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The Bahamas

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LEGAL MEMORANDA

THE LAW AGAINST CORRUPTION AND MONEY LAUNDERING IN THE CARIBBEAN WITH SPECIAL REFERENCE TO THE BAHAMAS

The Caribbean is literally a sea of developing countries offering special tax incentives, free trade zones, tax holidays, and in many cases, complete freedom from the imposition of income, estate, gift, and most other taxes. The Caribbean is the setting for a broad spectrum of international financial institutions and transactions that make use of sophisticated global technology. An analysis of tax laws is a useful lens through which to view the offshore financial centers of the Caribbean.¹

The “no-tax” havens in the region are The Bahamas, Bermuda, Cayman, and the Turks and Caicos Islands; they impose no income, estate or gift taxes on either residents or non-residents. The “low-tax” havens include most of the other countries in the region, such as Barbados which offers tax incentives for offshore banks, international business companies, foreign sales corporations, and exempt insurance companies.

1. For a useful study, see THE OFC REPORT 1995/96: THE REPORT OF OFFSHORE FINANCIAL CENTRES AND SERVICES (Milton Grundy, ed., 1995). See Milton Grundy, *Offshore Banks—Friend or Foe*, Address at the Tenth International Symposium on Economic Crime (Jesus College, Cambridge) (July 15, 1992).

In most instances, the absence of such taxes represents part of a formal policy to attract offshore banks and other corporate business. For example, in the Cayman Islands, offshore companies are entitled to a tax-free guarantee of up to thirty years from the date of formation; a twenty-year guarantee is usually granted.

Some particular features include the following: strict confidentiality or non-disclosure requirements; minimal annual reporting requirements; a dual currency control system that distinguishes between both residents and non-residents and also between local and foreign currency; extremely low and competitive fees for company and investment transactions; tax treaties; mutual legal assistance treaties (MLATs) and exchange of information agreements. While some tax havens maintain an extensive network of tax and other treaties, others have not entered into such treaties at all. The Caribbean is also remarkable for the increasing presence of mutual legal assistance or exchange of information agreements.

This memorandum does not aim to cover all of the countries in the region, although they share much in common in their legislation, especially the Commonwealth Caribbean countries. This memorandum addresses corruption generally, the new convention of the Organization of American States (OAS) in particular, and as a case study, the anti-bribery and money laundering laws of The Bahamas.

The connecting thread that runs throughout the Caribbean countries is that the governments are genuinely concerned about maintaining the integrity of the financial industry and about pursuing prudent policies to further this end to the satisfaction of the international community.

OAS CONVENTION AGAINST CORRUPTION

In order to promote regional and global anti-corruption laws, the OAS recently approved the Inter-American Convention Against Corruption. The Specialized Conference on the Draft Inter-American Convention Against Corruption met in Caracas, Venezuela from March 27 to 29, 1996, and adopted the Inter-

American Convention Against Corruption (Convention) on March 29, 1996.²

The purposes of the Convention are to strengthen each State's development of mechanisms to prevent, detect, punish, and eradicate corruption, and to promote cooperation to ensure the effectiveness of such mechanisms. The Convention is divided into a preamble and twenty-eight articles. The Convention is aimed at corruption in the performance of public functions and acts of corruption related to such performance.

The Convention establishes detailed preventive measures that States agree to consider with their own institutions. It also requires States to adopt measures to establish jurisdiction over acts of corruption that,³ include, but are not limited to transnational bribery⁴ and illicit enrichment.⁵ Transnational bribery is

2. Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724 (1996) [hereinafter Convention]. On Mar. 26, 1996, the following Organization of American States Member States signed the Convention: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. *Id.* at 724.

3. "The Convention is applicable to the following acts of corruption:

(a) The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

(b) The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;

(c) Any act or omission in the discharge of his duties by a government official or a person who performs public function for the purpose of illicitly obtaining benefits for himself or for a third party;

(d) The fraudulent use or concealment of property derived from any of the acts referred to in this article; and

(e) Participation as a principal, coprincipal-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.

Convention, art. VI, 35 I.L.M. at 729.

4. The Convention states in Article VIII:

Subject to its Constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial trans-

the offering or granting, directly or indirectly, by the nationals of one State to a government official of another State of any article of monetary value or other benefit in exchange for an act or omission in the performance of that official's functions. Illicit enrichment is a significant increase in the assets of a government official in relation to his lawful earnings that he cannot reasonably explain.

Another fundamental aspect of the Convention is that it encourages the progressive development of the law. It urges the parties to establish offenses for the following: a government official's improper use of any classified or confidential information, or any property belonging to the State or to an institution in which the State has a proprietary interest; illicitly seeking to obtain a decision from a public authority and the diversion by a government official of any movable property monies or securities to an independent agency or individual.⁶

action in exchange for any act or omission in the performance of that official's public functions.

Id. art. VIII, 35 I.L.M. at 730.

5. The Convention states in Article IX:

Subject to its Constitution and the fundamental principles of its legal system, each State Party that has not yet done so shall take the necessary measures to establish under its laws as an offence a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.

Id. art. IX, 35 I.L.M. at 730.

6. The Convention states in Article IX:

In order to foster the development and harmonization of their domestic legislation and the attainment of the purposes of this Convention, the States Parties undertake to consider, establishing offences under their laws the following acts:

a. The improper use by a government official or a person who performs public functions, for his own benefit or that of a third party, of any kind of classified or confidential information which that official or person who performs public functions has obtained because of, or in the performance of, his functions;

b. The improper use by a government official or a person who performs public functions, for his own benefit or that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person who performs public functions has access because of, or in the performance of, his functions;

c. Any act or omission by any person who, personally or through a third party, or acting as an intermediary, seeks to obtain a decision from a public authority whereby he illicitly obtains for himself or for another person any benefit or gain, whether or not such act or omission harms State property; and

d. The diversion by a government official, for purposes unrelated to those for which they were intended, for his own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State,

The offenses established by the parties to the Convention are extraditable offenses. Parties are also required to provide each other with the broadest possible assistance in the identification, tracing, freezing, seizure, and forfeiture of property or proceeds derived from the offenses.

Regarding bank secrecy, the requested State cannot invoke the principal bank secrecy as a defense to refuse the assistance sought by the requesting State. However, the requesting State cannot use such information for any purpose other than the proceeding for which the information was requested, unless authorized by the requested State.

The OAS also participated in developing model regulations which were approved by the General Assembly meeting in Nassau, Bahamas in May 1992. Financial institutions are liable for the actions of their employees, directors, owners or authorized representatives who participate in money laundering.⁷ The model regulations were an important precursor to the Convention. It is remarkable that the Americas have been an integral part of the momentum of Europe, other parts of the world, and the United Nations to enact up-to-date legislation with respect to corruption.

Countries in the Caribbean region actively participate in international anti-money laundering efforts. For example, they were among the first states to ratify the U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Banking regulations and supervisory practices were tightened up in the 1980s. For example, the Code of Conduct of the Association of International Banks and Trust Companies in The Bahamas was adopted in January 17, 1985, and approved by The Central Bank of The Bahamas. In addition, the countries have participated in the mutual assistance in criminal matters and extradition with the United States and Canada and within the Commonwealth, and are also members of Interpol.

to an independent agency, or to an individual, that such official has received by virtue of his position for purposes of administration, custody or for other reasons.

Id.

7. Heidi V. Jiménez, *Inter-American Measures to Combat Money Laundering: The OAS Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses*, 8 INT'L ENFORCEMENT L. REP. 165 (1992).

As of February 1997, only two countries have ratified the Code of Conduct: Bolivia and Paraguay. But, for most Commonwealth Caribbean countries, this is not problematic. One problematic provision is Article IX which shifts the burden of proof from the prosecution to the accused; thus, it violates the Fifth Amendment of the U.S. Constitution right against self-incrimination. However, this provision already exists in some regional legislation.

Most Commonwealth Caribbean countries have no difficulty accepting the OAS Convention. The self-incrimination problem does not arise for those countries, such as The Bahamas, which already have in their legislation, provisions that are similar to the Convention's illicit enrichment provision.

ANTI-MONEY LAUNDERING LAWS IN THE CARIBBEAN

Increasingly, the countries of the Caribbean are finding that effective anti-money laundering legislation is something they cannot afford to be without if they want to attract long-term investment from legitimate private business. The Caribbean Financial Action Task Force (FATF) enables Caribbean countries to monitor each others' progress in implementing anti-money laundering review groups, modeled on the Caribbean FATF, which twenty-one countries joined on October 10, 1996.

ANTIGUA

Several weeks after the Washington Post detailed a series of drug-related scandals in Antigua, the *U.S. News and World Report* branded the island-nation as "the money laundering capital of the Caribbean," a place where the Russian mafia, drug cartels and other notorious organizations and individuals launder millions of dollars, easily skirting the government's attempts at law enforcement. According to one estimate, up to \$50 billion from the sale of narcotics, out of an annual world total of \$500 billion, is laundered through the Caribbean. By depositing the money into offshore banks that are very discrete about their customers, the origin of the money is hidden. Funds can then be transferred through other banks as if the money had a legitimate origin, allowing the criminals to use the illegal profits legally. Moving the

money through banks with wire transfers is much easier than moving it physically.⁸

One bank that has drawn the scrutiny of U.S. authorities is European Union Bank (EUB), chartered in Antigua. EUB describes itself as the first bank on the Internet, offering to open accounts, wire money, order credit cards or write checks by computer from anywhere in the world, twenty-four hours each day. EUB caught the attention of investigators when it was chartered in July 1994 as an offshore subsidiary of Menatep, a large Russian bank. Menatep denied that it was ever involved in EUB or that it ever had any ties to organized crime. Antigua's Finance Ministry told the bank that it was "not in good standing." However, EUB continues to operate.⁹

The Government of Antigua and Barbuda launched a new initiative in the struggle against illegal drug trafficking and money laundering. In early 1996, the government outlined details of the new initiative to the Assistant Secretary General of the OAS. A delegation from Antigua and Barbuda, headed by Attorney General and Minister of Justice met with Thomas stating that the new initiative "seeks to more vigorously address the issue of drug trafficking and money laundering." Also, a financial intelligence unit was established in an effort to monitor any cases of money laundering in Antigua and Barbuda. A money laundering bill was tabled in 1996 which is expected to be enacted in 1997. The government signed an MLAT with the U.S. on October 31, 1996, and is negotiating with the U.K. for an MLAT.¹⁰

ARUBA

Anti-money laundering ordinances came into force on March 1, 1996, requiring obligatory reporting of suspicious transactions.

8. Douglas Farah, *Russian Crime Finds Haven in Caribbean*, WASH. POST, Oct. 7, 1996, at A15.

9. *Id.*

10. See *Antigua/US Sign MLAT*, 1 OFFSHORE RED 162 (1996-97)

THE BAHAMAS

The Bahamas was the first country to ratify the 1988 U.N. Convention on drug trafficking and psychotropic substances. The Bahamas will undergo evaluation of its money controls by the Caribbean FATF in 1997.

BELIZE

Economic citizenship is available, as in Dominica and St. Kitts-Nevis. Belize is party to the 1961 Single Convention and the 1972 Protocol thereto. Although it has not yet acceded to the 1988 U.N. Convention, the government of Belize has cooperated with other governments in efforts to meet the Convention's goals and objectives. The Money Laundering (Prevention) Act 1996 came into force on August 1, 1996.¹¹

BERMUDA

The government has circulated, but not yet tabled, the Proceeds of Criminal Conduct Bill. Speaking to Commonwealth Finance Ministers in Bermuda in September 1996, the British Chancellor of the Exchequer said: "International criminals seeking a safe harbor for the criminal proceeds are not respecters of international borders—they will always locate the weakest links in the anti-money laundering chain."¹²

The international FATF, following a full evaluation of the U.K.'s legal and regulatory system of combating money laundering, suggested that the U.K.'s regime could serve as a model for other countries to follow. The FATF also updated its Forty Recommendations to reflect changes in the money laundering threat. The Commonwealth fully supports these revised Recommendations. The Commonwealth guidance notes, in many cases, go beyond what is required by the FATF.

11. *Id.*

12. HM Treasury News Release 143/96, Sept. 26, 1996.

CAYMAN ISLANDS

On September 20, 1996, the Cayman Islands Government passed the Proceeds of Criminal Conduct Act, which is also based on the U.K.'s Criminal Justice Act 1993. Scheduled to enter into force in 1997, it was developed in closed consultation with the private financial sector in the Cayman Islands and carefully balances the legitimate rights of the individual to privacy with the need for transparency and disclosure in the public interest of defeating crime.

The legislation builds on the MLAT between the Cayman Islands and the United States, and the anti-money laundering provisions of the Misuse of Drugs Law 1973 which was revised in the early 1990s and re-enacted in 1995.

The important aspects of the Proceeds of Criminal Conduct legislation include: making it a criminal offense for a financial services provider to fail to report any suspicions he may have that a client has been engaged in or benefited from crime; allowing an application to be made to the Grand Court for an order restraining criminal proceeds pending prosecution and ultimately confiscation whether they are the contents of a bank account, or movable or immovable property; allowing for confiscation orders made in designated countries to be registered in the Cayman Islands and enforced by the Grand Court.

According to the Attorney General of the Cayman Islands, "this legislation makes it clear that the Cayman Island is not a place for those who wish to hide illicit proceeds. It will also reassure those legitimate users of the financial services in the Cayman Islands that their business will not be tainted by any illicit proceeds. The Cayman Islands have once again demonstrated our commitment and determination to assist in the fight against international crime."¹³

The British government is now encouraging other Dependent Territories and Crown Dependencies to follow the Cayman Islands example as soon as possible.¹⁴

13. Business Monitor Online, Sept. 23, 1996.

14. *Id.*

DOMINICAN REPUBLIC

In 1995, the government of the Dominican Republic criminalized money laundering and provided for the seizure of assets in criminal cases, including drug offenses. Although this new law is comprehensive, there is some question as to whether it can be implemented given the country's large, unexplained money flows, unsupervised exchange houses, and burdensome tax system.

HAITI

In 1995, Haiti became a party to the 1988 U.N. Convention. The Government of Haiti participated in money laundering conferences and began drafting money laundering legislation. The government attempted to strengthen the country's judiciary system, which was plagued by scarce resources, incompetence and corruption. In 1995, Prime Minister Werleigh announced an anti-corruption campaign as part of her basic program.

JAMAICA

In 1995, the Jamaican government passed a MLAT enabling act and completed all internal procedures to enable ratification of the U.S.-Jamaica MLAT. The government also presented to parliament a money laundering bill and drafted a precursor chemical control bill. Also, in December 1995, the government acceded to the 1988 U.N. Convention, making Jamaica the last major country in the Western Hemisphere to become a party to the Convention.

PANAMA

A presidential decree in March 1995 formalized the position of "drug czar" and established a permanent presidential commission to oversee money laundering controls. In November, the government passed a new anti-money laundering law, which mandated suspicious transaction reporting, "know your client" provisions, "whistle-blower" protection, and penalties for violations. The government also acknowledged severe domestic abuse problems and pursued prevention and education campaigns. Among the government's most significant accomplishments were

the November 1997 arrests of two major money laundering suspects in response to a U.S. extradition request.

ST. MAARTEN AND THE NETHERLANDS ANTILLES

St. Maarten and the Netherlands Antilles recently enacted anti-money laundering legislation. The Ordinance on Identification when Rendering Financial Services was passed on February 10, 1996, and was to enter into force in January 1997. As a duty-free zone, there are few customs formalities. That makes it easier to bring large amounts of cash into the country. Moreover, reporting suspicious transactions is still voluntary in St. Maarten.¹⁵

The vast majority of the Caribbean countries have either criminalized, or are in the process of criminalizing, money laundering and are providing for the seizure of the proceeds of crime. The Caribbean FATF is increasingly a focus on this effort.

THE BAHAMAS AS A CASE STUDY

A number of events have occurred in the past three decades that have affected the image of The Bahamas. Beginning in the early 1970s, fugitive financier Robert Vesco fled from the United States to The Bahamas. In 1982 the Vatican's Banco Ambrosiano collapsed. In 1983, NBC reported on Norman's Cay, the island stronghold of Carlos Enrique "Joe" Lehder, Colombian drug lord. In 1984, the Commission of Enquiry on drug trafficking was created. The Progressive Liberal Party Government won re-election in 1987. In late 1980, U.S. Coast Guard patrol ships and helicopters began to patrol Bahamian waters with Bahamian Defense Force officers to make arrests, and DEA agents, already based in Nassau, could directly contact their opposite numbers in the police force without the red tape of referrals to the U.S. Embassy and the Bahamian Attorney General. Further, the Drug Enforcement Unit was created within the police force, and a joint task force from both countries meets semi-annually for frank discussions about money-laundering and other law-enforcement issues. Radar observation balloons manned by U.S. technicians floated above three Bahamian islands to detect drug ships and aircraft. In 1990, Central Bank

15. Farah, *supra* note 8.

closed B.C.C.I. Nassau. Also, in 1992, Nigel Bowe, Lehder's Bahamian lawyer, was extradited. In 1992, the Free National Movement Government was elected while the economy was flagging and weak. Finally, in 1993, the new Commission of Enquiry investigated the affairs of three government corporations.

ANTI-BRIBERY LAW IN THE BAHAMAS

The principal laws on public and private corruption and bribery in The Bahamas are: the Prevention of Bribery Act (Ch. 81); the Tracing and Forfeiture of Proceeds of Drug Trafficking Act (Ch. 86); the Dangerous Drugs Act (Ch. 223); the Public Disclosure Act (Ch. 9); the Penal Code (Ch. 77); and most recently, the Money Laundering (Proceeds of Crime) Act (No. 8 of 1996).

Under the Prevention of Bribery Act, which came into force in 1976, the burden of proof of a defense of reasonable excuse lies upon the accused.¹⁶ Further, if it is proved that the accused gave or accepted an advantage, it is presumed that the advantage was an inducement or reward as alleged in the offense, unless the accused proves the contrary.¹⁷ These provisions of the Bahamian Prevention of Bribery Act are virtually identical to those of the highly acclaimed Hong Kong Prevention of Bribery Ordinance (Cap. 201), which in Sections 24 and 25 also shifts the burden of proof to the accused. Sweden's legislation is also similar in this regard.

The primary case arising under the Prevention of Bribery Act is *Wilbert Moss v. C.O.P.*, Appeal No. 74 of 1989. The facts were that Wilbert Moss, a member of Parliament, was charged

16. Prevention of Bribery Act of 1976, X The Statute Law of The Bahamas Ch. 81. "In any proceeding against a person for an offence under this Act, the burden of proving a defence of lawful authority or reasonable excuse shall lie upon the accused." *Id.* § 17.

17. The relevant section of the Prevention of Bribery Act reads:

Where, in any proceeding for an offence under section 3 [bribery] or 4 [bribery for giving assistance, etc. in regard to contracts], it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given and accepted as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved.

Id. § 18. It is important to note that the penalty for bribery is, under Section 10, on conviction on information a fine of \$10,000.00 for four years or both; and on summary conviction, a fine of \$5,000.00 or two years or both and the defendant "shall be ordered to pay such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify." *Id.* § 10.

with offering an advantage—to wit \$10,000—to a stipendiary and circuit magistrate as an inducement for her to acquit one of two men appearing before her to answer charges for offenses against the Dangerous Drug Act. Mr. Moss went to the magistrate's office and told her that the man's father would pay that sum to secure the man's release.

At first instance, a magistrate found Mr. Moss guilty of offering an advantage to a public servant contrary to Sections 3(1)(a) and 10(b) of the Act. On appeal to the Supreme Court, the appeal was dismissed.

The appellant advanced two arguments. First, appellant argued that only the principal could be charged, not the agent. The appellant relied on a definition contained in Section 2(2)(a) of the Act which states that "a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, any advantage to or in trust for any other person."

The court also held that the agent falls clearly within the terms of Section 3(1)(a).

Section 3 of the Act states:

(1) Any person, who, without lawful authority or reasonable excuses, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's—

(a) performing or abstaining from performing, or having performed or abstained from performing any act in his capacity as a public servant...shall be guilty of an offence.

Commenting on the difficulties of proof in bribery offenses, Georges, C.J. said:

This accords both with the language and with common sense. It could not have been intended that the emissary who actually made the offer should not be the principal but merely an abettor in circumstances in which proof against the principal might be well nigh impossible save with the cooperation of the emissary.

Appellant's second argument was that there was no evidence that the magistrate was a public servant, and that such finding at first instance undermined the principal of separation of powers upon which the Bahamas Constitution was based.

The court was satisfied that the magistrate held a public office, that is, an office of emoluments under the Crown in right of the Government of The Bahamas. Accordingly, the court held that the magistrate was a public officer and fell within the definition of public servant under the Act, and the appeal was dismissed.

ANTI-MONEY LAUNDERING LAW IN THE BAHAMAS

The Bahamas is the only English-speaking Commonwealth Caribbean state to date that has enacted an anti-money laundering law: the Money Laundering (Proceeds of Crime) Act (No. 8 of 1996), which commenced on March 19, 1996. The existence of tax treaties and the exchange of information agreements may account, in part, for the absence of anti-money laundering legislation in some countries. Three primary categories of offenses are established.

First, the Act's key provision is the creation of the offense of money laundering under Section 9(1).¹⁸ The actus reus consists

18. Section 9 provides:

(1) A person is guilty of an offence if he uses, transfers the proceeds of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds and knowing that all or a party of that property or of those proceeds was obtained or derived directly or indirectly as a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of:

(a) the commission in The Bahamas of any offence under the Dangerous Drug Act;

(b) the commission in The Bahamas of any offence which is punishable by a term of imprisonment of not less than five years;

(c) an act or omission anywhere that, if it had occurred in The Bahamas would have constituted an offence under the Dangerous Drug Act;

(d) an act or omission anywhere that if it had occurred in The Bahamas would be punishable by a term of imprisonment of not less than five years.

(2) A person who commits an offence under subsection (1) shall be liable -

(a) on conviction on information to imprisonment for a term not exceeding ten years; or

of the following components: a person uses, transfers the proceeds of, sends, or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property.

The mental elements consists of (i) the intent to conceal or convert that property or those proceeds and (ii) knowledge that all or part of that property or of those proceeds was obtained or derived directly or indirectly as a result of an offense within the subparagraphs (a) to (d) of Section 9(1)—namely: (a) an offense under the Dangerous Drugs Act, 1939, as amended (Ch. 213); (b) an offense in The Bahamas punishable by not less than five years imprisonment; (c) an act or omission outside of The Bahamas which if committed in The Bahamas would constitute an offense punishable by not less that five years imprisonment. The indictable offenses under the Penal Code (Ch. 77) usually carry a punishment of five years or more. Thus, money laundering is not confined to the proceeds of drug trafficking; it applies to other serious crimes as well. Its scope is not limited to banks; any person can be charged with money laundering.

Secondly, Section 4 of the Act imposes upon banks, trust companies, insurance companies, gaming premises, persons engaged in the business of dealing in securities and portfolio management and other persons engaged in a business, profession, or activity described in the Schedule to the Act the duty to keep and retain records relating to financial activities.¹⁹ The records must be kept in accordance with regulations to be promulgated.

Thirdly, according to the Act, failure to disclose knowledge or suspicion of money laundering is now an offense. A positive duty to disclose information is imposed on persons generally by Section 22.²⁰ A person is guilty of an offense if: (a) he knows or

(b) on summary conviction to imprisonment for a term not exceeding five years.

Money Laundering (Proceeds of Crime) Act (No. 8 of 1996), § 9.

19. "Every person to whom this section applies shall keep and retain records relating to financial activities in accordance with the regulations made under section 5." *Id.* § 4.

20. *Id.* § 22.

A person is guilty of an offence if:

(a) he knows or reasonably suspects that another person is engaged in money laundering;

(b) the information, or other matter in which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or

reasonably suspects that another person is engaged in money laundering; (b) the information on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and (c) he does not disclose the information or other matter to the Supervisory Authority or the Attorney General as soon as is reasonably practicable after it comes to his attention. The Supervisory Authority has not yet been appointed by the Minister of Finance, but is quite likely to be the Central Bank.

Such informants are immune from criminal or civil liability. Any disclosure is not treated "as a breach of any restriction respecting the disclosure or information imposed by law or otherwise." Thus, the disclosure of such information by a banker or his staff is not actionable as a breach of the contractual duty of bank secrecy established in *Tournier v. National Provincial & Union Bank of England* [1924] 1 KB 461, nor of the statutory duty imposed by Section 10 of the Banks and Trust Companies Regulation Act (Ch. 287).

The Attorney General may obtain restraint orders in relation to property to which Section 9(1) money laundering applies. In Sections 10, 11, and 12, the restraint order procedure is not unlike that of the Mareva injunction in civil law. Forfeiture of property on conviction and related matters are dealt with in Sections 13 to 21. The detailed regulation underpinning the Act and setting out identification, record-keeping, and internal reporting procedures were subsequently published.²¹

Therefore, by enacting the new anti-money laundering Act, The Bahamas has taken a further significant step in establishing and maintaining its position as a responsible international financial center.

employment; and

(c) he does not disclose the information or other matter to the Supervisory Authority or the Attorney General as soon as is reasonably practicable after it comes to his attention. It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or the matter in question. A person who contravenes or fails to comply with this section is guilty of an offence and liable on summary conviction, to a fine not exceeding \$10,000.00 or to imprisonment for a term not exceeding one year or both.

Id. § 4.

21. The Money Laundering (Proceeds of Crime) Regulations, 1996 in effect on December 16, 1996. See also The Guidance Notes for Banks issued by the Central Bank of the Bahamas, December 1996.

CONCLUSION

The following observations can be made from the foregoing remarks:

1. The Caribbean countries have the political will to enact legislation to address the problem. A quantum leap in awareness of the problem is currently taking place.

2. The anti-money laundering measures have the widespread support of the financial community and the public at large.

3. A possible emerging trend is that there have been one or two actual or threatened actions on defamation arising from reports not yet prosecuted. The blanket protection against civil or criminal liability may be tested eventually.

4. More resources are needed. The early indications are that increasing resources have to be allocated to the complex sophisticated labor intensive police investigations. Prosecutors need training. This also extends to the size and continuity of Caribbean FATF financing. If the legislation is to be more than cosmetic, substantially more resources must be provided.

While they are tax havens and, in some cases, bastions of bank secrecy, the Caribbean countries, The Bahamas in particular, have confronted corruption and money laundering.

Notwithstanding critics such as Senator John Kerry of Massachusetts (who expressed the extremist view that bank secrecy in the Caribbean threatens vital interest of the United States) there is close day-to-day cooperation between U.S. government agencies and the Caribbean countries to address drugs and crime. There is also increasing recognition that the Caribbean countries have legitimate economic and financial interests which may not be identical to those of the United States. Hence, through legislation, such as the anti-corruption and anti-money laundering legislation, the Caribbean countries have improved their images as international financial centers.

The Caribbean countries have sought to establish and maintain the integrity of the financial industry. This is corroborated by the anti-corruption and anti-money laundering measures they

have adopted, by the extensive due diligence procedures they follow, by their growing cooperation with the Caribbean FATF, and by the continued growth of the financial industry.

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