleased with the OAG's progress in executing requests from the US Office of International Affairs and attributed this progress to increased staffing of the International Legal Cooperation Unit.

The Organisation for Economic Co-operation & Development ("OECD")

In 2002, The Bahamas emerged from its OECD discussions on international financial services with a unilateral commitment at that time premised on the establishment of a level playing field for all centres conducting international financial services activities. The Bahamas agreed to keep pace with developments adopted by OECD and non-OECD centres, ensuring preservation of the competitive status of The Bahamas. In particular, The Bahamas' commitment was based on:

- The Bahamas is not included on the OECD list of Un-cooperative Tax Havens nor subject to any framework of co-ordinated defensive measures;
- The Bahamas will protect its economic interests and fiscal autonomy in all negotiations with OECD. The Bahamas considers the establishment of a level playing field among all OECD member countries and also those non-member jurisdictions with which it is materially in competition in the provision of cross border financial services to be critical to its economic interest;
- Co-ordinated defensive measures being taken against those jurisdictions including OECD Member countries and other jurisdictions that fail to make equivalent commitment or to satisfy the standards of the 1998 Harmful Tax Competition Report;
- Participation by The Bahamas on an equal basis in any discussions in the Global Forum on the design of internationally accepted standards for the implementation of these and any similar commitment; and
- The approval by the Parliament of The Bahamas of the detailed implementation of any commitments not already provided for under Bahamas law.

As regards the exchange of information on savings instruments in civil tax matters, such implementation also took into account the application of international standards in these matters.

During his March 2009 communication to parliament, the Prime Minister of The Commonwealth of The Bahamas spoke to the international standards of transparency and exchange of information and reaffirmed The Bahamas' commitment as

enshrined in its 2002 letter of agreement with the OECD. The Rt. Hon. Hubert A. Ingraham indicated that "In this regard The Bahamas has reaffirmed its commitment recorded in a March 2002 agreement between The Bahamas and the OECD. The Bahamas recognises significant advances in commitments to broader application of OECD standards of transparency. The Bahamas is ready to negotiate and conclude appropriate arrangements to accommodate these OECD standards." In 2009, the OECD confirmed commitments to the internationally agreed tax standard by Austria, Belgium, Brunei, Chile, Guatemala, Liechtenstein, Luxembourg, Monaco, Singapore, and Switzerland.

Conclusion

The Bahamas' status in international agencies such as the United Nations, the Commonwealth, OAS and CARICOM allows it to keep pace with international standards. In addition it continues to signal a willingness to operate within negotiated parameters for the global delivery of financial services with its entry into the EU Economic Partnership Agreement and by progressing its accession to the WTO.

Summary of Regulatory Milestones

1965	Regulated banks & trust companies
1971	Regulated insurance companies
1987	Criminalized proceeds of drug trafficking
1989	1st to sign UN Convention against illicit traffic in drugs
1990	Bahamas-USA MLAT (MLATs also with UK & Canada)
1995	Regulated securities market. Member of IOSCO, COSRA
1996	Criminalized money laundering via comprehensive law
1998	Elimination of managed banks
2000	Major adjustments to ensure availability/access to, and exchange of information
2001/	
2002	Independent Assessments
2001	Elimination of bearer shares
2002	Tax Information Exchange Agreement with the United States of America
2002	OECD commitment subject to level playing field
2004	Anti-Terrorism Act
2000 onwards	
	<ul style="list-style-type: none"> • Continued focus on monitoring and implementing relevant international standards • improved documentation of policies by way of guidelines • human resource capacity building to properly conduct on and off site supervision of financial institutions

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