

G-20 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”

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PART 5

REMOVAL OF THE BAHAMAS FROM MONITORING LIST OF THE FATF IN 2005

When The Bahamas was removed from the Black List by the FATF in 2001, the FATF continued to keep The Bahamas on the Monitoring List which required The Bahamas to submit semi-annual progress reports to the CFATF on international cooperation.

In June 2002 the FATF released the Annual Review of Non-Cooperative Countries in which it stated that: **“The FATF will continue to monitor the situation in The Bahamas, with particular attention given to international cooperation with respect to foreign regulator requests.”**

Subsequently, a series of letters from the President of the FATF were sent to the Attorney General of The Bahamas threatening to place The Bahamas back onto the FATF’s Back List unless all outstanding regulatory and judicial requests for assistance from OECD member countries were

processed in a satisfactory manner. The monitoring of The Bahamas was being coordinated by the Americas Group of the FATF which, at that time, was chaired by a U.S. Treasury technical officer, Danny Glazer.

To facilitate the removal of The Bahamas from the Monitoring List of the FATF, Prime Minister Christie, in coming to office in May 2002, developed a strategy of constructive and proactive engagement with the FATF and the CFATF. Fortuitously, the Attorney General of The Bahamas assumed the chairmanship of the CFATF in October 2002 at the 16th Plenary and 8th Ministerial Meeting of the CFATF held in Nassau, Bahamas.

The CFATF at that time comprised twenty-seven states and territories of the Caribbean Basin and is the oldest FATF regional styled body, formed in 1990, is the regional advocate for its members achieving international best practice in anti-money laundering. Since The Bahamas has neither a voice nor a vote in the FATF, the Executive Director of the CFATF, Mr. Calvin Wilson, became the voice of The Bahamas in the FATF Plenary and committees and played a critical role in having The Bahamas removed from the Black List and the Monitoring List of the FATF.

The regulators, under the chairmanship of the Attorney General, met monthly during this period to coordinate the respective functions of the regulators resulting in a Memorandum of Understanding amongst the

regulators to harmonize the oversight function in the area of legal and regulatory cooperation.

In the Office of the Attorney General, the International Legal Cooperation Unit was expanded from two to six (6) lawyers, under the direction of a Deputy Director of Legal Affairs, Ms. Antionette Bonamy, to work exclusively on request for legal assistance under the MLAT and other statutory obligations. The Ministry of Financial Services and Investment was created by Prime Minister Christie to separate the promotional function from the regulatory/supervisory functions of financial services in order to give greater integrity to the regulatory process. To ensure that The Bahamas increased its influence in the mutual evaluation process of the CFATF and cultivate contacts in the multilateral agencies which were assessing The Bahamas, the Government lobbied for the certification of Bahamian legal and law enforcement professionals to participate in the mutual evaluation of other countries. In this context, Rhonda Bain, Bernard Turner, Rochelle Deleveaux, Michelle Dean, Shirl Deveaux, Garvin Gaskin, Terrell Butler, Cheryl Bethel were certified as legal experts and Acting Director of the Financial Intelligence Unit (“FIU”), Edward Smith, and ASP Basil Collie were certified as law enforcement experts. This Bahamian team of legal and law enforcement experts participated, at the expense of the Bahamian

Government, in the mutual evaluation of a number of countries including Belize, Bermuda, Guyana and Jamaica.

Prime Minister Christie promoted the convening of a global forum under the United Nations to address the uneven playing field and discriminatory application of rules in the tax and anti-money laundering areas. While serving as the Chairman of the CFATF, at a Special Ministerial Council of the CFATF on the 15th January 2003 in Bridgetown, Barbados, the member states of CFATF issued the following endorsement of the global forum:

“The Member States of the Caribbean Financial Action Task Force (CFATF) reaffirm their commitment to the global struggle against money laundering and the financing of terrorism and strongly recommend utilizing the United Nations framework, based on collaboration and open participation, to work towards a Global Convention on Money Laundering.”

BAHAMAS FINANCIAL INTELLIGENCE UNIT ACHIEVES STATUS OF BEST PRACTICE

Since its inception in 2000, the Bahamian FIU has become the model of best practice in the world. One of the first FIUs to be given administrative freezing powers, the Bahamian FIU sponsored Barbados, Antigua, Anguilla, Dominica, Grenada and the Grenadines, Belize, St. Vincent and the Grenadines, St. Kitts and Nevis, the Turks & Caicos Islands,

St. Lucia and, with the United States, Nigeria into the Egmont Group. Mr. Smith, the acting Director of the FIU, has served as a member of the Egmont Committee from 2005 to 2009, as Vice Chair of the Outreach Working Group, Co-Vice Chair of the Egmont and as Chair of the Implementation Committee of Egmont from 2006 to 2007 which was responsible for transforming Egmont Group from an informal group into an international entity, with a secretariat in Toronto. He is by far the most effective Bahamian ambassador in the multilateral bodies dealing with anti-money laundering and the financing of terrorism and is a leading global expert in the field of financial intelligence.

During the Bahamas Chairmanship of the CFATF, a new initiative was introduced, proposed by its Executive Director Calvin Wilson, of convening the heads of Financial Units during the Plenary of the CFATF to explore ways to enhance intra regional cooperation and support in regional data on anti-money laundering and terrorist financing issues. This initiative of the CFATF is now being promoted by the Egmont Group as a global best practice.

DENIED A VOICE AND VOTE AT FATF PLENARY IN PARIS

During the FATF Plenary in Paris, France, in February 2003, the Bahamian Attorney General, while serving as Chairman of the CFATF, attended the Plenary at which the Monitoring of The Bahamas was an item

on the agenda. Although the Attorney General was permitted to attend the Plenary and participate in the preliminary discussions, when the issue of the Bahamas came up on the agenda, the Bahamian Attorney General was required to leave the room. As Attorney General of The Bahamas and the serving Chairman of CFATF, he had neither a voice nor a vote in the FATF Plenary when the issue of The Bahamas came up on the agenda. It is ironic that at that same Plenary of the FATF, the results of a self assessment that the FATF member countries had carried out, using the 25 NCCT criteria and the FATF 40 Recommendations, was revealed. Most of the members, including the leading G-20 countries, failed to meet many of the NCCT criteria, a failure of which had been used by the FATF in 2000 to Black List The Bahamas and 15 other countries! What was more incredible was that a vote was taken by the Plenary to keep the results of that self assessment private.

Under Prime Minister Christie, The Bahamas also undertook a vigorous foreign policy campaign for a global forum on anti-money laundering. Prime Minister Christie invited and hosted President Mbeki of South Africa, a member of the FATF and G-20, in The Bahamas in December 2003. This opportunity was used to explain the position of The Bahamas and to solicit the support of South Africa in the deliberations of the

FATF. This relationship also gave The Bahamas another friend in the membership of the FATF and G-20. Other areas of functional cooperation between South Africa and The Bahamas were established through a Bilateral Cooperation Agreement and Commission. The Minister of Education hosted the South African Minister of Education, Minister Naladi Pandor, in The Bahamas in May 2006. Minister Fred Mitchell took the campaign for the convening of a global forum on money laundering to the United Nations' General Assembly in September 2003 and asked the body to examine the feasibility of a global treaty on anti-money laundering. The Barbados Minister of Foreign Affairs also, when addressing the General Assembly of the United Nations in September 2003, called for the convening of a global forum on anti-money laundering.

The strategy of Prime Minister Christie was to challenge the unfair ruling making and application processes of the FATF, OECD and Financial Stability Board while strengthening the regulatory capacity of The Bahamas to meet the international requests for judicial and regulatory assistance.

The Christie Government also had to amend many of the laws that had been passed in 2000 to get The Bahamas off the Black List as well as passed additional legislation to get The Bahamas off the Monitoring List: Amendment to Financial Transactions Reporting Regulations, 2003 and

passed the Anti-Terrorism Act, 2004, Insurance Act, 2005, Justice Protection Act, 2006, the Foundations Act, 2006, Non-Charitable Purpose Trust Act, 2006, Segregated Account Companies Act, 2006. The Financial Services Regulatory Reform Commission, chaired by the Minister of State for Finance, Minister James Smith, was established in 2006. The Central Bank abolished shell banks in 2003, resulting in the withdrawal of about 199 bank licenses between 2001 to 2005. The Bahamas signed and ratified the Corruption Convention in 2006.

Due to the progress made by The Bahamas in the areas of judicial and regulatory cooperation from 2002 to 2005, The Plenary of the FATF decided in October 2005 to discontinue the monitoring of The Bahamas.

The removal of The Bahamas from the Monitoring List of the FATF could not have been realized without the extraordinary work of the team of financial regulators, working under the chairmanship of the Attorney General who had responsibility for international cooperation. In particular former Minister James Smith and former Minister Allyson Gibson, the then Governor of the Central Bank, Julian Francis, the Chairman of the Securities Commission, Calvin Knowles, the Executive Director of the Securities Commission, Hillary Deveaux, the Director of the Compliance Commission, Rowena Bethel, the Director and the Acting Director of the Financial

Intelligence Unit, Anthony Johnson and Edward Smith, the Secretary of the Gaming Board, B.K. Bonamy, the Registrar of Insurance, Roger Brown, the Director of Legal Affairs, Rhonda Bain, the Director of Public Prosecution, Bernard Turner, and the Executive Director of the CFATF, Calvin Wilson, exercised a quality of skill and sound judgment which resulted in The Bahamas being removed from the Monitoring List of the FATF. I thank Prime Minister Christie for the confidence and trust that he reposed in me as Attorney General during this period.