



FINANCIAL & CORPORATE SERVICE PROVIDERS ACT, 2000

Annual Industry Briefing

Opening Remarks

Deputy Prime Minister the Hon. K. Peter Turnquest, MP
The Minister of Finance
The Commonwealth of The Bahamas
Tuesday 8, August, 9:00 a.m.
British Colonial, Hilton
Nassau, The Bahamas

Salutation

Thank you, [moderator]

I will accept the protocol already established.

Good morning, Ladies and Gentlemen:

I would like to thank the Securities Commission of The Bahamas for inviting me to bring opening remarks at this morning's industry briefing, which the Commission is hosting in its capacity as the Inspector of Financial and Corporate Services. I am pleased that so many of you have joined us today in person, and I understand the Commission is using web conferencing facilities to allow licensees in the Northern Bahamas, particularly in Grand Bahama and Abaco, to participate remotely in this morning's briefing.

Introduction

The Financial and Corporate Services Providers Act, or the FCSPA, provides for the oversight of persons providing corporate services as well as persons providing non-banking financial services that are not captured under the Securities Industry Act or the Investment Funds Act, and who do not fall under the supervision of any of the other financial services regulatory agencies in The Bahamas.

As at 31st December 2016, there were three hundred and twenty-five (325) licensees pursuant to the FCSPA, of whom two hundred and forty-nine (249) were licensed to provide corporate services, thirty-six (36) to provide financial services and forty (40) to provide both financial and corporate services.¹ The industry has been growing, modestly, with an average annual increase in the number of licensees of 3 percent between the 1st of January 2013 and the 31st December 2016.²

¹ Securities Commission of The Bahamas, Annual Report 2016

² SCB Annual Reports 2012-2016

Year End	#FCSPs	Y-on-y% Growth	Average Growth
2012	289		
2013	309	6.9%	
2014	311	0.6%	
2015	322	3.5%	

The result of this growth is now a particularly interesting composition within this sector – on the financial services side, activities are varying and include money lending, mortgage broking, pay day and cash advances, financial intermediation and other financial services which, if not regulated, could easily fall into the category of shadow banking. On the corporate side, activities involve services such as the formation of international business companies, the provision of registered office and registered agent services for IBCs and Exempted Limited Partnerships, and acting as a director, officer or nominee shareholder.

The subsectors within financial services that fall within the scope of the Financial and Corporate Services Providers Act are important as there are many entry level opportunities for Bahamians to become owners—in a real way, both mind and management—of their own financial and/or corporate service businesses—selling their services and competing internationally. On the financial services side, we all appreciate the rise in The Bahamas of services like in-house financing, money lending and pay day and cash advance services. This perhaps speaks to demand in the local financial services industry for greater access to such financial products, and a space which Bahamians are moving into to address these needs. On the corporate service side, there are few barriers to entry for a Bahamian who is qualified and who wants to establish their own business to provide corporate services to an international clientele.

Considering, therefore, the opportunities the sector provides Bahamians to be business owners or to gain meaningful employment, and the role FCSPs play in supporting the jurisdictions' wealth management services, this is a sector that obviously deserves attention and requires good regulation to ensure its continued growth and sustainability.

A matter of Reputation

Much of any such growth will hinge on reputation. Who's reputation? - Everyone's! - The professionals who populate the industry, the regulators' who are charged with oversight in order to ensure the integrity of the sector, and indeed the Government, with its responsibilities to set policy direction, enact appropriate legislation, and follow through with the enforcement of the

2016	325	0.9%	3.0%
------	-----	------	------

law. We must be a jurisdiction which is organised, well-regulated, and replete with competent, world-class professionals and certainly, open for business. And this is what we must be known for. In today's international climate, regardless of whether it be true or not, being perceived as an international financial centre that is weak on anti-money laundering and combatting terrorism efforts, or a haven for persons engaging in illicit activities will inevitably destroy the financial services industry.

It is a very serious matter for the jurisdiction when the Head of the Organization for Economic Co-Operation and Development (OECD) Global Forum on tax transparency and tax information exchange, Monica Bhatia, says the nation's image was that of the 'last tax haven standing',³ and warns that action is needed to avoid blacklisting, as was reported in the Tribune in late April this year. Let us not be fooled into thinking that serious, "above the board" investors start beating a path to our door to do business here as a result of headlines like these. Of course, this announcement came prior to the Government's commitment to adopt the Multi-Lateral approach to sharing tax information under the OECD's Common Reporting Standard regime.

The reputational hit the jurisdiction would have to suffer from being blacklisted as non-cooperative would pose an existential threat to our financial services industry—restricting access to global markets and increasing the cost of doing business as a result of the greater due diligence requirements that those willing to doing business with a blacklisted jurisdiction would incur.

Transparency is the order of the day. I understand that the Commission has recently released Guidance on the Management of Accounting Records, which impact many of you directly. I want to underscore the importance of this matter and commend the regulator for issuing these Guidelines, which sends a strong signal to the international community that the jurisdiction is committed to world-class regulation. As financial and corporate service providers, you must ensure that you meet your obligation to maintain accounting records as required under relevant legislation, both with respect to your own business and any IBC or Exempted Limited Partnership

³ <http://www.tribune242.com/news/2017/apr/27/oecd-chief-tells-bahamas-act-now-avoid-blacklist/>

where you provide corporate or administrative services. The eyes of the world are on us, and we should expect that our access to beneficial owner information and reliable accounting records will be tested. We should also expect that you are taking every effort to meet these fundamental responsibilities. You have a reasonable and pragmatic regulator in the Securities Commission, so as you see ways to improve the Guidance, share it with your regulator. But ensure that you meet your requirements. The world is watching.

Reputation, in financial services especially, remains of paramount importance. Reputation undergirds trust. In fact, in this world of information overload where individuals and businesses have less and less time to do independent research and 'get to know you', reputation will stand as a surrogate for trust more frequently. The Government, regulators, and the professionals that populate the financial services industry have a shared responsibility for it, as our reputations may be separate, but are intrinsically linked in the client's, or investors' assessment.

CFATF

I am certain that you are familiar with the Caribbean Financial Action Task Force, or CFATF. For the benefit of any of the audience this morning who may not be aware, the CFATF is "an organisation of 27 states in the Caribbean Basin, Central and South America who have agreed to implement common countermeasures to address the problem of Money Laundering, Terrorist Financing and the Financing of the Proliferation of Weapons of Mass Destruction. Its main objective is to achieve effective implementation of and compliance with its recommendations to prevent and control money laundering and to combat the financing of terrorism".⁴

The Bahamas underwent its fourth round of mutual evaluations under the programme which involved, among other things, an onsite visit to The Bahamas by CFATF assessors conducted between November 30th and December 11th, 2015. The evaluation assessed compliance with the Financial Action Task Force's 2012 recommendations and the Methodology released in 2013. The progress of The Bahamas' efforts to address deficiencies identified in previous mutual evaluation and follow-up reports was discussed, and the jurisdiction successfully exited the

⁴ <https://www.cfatf-gafic.org/index.php/what-is-the-cfatf>

plenary. The Mutual Evaluation Report concluded that The Bahamas was Compliant with eight (8) recommendations, Largely Compliant with ten (10), Partially Compliant with twenty-one (21) and Non-Compliant with one (1). To note, FATF has identified six (6) core and key recommendations from amongst the forty (40), of which The Bahamas was rated as achieving at least a level of compliance equivalent to Compliant or Largely Compliant in four (4) core and key recommendations.

Falling afoul of the necessary compliance standards could result in FATF identifying a jurisdiction as high-risk and non-cooperative, the result being that clients and other financial institutions are precluded from or penalized heavily for transacting with the jurisdiction. For any contender in international financial services, such exclusion and penalties could trigger collapse of the industry as clients, intermediaries and other service providers flee the reputational contamination that business relationships would bring.

I would like to briefly highlight some of the key findings stemming from the Mutual Evaluation Report:

- The Report concluded that while there is a 'reasonable understanding' of Money Laundering/Terrorist Financing risks, of ML/TF risks, among competent authorities, that understanding needs to be framed within the context of The Bahamas as an international financial centre and shared with relevant stakeholders. Of course, this is directly related to the Financial Action Task Force's first recommendation⁵, which recommends each jurisdiction identify, assess and understand their ML/TF risks and act in a coordinated way to ensure risks are mitigated effectively.
- Noting that there have been no terrorist financing investigations, prosecutions, confiscations or convictions, the Report indicated that the legislative framework for targeted sanctions and proliferation financing is deficient.
- The report determined that financial institutions were overall aware of their regulatory AML/CFT obligations and apply strong customer due diligence procedures. However

⁵ http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

according to the report a large number of unverified facilities still exist in the domestic banking sector. Further, the report indicated that “financial institutions that are not part of a large international group did not demonstrate sufficient awareness of their specific inherent Money Laundering/Terrorist Financing Risks. They had not performed an institutional ML/TF risk assessment to define the specific risks with regard to their operations, environment, products etc.” The report cautioned that it is essential that such institutions, as well as their supervisors, pay more attention to conducting periodic ML/TF risk assessments.”

- Regarding suspicious transaction reports, or STRs, the report indicated that more emphasis should be put on guidance reporting and on the feedback provided to the reporting Financial Institutions.
- The report noted that while the majority of financial supervisors use a risk based approach which is based on a “comprehensive assessment of all types of different risks, including ML/TF risk”. The Assessors advised that more emphasis should be given to identifying ML/TF risk in the existing risk assessments.
- According to the report, financial supervisors in general communicate a clear understanding of AML/CFT obligations, but noted that proactive outreach on AML/CFT issues could be enhanced.
- Noting that The Bahamas is able to incorporate companies, partnerships, foundations and executive entities, the Report indicated the number of inactive entities indicates some level of ML/TF risk with legal persons and arrangements. The report noted that The Bahamas was unable to demonstrate whether sanctions were effective, proportionate and dissuasive.
- While the Mutual Evaluation Report concluded that the AML/CFT sanctions regime was by and large proportionate, it indicated that there was little use of civil and administrative penalties. It also indicated that sanctions may be non-dissuasive, noting fines for entities in some instances being only \$2000.

Obviously, we must be very attentive to what international bodies and standards setters say about our compliance with and commitment to international best practices. However, there are other tools investors may use to gain an understanding of the jurisdiction, which also speak directly our reputation. I'd like to briefly look at two of them this morning.

Ease of Doing Business

The first is the World Banks' Flagship Report, commonly referred to as "the Ease of Doing Business". The report currently assesses 190 economies across the following variables: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency. In the 2017 report, The Bahamas's economy – our economy – ranked 121st in the world, in terms of ease of doing business. For comparison purposes, our neighbour Jamaica ranked 67th, St. Lucia 86th, Antigua and Barbuda 113th, and Barbados 117th – all ahead of The Bahamas.

Perhaps the most discouraging aspect of this rating is how swiftly the country has been tumbling to the bottom of the list. In 2008, The Bahamas was ranked 59th in the world. By 2012, we were ranked 76th and by 2016 as indicated we had arrived – at the 121st spot. The fall is really representative, I believe, of how the rest of the world has progressed to improve ease of doing business and overtaking jurisdictions that rest on their laurels and settle for the status quo. We must always be improving or we will continue to lag further and further behind.

These rankings suggest that our country is not business friendly. For the Bahamian entrepreneur, the implication is that the processes and obstacles to getting a venture off the ground is discouraging. For foreign investor, the rankings imply that The Bahamas is not to be considered a jurisdiction of first choice. And for the Government, the rankings ultimately mean that the economic growth and development of the country are being impeded. To turn this story around, we must focus on making significant improvements in each of these areas if we wish for The Bahamas to be on a path for sustained growth.

Global Financial Centres Index

The second index I'd like us to consider briefly is the Global Financial Centres Index, or GFCI, published twice yearly. The Index provides evaluations of competitiveness and ranking for major financial centres around the world. The Index uses a combination of quantitative measures provided by third parties such as the World Bank, OECD and United Nations; and over 3000 assessments of financial centres completed online by professionals in the industry. It assesses five areas of competitiveness, namely: the business environment, human capital, infrastructure, financial sector development and reputation.

In the March 2017 report, The Bahamas is ranked eighty-third (83rd) out of eighty-eight (88) financial centres making it onto the index's 'main list'. Of note, the jurisdiction, at eighty-third (83rd), is up three in the ranks compared to the September 2016 report, as Panama, Moscow and Reykjavik fell. Even more noteworthy, I believe, is that in 2014 the jurisdiction was ranked as high as sixty-fifth (65th) of eighty-three (83) financial centres. In case you are curious about how jurisdictions we are often benchmarked against fared, in the last report, the Cayman Islands ranked 31st, Bermuda 34th, Jersey 43rd, Guernsey 47th and the British Virgin Islands 51st.

To make it clear, I am not advocating blindly chasing a rating on an index, per se, but undeniably we must recognise that there are highlighted deficiencies which should be considered and rectified as necessary, in the interest of creating a better Bahamas for all. We can change some of the realities, and in the process improve how we are perceived and position the economy for increased business growth and development.

Conclusion

If our financial services industry is to flourish, we must strive to ensure the true stars of our Bahamian financial services industry shine, and form the basis of our reputation – that we are renowned for professionalism, excellence in service, excellence in regulation, for being innovators and problem solvers. We must have the reputation for compliance with international standards and proponents of best practices, and together work to a pragmatic and sensible

approach to doing business in the jurisdiction. With that said, I wish you a productive exchange this morning.