



Remarks by

Senator the Hon. Carl W. Bethel

Attorney-General and Minister of Legal Affairs

The Bahamas Association of Compliance Officers (BACO)

Annual MLRO Day- Seminar

Baha Mar Convention Centre

Nassau, The Bahamas

Thursday 26th October 2017

Introduction Good morning ladies and gentlemen.

I would like to thank the executives of the Bahamas Association of Compliance Officers for this opportunity to address you on this MLRO Day.

I have been given the pleasant task to speak on your theme for today – ‘the changing face of compliance’.

THE BAHAMAS has a long-standing commitment as a responsible member of the international community. This commitment extends to having a responsible financial services centre and complying with international standards for the conduct of business. The compendium of legislation passed at the end of 2000, effectively closed the curtain on an era and ushered in an enhanced and stronger anti-money laundering legal and supervisory regime, reflecting the commitment to maintain an internationally accepted framework wherein a financial services sector is well equipped to compete and succeed in the increasingly regulated environment in which the industry operates. These measures were designed to:

- protect the reputation of The Bahamas as both a responsible and reputable international financial centre;
- prevent the use of the banking system for criminal purposes;
- prevent de-stabilization of the domestic economy while promoting legitimate economic activity;
- anticipate and implement effective counter measures to new and emerging trends in money laundering, terrorism financing and related criminal activities; and
- assist relevant authorities in other countries in fighting money laundering and terrorism financing through the timely sharing of information.

Today, The Bahamas operates in an integrated global financial services market. As such, the country's counter-money laundering, anti-terrorism and proliferation legislation must meet international best practices, standards and norms.

The Bahamas' track record in the fight against money laundering dates to 1987 when it criminalized the proceeds of drug trafficking through legislation. In 1989, The Bahamas became the first country to ratify a UN

Convention against the illicit trafficking of narcotic drugs, and in 1996 the country was first amongst international financial centres to criminalize money laundering.

The position of compliance officer in the early years was left to the legal fraternity. However, today, with the constant revision of the Financial Action Task Force (FATF) 40 Recommendations and Methodology, compliance professionals require the input from non-legal personnel in keeping abreast of compliance requirements. As such, compliance functions today look extremely different from those of 1996 when the first anti-money laundering Act was introduced with prescriptive lists, and little space for judgement regarding transactions and verification of identity of customers.

The compliance function used to be thought of as a necessary evil to keep Regulators at bay. Then the Basel Committee on Banking Supervision released in 2003 its consultative document on the Compliance Functionⁱ – effectively establishing the case for a more involved compliance function and standards for banking institutions and other financial service operations. By the release date of this document

in 2005, the FATF was keenly locked into review of its anti-money laundering standards which they released in 2012.

The scope of compliance began to expand over the 2000 – 2005 period to include, not just anti money laundering and terrorism financing, but also review of new products, new delivery channels, new markets, associated companies and businesses, etc.

This expansion of job scope made it necessary for financial service providers to look outside of the legal fraternity for personnel who were skilled in risk management and who understood the financial sector markets and products.

The compliance function is partly a legal function, partly a management function, and partly involves other important topics such as sociology, psychology, and other fields. This is a multidisciplinary area of study that is not limited to law. We are into something that is interesting and changing rapidly. Therefore, it is no surprise that the International Compliance Diploma, which was first introduced in 2000 by your august body, in 2015 revised its study material and the name of the Diploma to reflect the more topical issue of risk governance and management.

Compliance is governance. What is compliance and what is governance? Geoff Miller (2014) in his book defined compliance as ***“the processes by which an organization seeks to ensure that employees and other constituents conform to applicable norms—which can include either the requirements of laws or regulations or the internal rules of the organization.”***

ⁱⁱCompliance is the means by which firms adapt their behaviour or the behaviour of actors within the firm to relevant norms. Those norms are important because they include not only the legal strictures that the firm operates within but also things like reputation, internal ethics, policies, goals, and aspirational norms. Compliance is different from other operational functions. Compliance responsibilities cover core governance functions.

What is governance? Geoff also defines it in his book. Governance involves the structure of control within an organization and it is defined by reference to the process of decision-making which has the ultimate control of the firmⁱⁱⁱ. As such, Compliance is everyone’s business from the Board of Directors to the janitor that cleans the building.

The compliance function is critical to the operations of financial institutions as we thread this brave new world of financial services of international best practices, standards and information exchange. From yearend 2003, financial service providers were obliged to utilize risk based processes to review and assess money laundering and terrorist financing risks posed to their operations by their customers, products, delivery channels and targeted markets.

Supervisory requirements with penalties have become progressively more intrusive and obligations to carry out risk assessments and risk governance are the buzz words today in most business circles.

Accordingly, in 2016, the Central Bank introduced its Administrative Penalties Regulations which sought to encourage compliance of its licensees and registrants with the legal provisions and supervisory guidance covering their operations. Other regulators have various other measures also in place to assist their constituents in complying with regulatory requirements.

The compliance function is being pressed by international influences - OECD, FATF, CFATF, UN - which have pervaded and invaded our financial service sector 'space' since 1990 when the FATF drew up its first set of AML standards. The Standards have since been revised to take account of the Special Nine Anti-Terrorism Recommendations, Proliferation financing and tax evasion with the last major revision being released in 2012. OECD by the introduction of its corporate governance guidelines in 1999 set the international benchmark for policy makers, investors, corporations and other stakeholders worldwide. They have advanced the corporate governance agenda and provided specific guidance for legislative and regulatory initiatives in both OECD and non-OECD countries.

The Financial Stability Forum has designated the Principles as one of the 12 key standards for sound financial systems. The Principles also provide the basis for an extensive programme of cooperation between OECD and non-OECD countries and underpin the corporate governance component of World Bank/IMF Reports on the Observance of Standards and Codes (ROSC).

Regarding CFATF, an organization of which The Bahamas is a founding member, carried out a mutual evaluation of The Bahamas' anti-money laundering, countering the financing of terrorism and proliferation financing during the period of 30 November – 11 December 2015. The process was long and arduous with much discussion held with regulatory, law enforcement, immigration, customs and other governmental agencies.

Meetings were also held with private sector stakeholders. The final mutual evaluation report (MER) was tabled at the May CFATF Plenary reflecting that The Bahamas was accorded the following technical and effectiveness ratings-

- a) Technical Ratings – 8 Compliant; 10 Largely Compliant; 21 Partially Compliant; 1 Non-compliant
- b) Effectiveness Ratings – 5 moderate and 6 low

The gaps identified by the CFATF MER included an incomplete national risk assessment; lack of money laundering investigations, prosecutions and convictions; lack of effective targeted sanctioning regime; identification of a large number of unverified banking facilities; low suspicious transaction reporting; AML/CFT sanctions too limited; there is

a need for timely responses to international exchange of information requests; need for development and implementation of a risk-based approach by regulators for credit unions, securities industry, and designated non-financial business and professions; as well as the lack of demonstration of sufficient awareness of ML/TF risks by financial institutions and compliance officers.

The government has been successful in addressing several of the noted issues through the completion of the national risk assessment, the drafting of the compendium of legislative amendments and Bills, drafting of the national identified risk framework and the development of comprehensive action plans. The Office of the Attorney General has drafted legislative Bills for discussion and enactment during this session of Parliament, inclusive of the Proceeds of Crime Bill, 2017; Financial Transactions Reporting Bill, 2017; Anti-Corruption Bill, 2017; Travellers Currency Declaration (Amendment) Bill, 2017; Customs Management (Amendment) (No. 3) Regulations, 2017; Anti-Terrorism (Amendment) Bill, 2017; Independent Office of the Director of Prosecutions Bill, 2017; and the Proliferation Financing Bill, 2017.

The gaps identified by the national risk assessment (NRA) and the CFATF MER served as the basis for the development of the action plans and the national identified risk strategy. The NRA is due to be discussed with Cabinet of the Bahamas within the next fortnight with a summary version published and thereafter discussed with the wider stakeholder groups inclusive of the private sector.

It is the Government's intention that the end result of the implementation of the noted action plans and the enactment of the compendium of Bills, which were reviewed, to ensure that there would be no strong sense of regulatory "over-reach," the CFATF 11 effectiveness ratings would be greatly be improved with most falling within the substantial level of effectiveness and the 40 technical ratings improved to at least 30 compliant and largely compliant positions with no non-compliant positions. Quite frankly the government rejects any suggestion of any strategy of foot dragging or seeking to strategically lag behind perceived competitors in our region. Our intent is to embrace inevitable changes, expectations and disciplines, to make them our own and to thereby provide a framework of acceptable competition in the provisions of international financial services.

Allied to this commitment to attain the very highest standards compliance with new and emerging norms of conduct, oversight, risk-based assessments and due diligence we have embraced certain recommendations to enhance the ease of doing business in The Bahamas; and, further, have targeted a host of new and emerging financial services and enterprises by way proposed legislation, namely the Commercial Enterprises Act. These new enterprises are not currently to be found in any significant numbers in The Bahamas. The aim is to attract new businesses that hitherto chose other jurisdictions for their domicile. Certain rigidities, particularly in the administration of our immigration regime will be relaxed. The strategy is to tie immigration flexibility to training and capacity building of Bahamians in areas not presently being offered in the marketplace of our financial services regime. As the saying goes: when there is food on the table, everyone can eat! I would add that where there is no food, we all starve.

The recent IMF report pegs financial services at only 3% of our GDP. Historically, the contribution of your industry was between 15 and 20% of GDP. This indicates that although our GDP has grown markedly over the last 15 or so years, the financial services sector has not grown. As one Bahamian leader in the sector said to me just yesterday: "We are holding

on; barely". The fact is that, overall, growth in the sector has been stagnant, and has lagged far behind the growth in the domestic economy. This government is intent upon reversing this unacceptable trend in the financial sector.

Let's be real. There are many educated and qualified young Bahamians who remain abroad after completing their studies simply because the kinds of skills that they have acquired are not located in The Bahamas. They have to stay abroad. Why can't we attract these businesses which are not in The Bahamas today, and provide the kinds of jobs, capacity building and opportunities for which so many young Bahamians have trained, but which today are not conducting business in The Bahamas. When Sol Kerzner came to The Bahamas in the early 1990s he reinvented tourism here. He did so with an almost totally foreign management. Today 20 years later more than 90% of the management at Atlantis is Bahamian. This miracle of capacity building can be duplicated and replicated throughout our financial services sector.

The Government believes that the enhancements and improvements envisioned will position the country's financial services sector as a well-regulated, internationally compliant, international centre committed to

the fight against money laundering, terrorism and proliferation financing and other identified risks that threaten global markets; and also as an international financial services hub, which is capable of attracting new and diversified services to global commerce and financial enterprises.

It is not by chance but hard, consistent, efforts on the part of Government and private sector, that The Bahamas has been a successful international financial centre for over 80 years. These four decades have seen the country's second economic pillar, financial services meet the needs of the High and Ultra High net-worth individuals, families and businesses to manage their wealth efficiently in a legal framework befitting their goals and objectives.

Ladies and gentlemen, I wish to thank you for the opportunity once more to speak to this august body of professionals that are so critical to the ongoing viability of the financial service industry. You are our eyes and ears to protect the industry from infiltration of the proceeds of crime – be it from terrorism; proliferation of weapons of mass destruction; guns, drugs and human smuggling; or money laundering. Risk sensitivity is vital to your role as compliance professionals and I pray you never take the easy way out using prescriptive methods to combat these risks. We as

regulators of the financial system are always in a catch-up role. It will be you the gate-keepers that stop the fox from getting in the chicken coup and killing the chickens.

I thank you for your kind attention and wish each of you a very pleasant day.

Good morning!

ⁱ Compliance and the compliance function in banks – Bank for International Settlements (2005)

ⁱⁱ GEOFFREY P. MILLER, THE LAW OF GOVERNANCE, RISK MANAGEMENT, AND COMPLIANCE (2014).

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