



BRIEFING DOCUMENT

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SEPTEMBER 24<sup>th</sup>, 2020

## **BAHAMAS MAKES SIGNIFICANT STRIDES IN FIGHT AGAINST FINANCIAL CRIME: UPDATE ON THE BAHAMAS' NATIONAL IDENTIFIED RISK FRAMEWORK**

### **Executive Summary**

#### **INTRODUCTION**

There have been tremendous efforts made to address all concerns of the CFATF and the FATF Regarding The Bahamas' Anti Money laundering, counter financing of terrorism and counter proliferation (AML/CFT/CFP) framework - legislative, regulatory and enforcement landscapes have been thoroughly reviewed and strengthened. The Bahamas is committed to ensuring that it maintains a high level of readiness in addressing regulatory and best practice challenges in the AML/CFT/CFP space on an ongoing basis.

To assist in this effort and to ensure that there is much vigilance over the primary financial sector – banks and trust companies, The Central Bank of The Bahamas established an AML Analytical Unit in 2018, whose sole function is that of continuous monitoring of AML/CFT/CFP requirements by these institutions, credit unions, non-bank money transmission service providers and registered representatives. The Securities Commission of The Bahamas and the Insurance Commission of The Bahamas also established AML Analytical Units in 2019 to maintain ongoing vigilance regarding AML/CFT/CFP compliance of the securities and insurance licensees and registrants, respectively.

The onsite review by the Financial Action Task Force's International Cooperation Review Group (ICRG) of the Americas was slated to take place before mid-September 2020 and would have been a deciding factor at the October 2020 FATF Plenary, on whether FATF deems The Bahamas as having addressed action items on its agreed Action Plan to resolve identified strategic AML/CFT/CFP deficiencies identified in the Caribbean Financial Action Task Force Mutual Evaluation Report (CFATF MER) published in July 2017. Unfortunately, the onsite review is yet to occur due to COVID19 travel restrictions. The work has been done and it is our belief and expectation that the country should be released from the FATF's 'Compliance

Document' or 'Grey List' which is published three times per year following the FATF plenaries of February, June, and October.

The Hon. Carl W. Bethel, Attorney General is poised to assume the Chairmanship of the CFATF in November 2020. This strategic posting comes at a time when CFATF membership is the recipient of tremendous competitive and political pressures from the EU, international agencies and organizations. The Identified Risk Framework (IRF) Steering Committee will be focused on its support of this Chairmanship.

## **CONTEXT**

In December 2015, The Caribbean Financial Action Task Force (CFATF) conducted a mutual evaluation of The Bahamas' technical and effectiveness compliance with the Financial Action Task Force (FATF) 40 Recommendations. The MER of The Bahamas was published in July 2017. The Bahamas was rated as "Compliant or Largely Compliant" with 18 FATF Recommendations, "Partially Compliant" with 21 FATF Recommendations and "Non-Compliant" with 1 FATF Recommendation. Accordingly, the country satisfied the criteria for being placed into the 'CFATF Enhanced Follow-up Process'.

Within 10 months after the publication of its CFATF MER, The Bahamas applied to the CFATF in May 2018 for technical compliance re-rating of 21 FATF Recommendations. The Bahamas, at the CFATF November 2018 Plenary and meetings, was successful in obtaining 13 upgraded ratings of 'Compliant or Largely Compliant' in 12 FATF Recommendations and a 'Partially Compliant' for the 1 'Non-Compliant' Recommendation of the 2017 Mutual Evaluation. The Bahamas became the first CFATF Member country to achieve such a feat. The Bahamas' current standings vis-à-vis FATF Recommendations are - 30 Compliant and Largely Compliant ratings and 10 Partially Compliant ratings -which places The Bahamas firmly on par with the top FATF member states (i.e. USA, Switzerland, Ireland, etc.).

The results of the 2017 CFATF MER also attracted the monitoring of the FATF ICRG. The FATF gave The Bahamas a 12-month observation period June 2017 – June 2018 to remedy the effectiveness deficiencies. In February 2020, following submission of its fourth progress report in December 2019 to the FATF and the ICRG's desktop review of the same with supporting documentation by the ICRG, the FATF deemed that The Bahamas had made sustainable progress towards addressing the 'Action Plan' items and approved an onsite review to verify the actions taken. The agreed date for the onsite review at that time was the week of the 28<sup>th</sup> April 2020.

## **IMPACT OF THE COVID19 PANDEMIC**

The COVID19 Pandemic and the travel restrictions made it impossible for the onsite examination to occur as per FATF requirements. The Bahamas has since approached the FATF directly and via CFATF and regional organizations, seeking a virtual onsite review but to-date has not been successful in securing the same. This state of affairs has led to The Bahamas being disadvantaged as the onsite review results are required to support the country's release from the FATF's Compliance Document (Grey-list). This has been exacerbated by the fact that in May 2020, the Bahamas was warned that it would be placed on the European Union's 'AML Blacklist' as a result of the country's listing on the FATF Grey-List. The Bahamas re-iterates that we remain ready to accommodate an FATF onsite or virtual review. The work has been done as evidenced from the FATF's February 2020 published Compliance Document and it is our strong belief that The Bahamas has materially addressed all agreed FATF 'Action Plan' items and anticipate being

released from the FATF 'Grey List'. In short, we expect a favourable outcome from such an onsite examination (on-site or virtual) if given the opportunity to accommodate such a review.

## **SIGNIFICANT MEASURES TAKEN BY THE BAHAMAS**

Significant measures have been taken to implement the agreed action plan and the key achievements are as follows –

1. Completion and approval of the National AML/CFT Risk Assessment in 2017
2. Completion and approval of the National Identified Risk Framework Strategy in 2018
3. Enactment of a compendium of financial sector legislation in 2018 and 2019 including but not limited to:
  - a. The Proceeds of Crime Act which includes our anti-money laundering provisions and proportionate penalties for violations.
  - b. Financial Transactions Reporting Act and related Regulations which embodies our customer due diligence requirements with an effective sanctions' regime.
  - c. The Anti-Terrorism Act which allows the country to comply with United Nations Security Council resolutions and provides for dissuasive sanctions for offences.
  - d. The Register of Beneficial Ownership Register Act, 2018 which provides for the establishment of a secure search system to facilitate searches of beneficial ownership by the Competent Authority (Attorney General), and government agencies stated in the Act.

The full list of legislation enacted can be seen in The Bahamas Overview Document.

4. Strengthening of the regulatory regime by issuing revised AML/CFT/CFP guidelines to financial and non-financial sector service providers; development and issuance of an AML/CFT/CFP coordinated penalty regime; development and implementation of risk based supervisory frameworks for credit unions, money transmission service providers, securities industry licensees and registrants, gaming houses, and Designated Non-Financial Businesses and Professions.
5. Strengthening of the oversight powers of the Registrar General by way of enactment of the Companies (Amendment) Act, 2019, which included requirements for a declaration of nominee shareholders to be held at companies' registered offices, and a strengthened enforcement toolkit. Of note was the re-establishment of the Compliance Unit which is mandated to ensure companies' compliance with statutory requirements, as well as monitoring Non-Profit organizations.
6. The strengthening of law enforcement resources, and the refocusing in mid-2017 of law enforcement on investigating all types of money laundering including those with foreign predicates. To further empower our law enforcement agencies The Government of The Bahamas codified and issued its National Confiscation Policy in 2019.
7. Improved the International Cooperation case management capabilities
8. Overhaul of Information Technology infrastructure of the Financial Intelligence Unit.
9. Increased focus on training regulatory, legal and enforcement personnel to strengthen and increase capacity to supervise financial institutions and DNFBPs; respond to improve international cooperation; and, to investigate and prosecute money laundering and terrorist financing cases. We have had 120 professionals successfully trained by the UNODC, FATF, IMPACS, CFATF, ACAMS, ICA, and several academic institutions.

The foregoing outlines the tremendous efforts made to address all concerns of the CFATF and the FATF. The IRF Steering Committee is committed to ensuring that the country maintains a high level of readiness in addressing regulatory and best practice challenges in the AML/CFT/CFP space. In addition, as noted

previously, The Central Bank of The Bahamas established an AML Analytical Unit in 2018. The Securities Commission of The Bahamas and the Insurance Commission of The Bahamas also established AML Analytical Units in 2019. Enhanced coordination and cooperation arrangements avoids silo-regulating, and ensures information sharing between the 13 regulatory and enforcement agencies.

## **Conclusion**

The work of The National Identified Risk Framework Coordinator and the IRF Steering Committee is supported at the highest policy levels of Government of The Bahamas. The Bahamas has strengthened its AML/CFT/CFP framework and has addressed the FATF's 'Action Plan'. The Bahamas is fully committed to maintaining the highest AML/CFT/CFP standards in the global fight against financial crime. We are ready to accommodate a review by the FATF (virtual or in-person) to validate these efforts.

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**UPDATE ON THE BAHAMAS' NATIONAL IDENTIFIED RISK FRAMEWORK**  
**ACTIVITIES SINCE THE PUBLICATION OF THE COUNTRY'S**  
**CFATF MUTUAL EVALUATION REPORT IN 2017**

**Introduction**

The Mutual Evaluation Report (MER) of The Bahamas was adopted at the CFATF Plenary of May 2017. Post review by the Global FATF network, the MER was published in July 2017. Attorney General Honourable Carl Bethel, Bahamas' Primary CFATF contact, following the publication of the MER, summoned the National AML/CFT Task Force (now IRF Steering Committee) to begin the work of addressing the deficiencies identified therein. Members of the IRF Steering Committee were directed to formulate action plans, within two -weeks, with short-term, medium-term, and long-term deadlines to address gaps and/ or deficiencies in The Bahamas' AML/CFT regime.

**Notable Activities**

The Bahamas CFATF MER was published in July 2017 and the results reflected – (a) eight (8) compliant ratings, (b) ten (10) largely compliant ratings, (c) twenty-one (21) partially compliant ratings, and one (1) non-compliant rating. Deficiencies were primarily noted as – a) incomplete national risk assessment; b) lack of administrative arrangements to oversee and monitor the country's AML/CFT Regime; c) gaps in customer due diligence legal provisions and supervisory guidance for FIs and DNFBPs; d) gaps in targeted sanctions regarding money laundering, terrorist financing, and proliferation financing; e) gaps in legal provisions and supervisory guidance regarding PEPs for FIs and DNFBPs; f) gaps in legal provisions and supervisory guidance regarding new technologies for FIs and DNFBPs; g) weaknesses in the legal provisions and supervisory guidance regarding the reliance on CDD by third parties for FIs and DNFBPs; h) gaps in legal provisions regarding internal controls over foreign branches and subsidiaries; i) absence of legal provisions mandating enhanced due diligence when conducting business with higher risk countries as noted by the FATF for FIs and DNFBPs; j) absence of risk-based supervision for credit unions, gaming licensees, and securities industry licensees; k) deficiencies in statistics; l) deficiencies in sanctioning toolkit; m) lack of measures to address cash couriers and travellers' currency declarations; and n) weaknesses in the powers of law enforcement and investigative authorities.

The Bahamas conducted a National AML/CFT Risk Assessment over the period 2015 – 2016. The National Risk Assessment (NRA) Report was submitted to Cabinet and approved in December 2017. The National AML/CFT Task Force utilized the World Bank Risk Assessment Module, surveys, and intelligence to complete the NRA. The NRA covered a review of all sectors of the financial services and designated non-financial businesses and professions, law enforcement, prosecutor and the regulatory resources and structures established to regulate, supervise, and enforce AML/CFT requirements in the country. The summary results of the NRA were shared widely with all stakeholders via industry briefings, round tables, and sector meetings. High risk sectors were found to be money transmission service sector, legal, and real estate sectors.

Post completion of the NRA of 2015/2016, In 2019, the Central Bank (CBB) and the Compliance Commission (CC) joined forces and completed several studies into various sections of the DNFBP category of businesses falling with the ambit of the section 4 of the FTRA, 2018. The studies have assisted in confirming that the automobile sector of the country is low ML/TF risk and the domestic banking and gaming sectors were identified as low risk. The CC, Gaming Board (GB) and CBB intend to collaborate on studies of the international real estate and international gaming sectors before end of 2020 to verify the level of ML/TF risk they pose for the country. Further, plans are afoot, and a working group established to refresh the 2015/2016 NRA commencing work in last quarter of 2020 and completion before March 2021. Areas of focus will include virtual asset providers (new regulated sector); international gaming;

international financial services; COVID19 / cyber financial crime and the resultant ML/TF exposure to the financial and non-financial sectors.

The Bahamas developed a three year (2017 – 2020) National Identified Risk Framework Strategy (NIRFS). The NIRFS is designed to address the deficiencies in the country's AML/CFT regime (legal, supervisory, and regulatory) identified in its CFATF Mutual Evaluation (CFATF MER) and the NRA. The NIRFS provided a road map for the strengthening of the existing anti-money laundering/countering financing of terrorism and proliferation (AML/CFT/CFP) regimes and National Identified Risk Framework (IRF) over the 2017 - 2020. The NIRFS was finalized in early 2018 and approved by government in April 2018. The NIRFS contributed significantly to re-hauling of the country's AML/CFT/CFP framework to produce an effective system for the prevention, detection and deterrence of money laundering, terrorist financing, the financing of proliferation of weapons of mass destruction and other identified risks.

The NIRFS was designed around six themes –

- a) enhancing the jurisdiction's identified risks' (inclusive of AML/CFT/CPF) legal and regulatory framework.
- b) implementing a comprehensive risk-based supervisory framework for all sectors of financial services and non-bank financial service sectors.
- c) strengthening of sanctions, intelligence, and enforcement.
- d) enhancing domestic cooperation and coordination.
- e) maintenance of an efficient and effective system for international cooperation; and
- f) raising awareness about identified risks' (inclusive of AML/CFT/CPF) awareness amongst all stakeholders.

The Bahamas has effectively followed its blueprint, the NIRFS, with the following steps / measures already taken:

**a) Legal Framework – Enactment of –**

- Proceeds of Crime Act, 2018 (POCA), provisions include –
  - repealed and replaced the POCA 2000;
  - enhanced and strengthened with new prosecutorial tools inclusive of Unexplained Wealth Orders and Non-Conviction Based Civil Forfeiture Orders;
  - Sections 4 – 6 of the POCA established the coordination mechanisms called for in FATF Recommendation 2 – the Ministerial Council (Decision Making Body); the National Identified Risk Framework Coordinator; and, the multi-agency Steering Committee consisting of operational representatives of 13 governmental agencies and private sector for cooperation amongst all domestic stakeholders involved in the legal, regulatory and enforcement of the National identified Risk Framework which incorporates the AML/CFT/CFP regime; and
  - Now includes the predicate offense of tax crimes via the amendment to the Bahamas' Penal Code.
  - Includes the offense of money laundering, terrorism, proliferation, etc., (list at the rear of the Act) and penalties for same.
- Financial Transaction Reporting Act, 2018 (FTRA) and Financial Transaction Reporting Regulations 2018 (FTRR), provisions include –
  - Repealed and replaced the FTRA 2000 and FTRR 2000;
  - Section 3 FTRA 2018 – captures financial institutions and non-bank financial institutions;
  - Section 4 FTRA 2018 – captures expanding list of DNFBPs;
  - Section 5 FTRA 2018 - includes risk assessment obligation for all FIs and DNFBPs;

- Sections 6 – 14 FTRA, 2018 – established strengthened CDD requirements inclusive of provisions covering PEPs, correspondence relationships, dealing with third party introducers of business, enhanced due diligence, etc.
  - Sections 19 – 24 FTRA, 2018 – established internal control obligations previously only mandated by legally enforceable guidelines;
  - Section 57 of FTRA - Introduction of administrative penalties for violation of obligations contained in FTRA, 2018 that are appropriate, effective and dissuasive;
  - Sections 31 – 37 FTRA 2018 – introduction of enhanced provisions to strengthen the Compliance Commission’s ability to regulate DNFBPs including an additional administrative penalty for non-compliance of DNFBPs with the obligations noted in the mentioned sections.
- Anti-Terrorism Act, 2018; Anti-Terrorism (Amendment) Act, 2019, Anti-Terrorism Regulations, 2019; and Anti-Terrorism (Amendment) Regulations, 2019, repealed and replaced Anti-Terrorism Act, 2004 and introduced provisions in compliance with FATF Recommendations 6 and 7 and United Nations Security Council Resolutions on sanctioning terrorists entities and individuals and those who promote weapons of mass destruction.
  - International Obligations (Economic & Ancillary Measures) Amendment Act, 2019 – provided for amendments to allow circulation of United Nations Security Council resolutions (Sanctioning of entities / individuals) without delay in conformity with the requirements of FATF Recommendation 6 and 7; and for their immediate incorporation into Bahamian Domestic Law, upon promulgation by the UNSC. Further, the amendments allows for the Attorney General to assist in unilateral sanctions by directing financial institutions to perform searches of their databases and report findings which can be passed to the FIU an Police of the sanctioning State.
  - Securities Industry (Anti-Money Laundering and Countering of Terrorism) Rules, 2019, incorporated the new and enhanced AML/CFT Customer Due Diligence provisions for licensees and registrants supervised by Securities Commission of The Bahamas.
  - Financial and Corporate Services Providers (Anti-Money Laundering and Countering of Terrorism) Rules, 2019 - incorporated the new and enhanced AML/CFT Customer Due Diligence provisions for FCSPs.
  - Travellers’ Currency Declaration (Amendment) Act 2018 – introduced the currency declaration for all persons arriving or departing the country with cash in excess of \$10,000 or equivalent in negotiable instruments or precious metals and precious stones.
  - Non-Profit Organizations Act, 2019, Non-Profit Organizations (Amendment) Act, 2019, provided for the regulation and supervision of non-profit organizations in compliance with the requirements of FATF Recommendation 8.
  - Companies (Amendment) Act, 2019 – provided for enhanced sanctions to enforce statutory requirements and obligations and strengthened powers for the Registrar General in compliance with FATF requirements.
  - Register of Beneficial Ownership Act, 2018 and Register of Beneficial Ownership (Amendment) Act, 2019 – served to strengthen existing provisions to improve compliance with the requirements of FATF Recommendation 24, allowed for more timely exchange of information with international

partners and provided for the creation of a secured search system accessible to domestic regulators and law enforcement agencies.

- Financial Transactions (Wire Transfer) Regulations, 2018 – updated the 2015 Regulations to include dissuasive, appropriate, and effective monetary fines for non-compliance with the attendant requirements.
- International Obligations (Economic & Ancillary Measures) Orders that domesticated sanctions in accordance with United Nations Security Council Resolutions on terrorists and those involved in proliferation –
  - International Obligations (Economic & Ancillary Measures) (Iraq) Order 2018
  - International Obligations (Economic & Ancillary Measures) (Afghanistan) Order 2018
  - International Obligations (Economic & Ancillary Measures) (Iran) Order, 2019
  - International Obligations (Economic & Ancillary Measures) (Democratic People’s Republic of Korea) Order, 2019

## **b) Regulatory Framework**

In seeking to address deficiencies and gaps, the regulators (CBB, ICB, SCB, GB and CC):

- a. issued revised and enhanced Anti-Money Laundering /Countering Financing of Terrorism/Countering Financing Proliferation (AML/CFT/CFP) guidelines to licensees and registrants.
- b. refreshed, in most cases, or conducted risk assessments of licensees and registrants to ensure regulatory programs captured all emerging and current risks.
- c. developed and implemented risk based supervisory programs by Securities Commission of The Bahamas, Compliance Commission, Gaming Board, and the Central Bank of The Bahamas (Credit Unions and Money Transmission Service Providers). Note is made that risk based supervisory programs were introduced by the Central Bank of the Bahamas (banks and trust companies), Insurance Commission of The Bahamas and Inspector, Financial and Corporate Service Providers in 2009, 2014, and 2015, respectively.
- d. revised onsite examinations and off-site surveillance programs to capture the monitoring and scrutiny of licensees’ compliance with United Nations Security Council Resolutions (UNSCRs) on Terrorism and Proliferation of Weapons of Mass Destruction.
- e. ramped up engagements (over 30 briefings and training programs were conducted in 2018 and 2019) with their constituents to ensure all AML/CFT/CFP obligations and requirements were discussed and understood by Financial Institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs) - to date where topics regarding CFT/CFP/AML, Sanctions lists and procedures, policies, legislations and IOEAMA Orders (domestication of UNSCR obligations) etc., were discussed. Further, the Group of Financial Service Regulators (CBB, SCB, CC, ICB, GB) hosted two international AML/CFT/CFP conferences in September 2018 and June 2019 which attracted more than 400 delegates (local and international) to discuss and educate the clients and providers regarding the country’s strengthened AML/CFT/CFP regime;
- f. collaborated and revised their enforcement regimes in line with section 57 FTRA, 2018 and implemented a coordinated penalty framework capable of deterring violations and breaches of the AML/CFT/CFP legal and supervisory requirements; and



- g. collaboratively developed two (2) guidance notes on proliferation, proliferation financing and financial crime –
  1. Guidance Note on the Sound Management of Risks Related to Financial Crime in The Bahamas; and
  2. Guidance Note on Proliferation and Proliferation Financing.

**c) Enforcement Framework**

- Proceeds of Crime, 2018 –
  - Expanded the list of predicate offenses to the Act, *ibid* (Schedule 1) including proliferation offenses and tax crimes.
  - Monetary Penalties and jail terms were noted at section 15 POCA, 2018 were revised to reflect a more dissuasive penalty to a maximum of \$500,000, imprisonment of twenty (20) years, or both for money laundering offenses, failure to file STRs or tipping off offenses;
  - Introduction of Non-Conviction Based Civil Forfeiture and Unexplained Wealth Orders – which gave prosecutors new tools to target proceeds of crime for confiscation.
  - Enhanced investigative powers.
  - Enhanced search, seizure, forfeiture, freezing and confiscation powers to assist law enforcement and prosecutors; and,
  - Enhanced provisions governing the confiscation fund.
- Anti-Terrorism Act 2018 –
  - Significantly increased monetary fines from \$2 million to \$25 million and imprisonment provisions to life sentences, respectively.
  - Introduced provisions to cover Implementation of with the UNSCRs, offenses covering chemical and biological, proliferation financing, proliferation of weapons of mass destruction.
  - Strengthened provisions covering terrorism and terrorism financing.
  - strengthened The Bahamas’ capacity to suppress and detect terrorist acts or act designed to facilitate a terrorist act or actions and to bring to trial or extradite, persons committing those acts;
  - provided comprehensive measures to prevent the national territory, resources and financial services of The Bahamas from being used to commit or finance terrorist acts or those acts involved in the manufacture of weapons of mass destruction or the financing related thereto;
  - provided powers to cooperate with other states in suppressing terrorism and proliferation of weapons of mass destruction by implementing the United Nations and other international instruments relating to the combating of terrorism; and,
  - provided provisions to ensure that goods are not supplied or exported and services are not provided, in circumstances where the goods will or may be used in, or the services will or may assist in the development, production, acquisition or stockpiling of weapons that are capable of causing mass destruction or missiles of any kind that are capable of delivering such weapons.
- Financial Transaction Reporting Act, 2018 -
 

Section 57 FTRA provides for an administrative penalty regime that strengthened the regulatory toolkit to enforce compliance with the AML provisions. To facilitate same the Group of Financial Service Regulators issued penalty regimes applicable to their licensees and registrants.

### **CFATF Re-rating Application 2018**

The tremendous effort expended over the ten months covering August 2017 – May 2018 post publication of The Bahamas' CFATF MER led to a re-rating application of the country's technical compliance with the FATF Recommendations. The Bahamas requested re-consideration of twenty – three (23) FATF Compliance ratings. In November 2018, at the CFATF Plenary held in Barbados, The Bahamas was found

- a) to have fully addressed the deficiencies in Recommendation 2, 10, 12, 17 and 30 which are re-rated as C.
- b) to have addressed most of the technical compliance deficiencies identified on Recommendations 1, 15, 18, 23, 25, 32 and 35, such that only minor shortcomings remain, and these Recommendations are re-rated as LC.
- c) to have addressed some of the deficiencies in Recommendation 6 and received a re-rating and upgrade to PC from a previous NC rating.

Recommendations 7, 8, 19, 22, 26, 27, 28 and 33 remained rated PC. Adding Recommendations 24 and 6 to this list results in the country having to address deficiencies identified in ten remaining Recommendations. In light of the above, The Bahamas' progress since its MER was adopted by CFATF Plenary in May 2017, the country's technical compliance with the FATF Recommendations was boosted to thirty (30) Compliant and Largely Compliant ratings and ten (10) Partially Compliant ratings. The country is due to submit to CFATF, its 3<sup>rd</sup> Follow-up Report in late September 2020 reflecting progress made in addressing priority issues and deficiencies identified in the published 2017 CFATF MER.

### **The Registrar General's Department**

Enhancements have been made to the RG's oversight mandate -

1. In August 2019, The Companies (Amendment Act) was passed by Parliament. The amendments require all Bahamian Companies to declare in their annual public filings whether any Shareholder is a Nominee Shareholder and, in respect, of any such Nominee, requiring that the Registered Office maintain a Declaration of Trust on its files stating who is the beneficial owner or controller of such Company.
2. Provisions regarding the sanctions for non-compliance with required statutory documentation filings and annual fees – to strengthen the Registrar General's enforcement tools, were included in the amendments (sections 11, 12, 15 of the Companies (Amendment) Act, amended sections 271 and 271A, and 286 of the principle Act). The Registrar of Companies has been enabled to impose administrative penalties for failure to disclose Nominee Shareholdings or to maintain Declarations of Trust on the Company's files (Section 3 of the Companies amendment Act, 2019).
3. The Company Registry established a Compliance Unit in 2014. The Unit received a boost in staff in March 2020 with the appointment of a Chief Compliance Officer, Tiffany Moss and a Senior officer, Adrianna Knowles-Rahming, both Senior Legal Counsels in the Office of the Attorney General (RGD). The Unit is responsible for monitoring NPOs' compliance with the provisions of NPO Act and also compliance of companies and international business companies with the obligations stated in the Companies Act, 1992 and the Companies (Amendment) Act, 2019. The RGD has received over 300 applications for NPO registration (new and re-registrations for exiting NPOs registered under Section 14 of the Companies Act). Applications are being received online.
4. Since the posting of the Chief Compliance Officer, the Unit held a three-day virtual training session for the NPOs with over 200 persons in attendance. A second virtual training session will be held on the 28 September 2020, for Religious organizations.

5. The Compliance Unit commenced posting to the Registrar General’s website, Notices of UNSCR press releases in September 2020, to ensure Registered Agents and Registered offices of companies are aware of Sanctions Lists and the persons and entities relating to the various UNSCRs on terrorism and proliferation. This action complies with the Section 44 Anti-Terrorism Act, 2018 and amendments which mandates that all persons (legal and natural) must freeze assets of Sanctioned Persons or entities.

Based on the enhanced provisions in the Companies Act over 11,000 companies were struck off the Companies Register in 2018 for failure to comply with statutory requirements – failing to pay appropriate registration fees, failing to comply with requirements to submit annual returns (a document reflecting senior officers, shareholders and capital, etc.) amongst other violations. Registrar General’s Office has identified another 9,000 companies to be struck from the Registry due to non-compliance with statutory filing and annual fee obligations. This current exercise will be drawn to a conclusion upon expiration of the COVID19 Emergency Orders which suspended compliance with the obligations of the Companies Legislation.

### Law Enforcement Agencies

- The Commissioner of Police merged the Business and Technology Unit and the Terrorist Financing and Money Laundering Unit to form the Financial Crime Unit in mid-2018. This restructuring and consolidating of the LEA resources responsible for investigating Money Laundering and Terrorist Financing and Proliferation Financing has greatly enhanced the output regarding ML cases brought before the courts. Before the 2015 CFATF Mutual Evaluation, The Bahamas had brought one ML case before the courts. The current statistics are noted below.

ONSITE	POST ONSITE
1 Person charged for money laundering	116 persons charged for money laundering
1 money laundering prosecution	79 money laundering prosecutions
0 stand-alone ML charges	1 stand-alone ML charges
0 ML matter under investigation	11 ML matters currently under investigation
1 conviction for Money Laundering	46 convictions for Money Laundering

- The FCU over the last 36 months have aggressively sought and found training opportunities for staff to build capacity. Twenty-four (24) Police, Customs and FIU Officers received accredited training in open source investigations. Twenty – two officers completed the investigation certification sponsored by CFATF and the EU 10<sup>th</sup> EDF. Other courses covered economic crime, asset forfeiture and money laundering, financial enforcement strategies, financial forensic investigation, and public cooperation.
- The FCU engaged 5 Stones Intelligence in April 2019 to provide Analytical and Forensic Investigation Support. The analytical and forensic support encompasses providing support in complex money laundering cases, analysis of financial records and transactions, conduct detailed analysis to authenticate net worth and source of funds etc. This agreement boosted resources available to the Unit until a forensic analyst can be employed.

### Office of the Attorney General (OAG)

- National Confiscation Policy  
Attorney General’s Directive, 2019 was issued to the Director of Public Prosecutions (DPP) in August 2019 containing the National Confiscation Policy of The Bahamas.
  - The Directive directed Office of the Director of Public Prosecutions (DPP) to consider whether –

- any money laundering charges are to be laid, either in association with a predicate offense, or as a stand-alone charge (against a person or entity who facilitated the disguised transmission or enjoyment of illicit money).
  - any proceeds of crime, i.e., assets for seizure, restraint, and confiscation, have been identified which may be recoverable.
  - there are instrumentalities of crime, and property of equivalent value, involving domestic and foreign predicates, which may be forfeited or confiscated.
  - further investigation such as a parallel inquiry should be conducted (for example, to determine the extent to which a financial intermediary may have knowingly facilitated money laundering; or
  - tracing, locating and eventually seizing with a view to confiscating the proceeds of crime from foreign / domestic predicates located abroad ought to be considered.
- The Directive directed DPP to consider
  - non-conviction based (civil) forfeiture orders where proceeds of crime or funds intended to finance crimes have been identified; but no criminal charges can be or are to be laid in respect of that property (such as, where the offender is unknown, or is not otherwise amenable to apprehension, arrest, service or process criminal charges within the jurisdiction); and
  - to give consideration to the preservation and management of the value of seized / confiscated proceeds of crime, and their deposit into the Confiscation Assets Fund and / or the repatriation or sharing of assets.
- International Cooperation Unit –
  - OAG over the last 24 months added several tools to assist the Unit in effectively managing the government’s responses to international requests for exchange of information either through a) Mutual Legal Assistance Treaties, b) Letters Rogatory, c) Court to Court for criminal matters via the Criminal Justice (International Cooperation) Act, 2000 or d) Court to Court for civil matters via the Evidence (Proceedings in Other Jurisdiction) Act, 2000.
  - A case management system has been developed by the Department of Information Technology as an IT solution to enhance the Unit’s procedures. The IT solution was launched during the week of the 10 December 2018 and is now fully functional. As of 20 February 2019, all Mutual Legal Assistance and Criminal Justice Requests for Assistance matters (United States of America, Canada, etc.) have been entered into the case management system and updating of matters is ongoing. As of July 2019, all matters relating to outgoing requests were entered into the case management system. Extradition matters were entered into the case management system as of 21 August 2019.
  - The Protocol for Processing International Requests for International Legal Assistance Matters has been amended to ensure that all members of the Unit are aware that all new matters are to be entered into the case management system upon receipt.
  - Since the implementation of the case management system, the International Cooperation Unit of the OAG has been able to collate statistics more efficiently and within a timely manner. Further, international partners have continued to be updated monthly on matters outstanding. A review of the outstanding matters allows senior management to ensure that all updates are forwarded to countries with outstanding cases.

- The International Unit has added two additional staff, and the Unit's personnel have been trained in the operations of the case management system.
- Memorandum of Understanding
  - In January 2020, a memorandum of understanding was signed between the Ministry of Finance (MOF), The Office of the Attorney General (OAG) and the Office of the Director of Public Prosecutions (ODPP) for the exchange of information on tax matters.
  - In March 2020, a memorandum of understanding was signed between the OAG, the ODPP and the FIU for assistance in investigating possible tax crimes where international requests were deficient in pertinent case information.
  - The MOU between the MOF, OAG, ODPP, allows for information exchange between the parties where there is a reasonable suspicion of a tax crime, including but not limited to any false declaration by a declarant with respect to the Common Reporting standard requirements, or the Economic Substance requirements, to facilitate review for the determination of whether a criminal charge can be laid in court. One such case is under active review whereby authorities were alerted to a possible evasion scam perpetuated by intermediaries for several foreign owned companies. Authorities are continuing their investigation into same which will possibly lead to criminal charges being pursued against intermediaries and beneficial owners of the noted companies. This MOU increases the toolkit and measures in enhancing the country's ability to identify, investigate and prosecute ML related to foreign tax crimes.
  - Following the signing of the MOU agreed between the OAG, ODPP, and the FIU, a standard procedure has been developed for all incoming requests, to the International Legal Cooperation Unit at the OAG related to tax offenses. Those requests deemed to be lacking insufficient information are forwarded to the FIU with a request to assist with a system search of its database for any significant related details for the cases with results forwarded to ODPP for prosecutorial review. To-date two such cases are being reviewed.
- Beneficial Ownership Secure Search System
  - The Bahamas Parliament passed the Register of Beneficial Ownership Act (BO Act), in December 2018. Section 3 of the BO Act applies to a legal entity which is an entity incorporated, registered, continued, or otherwise established in accordance with the Companies Act and the International Business Companies Act, Chapters 308 and 309, respectively. An amendment to the Act was passed in 2019 to include partnerships.
  - Section 4 of the BO Act mandates that the Competent Authority establish a secure search system for the purpose of enabling every registered agent to maintain a database of the required particulars on the beneficial ownership of a legal entity for which it has responsibility. Section 9 of the BO Act imposes a duty on every registered agent to establish and maintain a database that is accessible by the secure search system. Section 18 of the BO Act further requires legal entities and registered agents to comply with the new requirements within one year of the commencement of the Act, which is December 2019.
  - The implementation of the decentralized Beneficial Ownership Secure Search system (BOSSs) commenced in June 2019. BOSSs will enable searches of the databases of registered agents of legal entities registered or resident in The

- Bahamas. BO information will be accessible by the Attorney General, the FIU, and other designated persons, as per the Act.
- The Bahamas completed the onboarding process, in September 2019, for 100 of its top priority Registered Agents of International Business Companies and Companies incorporated under the International Business Companies Act and the Companies Act, respectively. The project involved the following three phases and targeted 100 of the priority Registered Agents:
    - ✓ Phase 1 - A Detailed Analysis and Design Phase: This phase was completed in June 2019 and included scoping, solution requirements, and solution architecture and implementation estimate and project plan.
    - ✓ Phase 2 - Implementation and roll out: This phase has been completed and included the development, testing, and deployment of the application specified in Phase 1.
    - ✓ Phase 3 Onboarding: This phase was completed in September 2019 and included meeting with each of the RAs, and determining the correct onboarding strategy, training them on use of the system, and ensuring adequate adoption of the BOSS system.
  - As of 15 September 2019, all 100 of the targeted registered agents have been fully onboarded and are in production mode with live data already loaded into BOSSs. As such, all initial three phases were completed for the large Registered Agents.
  - Currently, an additional phase (Phase 4) is being pursued to onboard the smaller practitioners numbering about 184. This phase commenced in March 2020 but was hampered by the COVID19 Pandemic. However, about 127 of these sole practitioners have commenced the onboarding process and are either in production or testing mode. Efforts are being made to engage the remaining 57 registered agents with full onboarding of their clients' BO within the next three months.

### **Bahamas Coordination Arrangements**

POCA 2018, specifically, sections 4 - 6 which establishes a Ministerial Council, provides for the Appointment of a National Identified Risk Framework Coordinator (NIRFC), and establishes a National Identified Risk Framework Steering Committee, respectively.

As provided in section 4, the Ministerial Council is comprised of the Attorney General and Ministers responsible for Finance, Financial Services, Foreign Affairs, National Security and the NIRFC as an ex officio member to be appointed by the Attorney General. Although not set out in POCA, the Ministerial Council is headed by the Attorney General. The Council is responsible for policy decisions. The functions of the Council are to define identified risks as under section 2 of the POCA and assess and make such recommendations to the Government as may be necessary from time to time to ensure the effective implementation of the Identified Risk Framework (IRF) to minimize or eliminate identified risks.

Section 5 sets out the responsibilities of the NIRFC, including chairing the meetings of the Identified Risk Framework Steering Committee (IRF Steering Committee) as established under section 6 of the POCA 2018. Dr. Cassandra Nottage was engaged as the NIRFC in August 2018. Prior to her engagement, Dr. Nottage served as a consultant with the Office of the Attorney General and spearheaded and coordinated efforts to complete the NRA and preparation of the NIRFS. Dr. Nottage is the former Bank Supervision Manager of the Central Bank where she was employed for thirty-six years.

Section 6 of POCA establishes the IRF Steering Committee (the successor to the former National AML/CFT Task Force – established in the early 1990's) and sets out its membership. The IRF Steering

Committee was formally established in August 2018 and is successor to the National AML/CFT Task Force which was initially formed in 1990. Its responsibilities include - to coordinate the national risk assessment periodically and ensure that such assessments are updated and relevant; coordinate the development and regular review and implementation of national policies and activities designed to mitigate identified risks; collect and analyze statistics and other information from competent authorities to assess the effectiveness of the IRF and to report to the Ministerial Council.

The IRF Steering Committee comprises of the NIRFC and representatives from the Office of the Attorney General, Office of the Director of Public Prosecutions, Financial Intelligence Unit, Customs Department, Royal Bahamas Police Force, Royal Bahamas Defence Force, Department of Immigration, Ministry of Foreign Affairs, Ministry of Financial Services, the Central Bank of The Bahamas and such other person or representative of a statutory body, that has as a part of its functions a requirement to regulate financial institutions, as the Attorney General considers would contribute to the objectives of the IRF Steering Committee. The IRF Steering Committee is the operational body and has been meeting weekly since the 2017 published CFATF MER.

### **United Nations Office on Drugs and Crime (UNODC) E-learning Platform**

Building capacity and skills training of personnel involved in the fight against ML/TF/PF are major objectives of the IRF Steering Committee. Accordingly, in May 2020, when The Bahamas was offered the opportunity for such personnel engaged in the implementation and maintenance of AML/CFT/CFP framework, to access the United Nations UNODC eLearning Platform – 13 Money Laundering modules, we accepted. Currently there are four (4) Supreme Court Justices, two (2) magistrates, the Deputy Registrar of the Supreme Court, and the Assistant Registrar of the Supreme Court accessing the UN e-learning Platform.

Also taking advantage of this significant training opportunity are ten (10) prosecutors from the Office of Public Prosecutions, six (6) senior lawyers of the International Legal Cooperation Unit of the Office of the Attorney General, nine (9) senior officers of the Royal Bahamas Defence Force, ten (10) senior officers from the Bahamas Customs Department, four (4) senior staff of the Registrar General's Office - The Registrar General, Assistant Registrar General, Chief Compliance Officer, and Chief Legal Counsel, and thirty-eight (38) personnel from the regulators (CBB, SCB, ICB, GB and CC).

The UNODC e-learning opportunities have been welcomed by all agencies and is assisting The Bahamas' key stakeholders in the fight against ML/TF/PF, to strengthen their skills and knowledge in the tools required to maintain a robust AML/CFT/CFP framework.

### **Look to the Future**

There have been tremendous efforts made to address all concerns of the CFATF and the FATF. The AML/CFT/CFP legislative, regulatory and enforcement landscapes have been thoroughly reviewed and strengthened as aforementioned. The IRF Steering Committee is committed to ensuring that the country maintains a high level of readiness in addressing regulatory and best practice challenges in the AML/CFT/CFP space. To assist in this effort and to ensure that there is much vigilance over the primary financial sector – banks and trust companies, The Central Bank of The Bahamas established an AML Analytical Unit in 2018, whose sole function is that of continuous monitoring of AML/CFT/CFP requirements by these institutions, credit unions, non-bank money transmission service providers and registered representatives. The Securities Commission of The Bahamas and the Insurance Commission of The Bahamas also established AML Analytical Units in 2019 to maintain ongoing vigilance regarding AML/CFT/CFP compliance of the securities and insurance licensees and registrants, respectively.

The country's coordination and cooperation arrangements as noted above, avoids silo-regulating, and ensures information sharing between the 13 agencies charged with implementation and maintenance of The Bahamas' AML/CFT/CFP framework. The National Identified Risk Framework Coordinator and the IRF Steering Committee enjoys the full support of the government.

The onsite review by the Financial Action Task Force's International Cooperation Review Group of the Americas was originally slated for end of April 2020 but was postponed due to the COVID19 Pandemic and resultant worldwide National Lockdowns. We have had several potential dates bounced around but none of which came to fruition due to the current FATF policy that onsite examinations must be physical onsite review instead of a virtual onsite review coupled with the Travel Ban in place for FATF staff members and international travel restrictions.

The Bahamas has requested, via a direct request and CFATF, a virtual onsite review as the country is disadvantaged by the current FATF Policy of requiring a physical onsite review as the restrictive travel environment due to COVID19 pandemic is a matter we cannot control. Unfortunately, the onsite review is requirement at this juncture of the FATF process and the results of same will be a deciding factor in whether FATF deem that The Bahamas has addressed or largely addressed all action items on its agreed Action Plan to resolve all strategic AML/CFT/CFP deficiencies identified in the CFATF MER published in July 2017. The work has been done and it is our belief that the country has addressed or largely addressed all agreed FATF 'Action Plan' items and should be released from the FATF 'Grey List' which is published three times per year following the FATF plenaries of February, June, and October.

The Hon. Carl W. Bethel, Attorney General is poised to assume the Chairmanship of CFATF in November 2020. This strategic posting comes at a time when CFATF membership is the recipient of tremendous competitive and political pressures from EU, international agencies and organizations. IRF Steering Committee will be focused on its support of this Chairmanship.

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