

REMARKS
OF
SENATOR CARL W. BETHEL QC,
ATTORNEY-GENERAL
AT THE
VIRTUAL SYMPOSIUM
OF THE MINISTRY OF FINANCIAL SERVICES
20th May, 2020

Good Morning,

Today I address you remotely, in this the ‘new normal’ and pray for a speedy return to a true normal, with health and safety for all!

Firstly I wish to commend Minister Elsworth Johnson and the Ministry of Financial Services on this great initiative.

Ladies and gentlemen,

In an Article posted on a website maintained by the International Consortium of Investigative Journalists (ICIJ) on the 11th May, 2020, the Secretary General of the Financial Action Task Force (FATF) David Lewis is quoted as saying that governments were failing to stop organized criminals and corrupt regimes from washing vast sums each year. Noting that most countries have dedicated laws and regulations to combat money laundering, he is quoted as saying: *“they are rarely being used effectively, or to the extent that we would expect.”*

The Article continues by pointing to a tendency for countries to display a ‘last-minute commitment’ to tackling money laundering because they faced an upcoming FATF evaluation: *“You see a sudden uptick in money laundering investigations and activity as they prepare to compensate for [past inaction] or to tell a good story to the assessors”*. The Article attributed to him a suggestion that *“some countries were said to only be concerned not to be placed on the FATF Grey List”*.

In 2015, when the last Mutual Evaluation of The Bahamas took place; which evaluation led to our placement in the FATF ICRG process in 2017, even that assessment mentioned above, if applied to The Bahamas in 2015, would have been extremely generous. Quite frankly, as a nation we had failed to keep up to date on the evolving FATF standards. When warned, the government was slow to act. The challenges we faced in 2017 were almost unbeatable.

Yet, by the hard work of all concerned, both government and industry, we were able to right the ship, pass a host of new enabling laws, strengthen the regulatory and supervisory framework governing financial services; and to commence the long and hard road, once again, to prove our resilience and worth as a financial services jurisdiction. Our progress to date has been considerable, and we are now poised to make that last great effort to show the effectiveness of all the efforts we have made together to address the need for change and improvements.

What is the lesson in all of this for us as a jurisdiction? Simply that we cannot afford to let our guard down again. If we wish to remain relevant and effective, we must strive every day to stay abreast of evolving standards and expectations. It is an easy thing to slip, take the easy road and end up being listed. Experience shows that it is easy to be listed, but a far more difficult thing to repair the damage.

We must all develop a firm resolve to work assiduously and in a mutually supportive manner, firstly to keep abreast of all initiatives and developments as they arise, and secondly, to seek to prepare ourselves to meet all impending challenges, even before they are made, and certainly before the World decides to impose the same.

For far too long we have adopted a passive approach, trying to lag behind so-called “competitors”, and each time have felt the brunt of international disdain, and criticism.

We cannot continue doing the same things the same way and expect any different results than those experienced in the past. So, I enjoin each of you to see all approaching storms and to adopt an attitude of engagement with each other, with your regulators and indeed with the World.

This has been our posture and is the posture we now embrace as we move towards the possibilities of the FATF ICRG on-site review.

The IRF Steering Committee which comprises representatives from 13 regulatory and enforcement governmental agencies and chaired by the Attorney-General, continue to meet weekly (now by Zoom). Although a date for the on-site cannot yet be set, due to travel restrictions imposed by the pandemic, we are pushing forward as though it were imminent. Regulators have continued their work.

The Central Bank research into the ML/TF risk in the domestic banking sector and the collaboration with the Compliance Commission in assessing the ML risk in the luxury vehicle sector in 2019 led to the conclusion that both sectors were low ML risk. This collaborative work with the Compliance Commission will continue in 2020 in assessing the risk of Designated Non-financial Businesses and Professions.

Central Bank introduction of an AML Analytics Unit in late 2019 has functioned as a continuous AML/CFT/CFP monitoring mechanism. Noteworthy is that the Securities Commission and Insurance Commission also established AML Analytics Units in 2019.

The Insurance Commission is continuing its outreach to General Insurers, who while not treated as financial institutions, must make STRs; and so, must be instructed in the appropriate levels of Customer Due Diligence now required for each agency to know what to look for as being appropriate for the filing of an STR; particularly client information. Guidance Notes will shortly be released, followed up by further training and on-site consultations with all participants.

The Securities Commission working with industry participants has proposed certain amendments to Regulations and laws, consistent with the need to keep abreast with evolving global standards. These will shortly be placed on the Agenda of Parliament. Additionally, in fulfilment of the FATF Recommendations for the development of critically needed regulation of the market for Virtual Assets, the Commission is working closely with the Office of the Attorney-General to finalize three new Bills to properly regularize new and emergent virtual technologies, and the marketing of the same, inclusive of digital currencies and tokens, which may be offered to the Market.

An electronic case management system was implemented by the International Legal Unit of the Office of the Attorney General in 2019. This system allowed the Unit to enhance its management of international cooperation requests made via the Mutual Legal Assistance Treaties, The Evidence (Proceedings in other Jurisdictions) Act, The Criminal Justice (International Cooperation) Act and Letters Rogatory. Moreover, the system greatly improved response times to international partners and the collation of critical statistics.

The Financial Intelligence Unit has significantly increased its analytical capacity and responsiveness with the purchase of a new computer programme which allows for the digital filing of STRs, along with new analytical software. They have made significant progress in addressing and reducing the historic back-log and are keeping abreast of all filings, as and when made, in real time. The time it takes for institutions to file STRs has also been substantially reduced, thereby greatly enhancing the possibilities of real-time interventions to stop suspicious transactions while they are still on-going.

A National Confiscation Policy was completed, and the Bahamas Cabinet approved the Policy in mid-June 2019 and the constitutional directive was gazetted on August 23rd, 2019 and is now in full force and effect. The Policy

formalizes that which was in put into practice immediately following the publication of the country's CFATF Mutual Evaluation Report in July 2017.

In tandem with the National Confiscation Policy, (in practice since July 2017) The Royal Bahamas Police Force, re-doubling of efforts on investigation and prosecution over the 2018 – 2019 period, has seen some 116 persons charged before the courts, 79 prosecutions and 46 ML convictions. Investigations of ML foreign predict cross-border matters, have been featured in several cases and we are awaiting responses from various international partners to complete review of documentation with a view to filing charges in the Bahamian courts.

The Office of the Attorney-General has created a new Compliance Unit, headed by Miss Tiffany Moss, a very experienced Attorney who has for a number of years participated in all FATF related matters, and who has served as a CFATF Assessor in a recent mutual evaluation exercise.

This Unit is entirely dedicated to the full implementation of the Beneficial Ownership Search System (called “the BOSS”) and also the implementation of the Register of Non-Profit Organizations Act. In short order Public Notices will be posted in the newspapers giving formal notice that all incorporated or unincorporated Non-profit organizations must begin to register the required information as to their Names and Objects, their Principal Offices, and their commitment to maintain proper financial records. The Notices have also served to remind Banks that all Banking facilities for unregistered Non-Profits must cease, as an additional, incentive for full and universal compliance.

In short Order the new Unit will also commence on-site visits and to take all necessary steps to be sure that all NPOs do in fact maintain financial records, which are accessible by law enforcement, should the need arise.

It is anticipated that in the coming months that Unit will be able to complete a thorough and informed Risk Assessment of the NPO sector, which assessment will be added to the National Risk Assessment.

In anticipation of the commencement of the on-site process, sometime after the e-Plenary of the FATF which will be held by remote means in June 2020, the NIRFC Dr. Cassandra Nottage, has mandated that all regulatory agencies should begin to prepare their “follow-up” reports, so that when the same is requested we will be able to send it to the FATF without any delay.

With the assistance of the Registrar-General, the process of striking-off Companies which are delinquent in filing Annual Returns for more than 10 years

will shortly be completed. Thus, in a sense, cleaning up, or rationalizing the Companies Registry.

The Compliance Commission, on 1st May 2020, launched its new website which is more user friendly and allows for online registration of prospective registrants. Functionalities soon to be operationalized include submissions of reports and industry sector webinars.

In an era where vigilance is golden, during the Emergency Orders issued world-wide for lockdowns, we have become aware that there are those organizations and groups that are taking advantage of the COVID19 pandemic to carry out scams and illicit activities. Accordingly, all regulators and enforcement agencies were issued copies of the FATF Statement on emerging COVID19 related financial crime risks and the FATF's policy paper on COVID19 related ML/TF risks, for review and necessary action. IRF Steering Committee Members (inclusive of representatives from the regulatory agencies – Central Bank, Securities Commission, Insurance commission, Gaming Board and Compliance Commission) were mandated to advise their licensees and registrants of the COVID19 related ML/TF/ risks for their information and vigilance when carrying out any financial transactions.

In conclusion, we must be aware that all these efforts will be for naught if we continue to make the errors of the past.

The remarks of FATF Secretary General David Lewis in the Article which started my remarks included his summing-up, which harkens back to a famous conclusion in George Orwell's book "Animal Farm" that 'all animals are equal, but some are more equal than others'; where Mr. Lewis is reported as saying: "*everyone is doing badly, but some are doing less badly than others*".

We should no longer settle merely for that standard, of trying always just to be a little **less bad** than others. That is no longer an acceptable state of existence. Well enough is no longer good enough!

We must positively seek to **do better** than others, lean forward, and continue to strive to attain and maintain the highest standards of practice, oversight, supervision and enforcement, in order to have a healthy, wealthy and respected financial sector.