

G-2-0 AND OFFSHORE FINANCIAL CENTRES: FREE TRADE OR PROTECTIONIST ATTACK BY G-20 MEMBER ON-SHORE FINANCIAL CENTRES? – A CALL FOR REFORM OF GLOBAL REGULATION OF ANTI-MONEY LAUNDERING AND TERRORIST FINANCING”

ALFRED M. SEARS, ESQ.
MANAGING PARTNER OF SEARS & CO. AND FORMER
ATTORNEY GENERAL OF THE BAHAMAS AND CHAIRMAN OF
THE CARIBBEAN FINANCIAL ACTION TASK FORCE (CFATF)

PART 2

BLACK LISTING OF THE BAHAMAS IN 2000

On the 22nd June 2000 FATF published a list of fifteen (15) countries, which included The Bahamas, the Cayman Islands, Panama, Israel, Liechtenstein, and the Philippines as “non-cooperative” jurisdictions in the fight against money laundering. The FATF, a 29 member multilateral organization based in Paris, was created at the 1989 at the G-7 Economic Summit, to combat money laundering. The OECD, formerly the Organization for European Economic Cooperation, was formed in 1961. In addition to the countries of Western and some in Eastern Europe, the OECD’s membership also includes the United States, Canada and Mexico.

The object of the OECD is to provide an institutional framework for cooperation in the solution of the economic problems of the Atlantic Community. The Bahamas is neither a member of the OECD, the G-7, the G-20, The Financial Stability Forum nor the FATF.

On the 22nd June 2000 the FATF published a list of “uncooperative jurisdictions” in the global fight against money laundering. With respect to The Bahamas and the other 14 jurisdictions listed as “non-cooperative,” the FATF recommended, with respect to financial institutions in FATF member countries, “...financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from the ‘non-cooperative countries and territories’”. Specifically, the FATF defined The Bahamas, under its twenty-five (25) criteria (“NCCT Criteria”), as a “non-cooperative country” in the international fight against money laundering against whom counter-measures should be taken.

The FATF criticised The Bahamas for having “serious deficiencies” in its money laundering system; for a lack of information about beneficial ownership as to trusts and international business companies which allow bearer shares; having “a serious breach in

identification rules since intermediaries . . .”; for a lack of international cooperation which is “marked by long delays and restricted responses to request for assistance” and; for there being “no room to cooperate outside of judicial channels”.

The FATF, in a stunning revelation, at paragraph 13, stated that The Bahamas is **“a member of the Caribbean Financial Action Task Force (CFATF), and has indicated, during the process of this review, its commitment to follow the recommendations contained in the CFATF mutual evaluation of 1997.”** If the FATF is to be believed, The Bahamas Government agreed to implement the 29 recommendations of the CFATF. Yet, Prime Minister Hubert Ingraham, while addressing the Financial Services Industry on the 16th August, 2000 at British Colonial Hilton, stated that **“we have not struck any deal with any country, any institution or any organization, whether that is the U.S. the OECD, the FATF, the FSF, or any other country in the world.”** This apparent contradictory representation by the Government of The Bahamas and the representations made by the FATF made it difficult for the financial services sector to assess the Bahamian position and contribute to the formation of effective public policy options in

responding to the concerted attack of the FATF, OECD/Financial Stability Forum and the United States; thus, making it impossible for any effective public/private partnership in responding to this external threat to the financial services sector of The Bahamas. It was imperative that the Bahamian people were told at the outset what commitments, if any, had been made by the country and to whom.

The attacks by the FATF and the United States on The Bahamas as a “non-cooperative jurisdiction” in the fight against money laundering were almost identical to the complaints made by the OECD’s Financial Stability Forum that The Bahamas was a “uncooperative tax haven” engaged in harmful tax practices. Clearly, there was an orchestrated and coordinated attack by the OECD, FATF, the Financial Stability Forum and the United States which suggests that the complaints of money laundering weaknesses and non-cooperation in tax matters may, for the most part, have been a pretext to eliminate the competition that the Bahamas, as an offshore low tax financial services centre, represented for the high tax regimes of the OECD member countries.

While offshore financial and onshore financial centres have an unqualified obligation to fight money laundering and the financing of terrorism and to cooperate in agreed tax matters in

promoting the integrity the global financial system, when the rule making process and application of the rules are guided by the protectionist interests of onshore financial centres then the legitimacy of the process becomes suspect.