



Anti-money laundering
and counter-terrorist
financing measures

The Bahamas

1st Enhanced Follow-up Report &
Technical Compliance Re-Rating

December 2018





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THE BAHAMAS: 1ST ENHANCED FOLLOW-UP REPORT

1. INTRODUCTION

1. The mutual evaluation report (MER) of The Bahamas was adopted in May 2017. This is The Bahamas' 1st Enhanced Follow-up Report (FUR). This follow-up report analyses The Bahamas' progress in addressing certain technical compliance deficiencies which were identified in The Bahamas' MER. Re-ratings are given where sufficient progress has been made. This report also analyses The Bahamas' progress in implementing new requirements relating to FATF Recommendations which have changed since The Bahamas' assessment: R. 5, 7, 8, 18 and 21. This report does not address what progress The Bahamas has made to improve its effectiveness. A later follow-up assessment will analyse progress on improving effectiveness which may result in re-ratings of Immediate Outcomes at that time.

2. FINDINGS OF THE MER AND 1ST FUR

2. The MER rated The Bahamas as follows for technical compliance:

Table 1. Technical compliance ratings, May 2017

| | | | | | | | | | |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| R 1 | R 2 | R 3 | R 4 | R 5 | R 6 | R 7 | R 8 | R 9 | R 10 |
| PC | PC | C | C | LC | NC | PC | PC | C | PC |
| R 11 | R 12 | R 13 | R 14 | R 15 | R 16 | R 17 | R 18 | R 19 | R 20 |
| LC | PC | C | C | PC | LC | PC | PC | PC | C |
| R 21 | R 22 | R 23 | R 24 | R 25 | R 26 | R 27 | R 28 | R 29 | R 30 |
| C | PC | C | PC |
| R 31 | R 32 | R 33 | R 34 | R 35 | R 36 | R 37 | R 38 | R 39 | R 40 |
| LC | PC | PC | C | PC | LC | LC | LC | LC | LC |

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Source: The Bahamas Mutual Evaluation Report, July 2017, <https://cfatf-gafic.org/index.php/documents/4th-round-meval-reports/8383-the-bahamas-4th-round-mer/file>

3. Given these results and The Bahamas' level of effectiveness, the CFATF placed The Bahamas in enhanced follow-up.¹ The following experts assessed The Bahamas' request for technical compliance re-rating with support from the CFATF Secretariat:

- *Ms. Sunita Ramsumair, Legal Officer II, AML/CFT Compliance Unit, Ministry of National Security; Trinidad and Tobago.*
- *Ms. Alva McCall, Deputy Financial Secretary, Ministry of Finance, Virgin Islands.*

¹ Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the CFATF's policy that deals with members with significant deficiencies (for technical compliance and/or effectiveness) in their AML/CFT systems and involves a more intensive process of follow-up.

- *Mr. Floyd Theodore, Financial Investigator, Financial Intelligence Unit, Dominica.*

4. Section 3 of this report summarises The Bahamas' progress made in improving technical compliance. Section 4 sets out the conclusion and a table showing which Recommendations have been re-rated.

3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

5. This section summarises The Bahamas' progress to improve its technical compliance by:

- addressing certain technical compliance deficiencies identified in the MER, and
- implementing new requirements where the FATF Recommendations have changed since The Bahamas' assessment (R. 5, 7, 8, 18 and 21).

3.1. Progress to address technical compliance deficiencies identified in the MER

6. The Bahamas has made progress to address the technical compliance deficiencies identified in the MER and requested a re-rating (including the revised standards) in relation to the following Recommendations:

- 1, 2, 7, 8, 10, 12, 15, 17, 18, 19, 22, 23, 25, 26, 27, 28, 30, 32, 33 and 35 which were rated PC;
- 6 which was rated NC;
- 5 which was rated LC; and
- 21 which was rated C.

7. As a result of this progress, The Bahamas has been re-rated on Recommendations: 1, 2, 6, 10, 12, 15, 17, 18, 23, 25, 30, 32 and 35. Based on the revisions to the revisions to Recommendations 8 and 21, the ratings remain. The CFATF welcomes the steps that The Bahamas has taken to improve its technical compliance with Recommendations 5, 7, 19, 22, 26, 27, 28, 33; however, insufficient progress has been made to justify a re-rating of these Recommendations.

3.1.1. Recommendation 1 (originally rated PC)

8. In its 4th MER, The Bahamas was rated PC with R.1. The technical deficiencies related primarily to the process of identifying and assessing ML/TF risks through a National Risk Assessment (NRA) was still underway; there was no evidence of the designation of an authority or mechanism to coordinate actions to assess risks; measures have not been taken as yet to mitigate the ML/TF risks; not all supervisors require or ensure that financial institutions (FIs) and Designated non-financial businesses and professions (DNFBPs) implement their obligations under the Recommendation 1 and not all FIs and DNFBPs were assessing and mitigating their risks.

9. In order to address the deficiencies noted, The Bahamas utilized the World Bank Methodology in the completion of its NRA on the December 6th, 2017. The Bahamas has identified and assessed its ML/TF risks and has developed a risk-based approach at various levels of the financial sector and DNFBPs.

10. However, a risk-based approach has not been identified or adopted by the law enforcement agencies (LEAs). **On this basis, The Bahamas is re-rated as largely compliant with R.1.**

3.1.2. Recommendation 2 (originally rated PC)

11. In its 4th MER, The Bahamas was rated PC with R.2. The technical deficiencies related primarily to The Bahamas National AML/CFT policies not having yet been informed by the risks identified as the NRA process was still underway; there was no clarity with respect to the designation of an authority or the coordination or other mechanism that is responsible for AML/CFT policies and no clarity with respect to the roles and composition of the various grouping and the need to differentiate them by level (policy or operational).

12. After the completion of the NRA, national policies have been impacted. The Bahamas revised laws in order to address the NRA ML/TF threats, vulnerabilities and identified risks along with gaps and weaknesses identified. National AML/CFT policies have been solidified in the National Identified Risk Framework Strategy completed which contains the road map 2017 – 2020.

13. Section 6 of the Proceeds of Crime Act, 2018 (POCA, 2018), establishes the National AML/CFT Task Force as the Identified Risk Framework Steering Committee as the functional/operational multi-agency body ensuring that the National Identified Risk Framework is implemented. **On this basis, The Bahamas is re-rated as compliant with R.2.**

3.1.3. Recommendation 6 (originally rated NC)

14. In its 4th MER, The Bahamas was rated NC with R.6. The technical deficiencies related primarily to not having a competent authority identified with the responsibility over the United Nations Security Council Resolutions (UNSCRs) 1267/1989; no indication as to how designations are made or communicated to the relevant United Nations (UN) committee; no indication that requests for freezing to another country will have as much identifying and specific information as possible supporting designations pursuant to UNSCR 1373; no indication that freezing occurs “without delay”; no mechanism to communicate or provide guidance to FIs or DNFBPs immediately on designations and obligations relating to freezing mechanisms and that the Procedure for delisting and unfreezing assets and funds of persons and entities who no longer meet the criteria for designation was limited to the Attorney General reviewing if the criteria for designation remains valid and revoking designations.

15. There was also a weakness in not having a due notification process to the UN Security Council 1267 Committee regarding access to frozen funds and assets as required by UNSCR 1452.

16. The Bahamas addressed some of the deficiencies its Anti-Terrorism Act, 2018 (ATA, 2018). Section 76 of the ATA, 2018 provides for the Attorney General to be the Competent Authority for proposing names to the UNSC 1267/1989 Committee.

17. Section 47 of the ATA, 2018 provides that the Commissioner of Police is to investigate on the instructions of the Attorney General, where the Attorney General receives information that a person or entity may meet the criteria for being placed on the ISIL (Da'esh) and Al-Qaeda Sanctions List. Also, Section 44 of the ATA, 2018 requires FIs to freeze all funds held by it in the name of a designated entity without delay, however it does not cover other natural and legal persons.

18. Section 43 of the ATA, 2018 allows for the National Identified Risk Framework Coordinator to communicate designations to FIs, which also include DNFBPs. Additionally, section 44 provides guidance to the FIs on the procedure to be adopted when the FI receives the list of designated entities.

19. There are outstanding deficiencies that are expected to be addressed once the ATA Regulations are in full effect. **On this basis, The Bahamas is re-rated as partially compliant with R. 6.**

3.1.4. Recommendation 10 (originally rated PC)

20. In its 4th MER, The Bahamas was rated PC with R.10. The technical deficiencies were significant and related to shortcomings regarding ongoing due diligence measures for entities under the Insurance Commission of The Bahamas (ICB) and the Securities Commission of The Bahamas (SCB) not including all requirements of criterion 10.7; no requirement for enhanced measures to identify and verify the identity of the beneficial owner of the beneficiary of a life insurance policy at the time of pay-out; no requirements for the identification of protectors of trusts; identification requirements for persons in legal arrangements other than trusts did not include all requirement of sub-criterion 10.11(b) and that simplified Customer Due Diligence (CDD) measures are not based on a risk assessment including analysis of risk by the country and the FI.

21. There were also some weaknesses regarding the measures for credit unions and insurance companies did not include all requirements of criterion 10.19 and no exemptions to conduct CDD if likely to lead to tipping-off.

22. The Bahamas, through the Financial Transactions Reporting Act, 2018 (FTRA, 2018), has addressed the deficiencies. The obligations for all FIs to conduct ongoing CDD (section 12 of the FTRA, 2018) is consistent with the requirements of Criterion 10.7.

23. The Bahamas' covers the definition of FIs (to include credit unions, DNFBPs and registrants and licensees of the ICB and SCB) under section 3 of the FTRA, 2018; Section 7(1)(a) of the FTRA, 2018 imposes the obligation on all FIs to identify the identity of facility holders, while section 8 imposes obligations for FIs to undertake identification and verification measures. For legal persons that are corporate entities, section 5(1)(a) - (c) provides for verification through name, legal form, proof of existence and powers that regulate and bind such entities, and section 5(1)(f) which requires FIs to verify through location of registered office, if different to the principal place of business. Further, under section 7 (1)(b) and (c) of FTRA, 2018, FIs are required to identify and verify the identity of any person purporting to act on behalf of a facility holder which would include senior managers. Section 7(1) of the FTRA outlines the verification measures FIs are required to undertake in relation to trusts and other legal arrangements.

24. Section 7(6) of the FTRA, 2018 addresses the requirements of sub-criteria 10.12 (a) – (c); section 7(5)(a) – (b) of the FTRA, 2018 requires FIs, in the case of trusts, to identify the settlor, trustee(s), the protector if any, the beneficiary or class of beneficiaries and any other natural person exercising control over the trust. Section 7(1) addresses the verification measures to be undertaken with respect to trusts.

25. Section 5 of the FTRA, 2018 requires FIs to identify, assess and understand risks and appropriately manage and mitigate such risks. FIs are also required to take into account risk assessments when applying CDD measures. Further, FIs are not permitted to apply simplified CDD when there is a suspicion of activities related to any identified risk and in

such cases are required to employ enhanced due diligence (EDD) under section 7(3) and 7(4) of the FTRA, 2018 respectively.

26. Additionally, Reg. 7 of the Financial Transactions Reporting Regulations, 2018 (FTRR, 2018) imposes an obligation on all FIs to undertake identification and verification measures for other types of legal arrangements similarly as those required with respect to trusts. **The Bahamas is therefore re-rated as compliant with R.10.**

3.1.5. Recommendation 12 (originally rated PC)

27. In its 4th MER, The Bahamas was rated PC with R.12. The technical deficiencies related to: licensees and registrants of the SCB are not subject to the requirements of criteria 12.1 to 12.3; very limited requirements on politically exposed persons (PEPs) issued to ICB licensees and small credit unions having no requirements for PEPs and larger credit unions are not required to comply with criteria 12.1(a) and 12.1 (c)

28. These deficiencies were all addressed through the FTRA, 2018, where section 14 does not differentiate between foreign, domestic and international organization PEPs. In addition, the definition of PEPs extends to family members and close associates. Also, Section 3 of the FTRA, 2018 includes credit unions, DNFBPs and licensees and registrants of the SCB and the ICB in the definition of FIs and consequently all credit unions are required to comply with criteria 12.1(a) and 12.2(c)

29. The amendment to include credit unions, DNFBPs and licensees and registrants under the ICB and SCB in the definition of FIs and consequently the imposition of obligations for all FIs to comply with the requirements of R.12 addresses the identified deficiencies. **The Bahamas is therefore re-rated as compliant with R.12.**

3.1.6. Recommendation 15 (originally rated PC)

30. In its 4th MER, The Bahamas was rated PC with R.15. The technical deficiencies related to not having specific provisions for licensees and registrants of the SCB to assess ML/TF risks of new business practices, including new delivery mechanisms or the use of new or developing technologies for both new and pre-existing products and no measures for SCB licensees and registrant to assess associated risks prior to launch or use of new products, or to take measures to manage and mitigate the risks

31. The deficiencies were specifically addressed by the FTRA, 2018, where section 5(1)(a)(iii) requires FIs to take appropriate measures to identify, assess and understand the risk in relation to its products, services, transactions and delivery channels. Section 5(2) of the FTRA, 2018 requires every FI to carry out a risk assessment prior to the launch of a new product or business practice, use of new or developing technologies or where there is a major event or development in the management and operation of the group and the inclusion of SCB licensees in the definition of FIs and the requirements under section 5 of the FTRA, 2018 for FIs to undertake measures to assess associated risks prior to the launch of new products as well as the requirements for FIs to execute measures to mitigate these risks.

32. Regarding the assessment of risks by The Bahamas with respect to the development of new products and new business practices, the FTRA only addresses the requirement for FIs to take appropriate measures to identify, assess and understand the risk in relation to their products, services, transactions and delivery channels. The FTRA does not, however, place any requirement on the country itself to carry out a similar risk assessment exercise. The deficiency has not been addressed. **The Bahamas is therefore re-rated as largely compliant with R.15.**

3.1.7. Recommendation 17 (originally rated PC)

33. In its 4th MER, The Bahamas was rated PC with R.17. The technical deficiencies related to licensees and registrants of the SCB and the ICB not required to ensure that the ultimate responsibility for CDD measures in third party situations remains with the FI; no specific requirement that insurance companies satisfy themselves that the introducer is regulated and supervised or has measures in place for compliance with CDD and record-keeping requirements in line with Recommendations 10 and 11 and no indication that country risk is taken into account in the selection of countries where eligible introducers can be based.

The jurisdiction has made progress with the inclusion of licensees of SCB and ICB in the framework and the amendments to ensure that insurance companies satisfy themselves that the introducer is regulated and supervised or has measures in place for compliance with CDD and record-keeping requirements in line with Recommendations 10 and 11.

34. Section 5 (1)(a) of the FTRA, 2018 provides that all FIs should take appropriate measures to identify, assess and understands its identified risks in relation to its facility holders and the countries or jurisdictions of their origin; the countries or jurisdictions of its operations and its products, services, transactions and delivery channels. **The Bahamas is therefore re-rated as compliant with R.17.**

3.1.8. Recommendation 19 (originally rated PC)

35. In its 4th MER, The Bahamas was rated PC with R.19. The technical deficiencies related to not having specific obligation that EDD should be applied proportionate to the risks from countries for which this is called for by the FATF; no provisions for applying countermeasures proportionate to the risks from countries for which this is called for by the FATF and independently of any call by the FATF and no measures to advise entities under the SCB and the ICB of concerns about weaknesses in the AML/CFT systems of other countries.

36. While the FTRA, 2018 and the POCA, 2018 allow for FIs to apply EDD proportionate to the risk, section 6(3)(d) of the POCA, 2018 does not allow for the application of countermeasures other than EDD. Additionally, the POCA, 2018 does not allow for countermeasures to be applied independently of any call by the FATF. Moreover, while the definition of FIs in the FTRA, 2018 encompasses those entities under the SCB and ICB, section 6(3)(d) of the POCA, 2018 does not allow for the Identified Risk Framework Steering Committee (IRF Steering Committee) to provide information on weaknesses in the AML/CFT systems of other countries to FIs. Furthermore, based on the definition of 'identified risk' in section 2 of POCA, 2018, section 6(3)(i) does apply as 'identified risks' relate to offences, whereas sub-criterion 19.3 relates to weaknesses in the AML/CFT systems of other countries. On this basis, **The Bahamas remains partially compliant with R. 19.**

3.1.9. Recommendation 22 (originally rated PC)

37. In its 4th MER, The Bahamas was rated PC with R.22. The technical deficiencies related to having the CDD threshold for Gaming House under the Financial Transaction Reporting (Gaming Regulations), 2014 above USD3,000; no distinctions are made regarding the various categories of PEPs: no requirement to identify and address ML/TF risks derived from technological: with respect to reliance on third parties and no provisions in the Compliance Commission (CC) AML/CFT Codes to have information on the level of country risk or for group-wide CDD requirements and mitigation.

38. Reg. 3 of FTRR, 2018 does not capture those entities conducting transactions above USD/EUR 3,000 as required by criterion 22.1(a) and there is no indication that country risk is required to be taken into account in the selection of countries where eligible introducers can be based, where eligible introducers are not part of the same financial group. **The Bahamas' rating of partially compliant with R.22 therefore remains.**

3.1.10. Recommendation 23 (originally rated PC)

39. In its 4th MER, The Bahamas was rated PC with R.23. The technical deficiencies related to not having measures for financial group-wide programmes for ML/TF or foreign branches and majority-owned subsidiaries of DNFBPs, which has been addressed by section 21 of the FTRA, 2018 where now all FIs are required to implement group wide policies and procedures against activities relating to identified risks and the policies and procedures referred to in subsection (1) shall be applied to all branches and majority owned subsidiaries of the group. DNFBPs are included in the definition of FIs and therefore are required to comply with the requirements.

40. The deficiency in relation to the measures for financial group-wide programmes for ML/TF or foreign branches and majority-owned subsidiaries of DNFBPs has been addressed. However, the deficiency in relation to the requirements of R. 19 for DNFBPs remain. **The Bahamas is therefore re-rated as largely compliant with R.23.**

3.1.11. Recommendation 25 (originally rated PC)

41. In its 4th MER, The Bahamas was rated PC with R.25. The technical deficiencies related to not having any requirements to verify the identity of any natural person exercising control over a trust; no requirement for trustees to obtain information on regulated agents or service providers to the trust; no requirements to verify that beneficiary information for legal arrangements be accurate and current; no requirement that ensures that information kept in compliance with this recommendation is updated on a timely basis and law enforcement authorities do not have powers necessary to obtain timely access to information held by trustees and other parties.

42. The Bahamas, pursuant to its FTRA, 2018 has addressed the deficiencies in relation to the verification of the identification of any natural person exercising control over a trust as well as the requirement for trustee to obtain information on regulated agents or services providers to the trust. There are requirements to keep updated information. However, this does not cover trustees who are not FIs.

43. Additionally, the Royal Bahamas Police Force (RBPF) does have the necessary powers to obtain timely access to information held by trustees and other parties on beneficial ownership, the residence of the trustee and assets held or managed.

44. **The Bahamas is therefore re-rated as largely compliant with R.25.**

3.1.12. Recommendation 26 (originally rated PC)

45. In its 4th MER, The Bahamas was rated PC with R.26. The technical deficiencies related to not having provisions for approval of the ICB for changes in the management of insurance entities; no risk-based supervision of credit unions; SCB having not implemented risk-based supervision; ICB risk-based supervision not including consideration of ML/TF risks.

46. Amendments to the Insurance Act are expected to address some of the deficiencies; no evidence has been provided to demonstrate that the risk assessment of the credit union sector has been completed and integrated into the supervisory approach of the supervisory authority. Also, the ICB is still in the process of developing a ML/TF framework. **The Bahamas' rating of partially compliant with R.26 therefore remains.**

3.1.13. Recommendation 27 (originally rated PC)

47. In its 4th MER, The Bahamas was rated PC with R.27. The technical deficiencies were that the CBB cannot impose supervisory sanctions for AML/CFT breaches on credit unions and that the SCB does not have power to impose supervisory sanctions for AML/CFT breaches under the Securities Industry Act, 2011 (SIA).

48. With the FTRA, 2018, the CBB is now empowered to impose a limited range of supervisory sanctions for AML/CFT breaches on credit unions. There is however an even greater limitation in the range of sanctions available to the SCB to address AML/CFT breaches and the sanctions are not dissuasive. Given the size of the financial sector, and in particular the securities sector, **The Bahamas' rating of partially compliant with R.27 remains.**

3.1.14. Recommendation 28 (originally rated PC)

49. In its 4th MER, The Bahamas was rated PC with R.28. The technical deficiencies were that neither the relevant licensing authority nor the CC has powers to prevent criminals and their associates from holding significant controlling interests in its supervised entities; no fit and proper measures for assessing shareholders or beneficial owners of financial corporate service providers; no provisions for administrative penalties by the CC or the Gaming Board and no provisions to prevent the criminals from holding significant or controlling interest in other DNFBPs such as dealers in precious stones and dealers in precious metal.

50. There is no evidence that fit and proper measures are implemented for assessing shareholders or beneficial owners of financial corporate service providers.

51. In addition, S.33 of the FTRA only speaks to FIs informing the Commission, within three months of a change in beneficial owner, director, partner, compliance officer or money laundering reporting officer. It does not provide any authority to prevent criminals or their associates from holding any interest, significant or otherwise, in any of the defined FIs. **On this basis, the rating of partially compliant with R.28 therefore remains.**

3.1.15. Recommendation 30 (originally rated PC)

52. In its 4th MER, The Bahamas was rated PC with R.30. The technical deficiencies were that there was no designated authority to investigate terrorist financing and that there were no measures authorising the pursuit of parallel financial investigations.

53. The Bahamas' LEAs conducting parallel financial investigations are permitted to forward potential cases involving money laundering to the Assistant Commissioner Crime Management, who has the authority to refer those cases to the Tracing & Forfeiture Money Laundering Investigation Section, Business Technology Crime Section and the Anti-Corruption Unit. In order to address the deficiency which relates to no designated authority to investigate TF, The Bahamas has provided, as per Force Order 1/2018, dated 24th May 2018, for the investigation of TF by The Tracing & Forfeiture Money Laundering



Investigation Unit and Business & Technology Section. **On this basis, The Bahamas' is re-rated as compliant with R.30.**

3.1.16. Recommendation 32 (originally rated PC)

54. In its 4th MER, The Bahamas was rated PC with R.32. The technical deficiencies, among others, were that the declaration system does not cover mail or cargo and that penalties under the Pre-clearance Agreement Act (PAA) were not proportionate and dissuasive.

55. The Bahamas has demonstrated that a currency declaration system for incoming and outgoing cross border transportation as well as bearer negotiable instruments (BNIs) is in place. The penalties imposed for false declaration appear to be proportionate and dissuasive and there are systems for international cooperation.

56. Based on the definition of goods in section 2 of the Customs Management Act, 2011, cash and BNI transported through cargo and the mail are liable for declaration. Section 292 (f) of the Customs Management Act, 2011 mandates that goods in respect of an erroneous statement, declaration, certificate or claim has been made or produced to a customs officer are liable for forfeiture. Further, section 344 (1) of the Customs Management Act, 2011 applies to all postal articles and goods contained therein. All imported articles and postal articles intended for exportation shall, if the comptroller so requires be produced by an officer of the post office or any other person authorised to perform duty in relation to the importation or exportation of such postal article. Additionally, the Travellers Currency Declaration (Amendment) Act, 2018 makes provisions for the declarations by all departing and arriving passengers.

57. There are issues regarding lack of documentation of access to declaration information by the Financial Intelligence Unit (FIU), there is no documentation as to the coordination among the Customs, Immigration or other related authorities on issues related to the implementation of Recommendation 32.

58. **On this basis, The Bahamas is re-rated as largely compliant with R.32.**

3.1.17. Recommendation 33 (originally rated PC)

59. In its 4th MER, The Bahamas was rated PC with R.33. The technical deficiencies were mainly related to The Bahamas not maintaining comprehensive statistics on matters relevant to the effectiveness and efficiency of the AML/CFT systems.

60. The statistics provided by The Bahamas are not adequately structured or collated. There are no statistics presented on TF investigations, suspicious transactions reports (STRs) dissemination to other competent authorities, property frozen, seized and confiscated, mutual legal assistance or other international request for cooperation. Additionally, apart from the FIU, there are no other provisions which indicate the keeping of or maintenance of statistics on matters relevant to the effectiveness and efficiency of The Bahamas AML/CFT systems

61. Notwithstanding the above, The Bahamas has demonstrated that they are maintaining statistics on some matters relevant to the effectiveness and efficiency of their AML/CFT systems. In this regard the RBPF has evidenced statistics on ML investigations, prosecutions and convictions aggregated according to the related predicate offences. The RBPF statistics have also isolated those ML investigations, prosecutions and convictions which have their genesis in the receipt of an STR. **On this basis, R.33 remains rated as PC.**



3.1.18. Recommendation 35 (originally rated PC)

62. In its 4th MER, The Bahamas was rated PC with R.35. The technical deficiencies were mainly related to having a high dependence on criminal penalties (fines and imprisonment) for some offences; sanctions applicable to directors and senior managers do not cover all FIs and DNFBPs and very little in the form of civil and administrative sanctions, particularly for supervisors to cover the broad range of preventative measures

63. In order to address the deficiencies noted, amendments included in the FTRA, 2018 stipulates penalties under section 57, which appear to be dissuasive and proportionate. Sanctions under Bank and Trust Companies Regulation Act (BTCRA), section 18 and The Bahamas Co-operative Credit Unions, Act, 2015 (BCCUA), section 14, empowers the Bank to impose a wide range of sanctions for non-compliance with AML/CFT requirements including the power to issue directions, impose, amend or vary conditions upon the licence, requiring the substitution of directors and officers, restricting, suspending or revoking licences, or suspending and cancelling registrations.

64. Section 18 of the BTCRA is concerned with the powers of the Governor of the Central Bank. In accordance with this section of the legislation, the Governor may apply a range of administrative sanctions including the revocation of the license of a bank or trust company if the Governor is of the opinion that the licensee is contravening the provisions of any Act, order or regulation, in The Bahamas or elsewhere, including the said BTCRA.

65. Section 14 of the BCCA is concerned with suspension and cancellation of registration and at section 14 (2) the Central Bank may suspend the registration of a co-operative credit union. Although section 5 of the BCCA endows the Central Bank with the power to administer the provisions of the said BCCA and also to prepare and issue ML guidelines it is unclear whether the sanctions triggers at section 14 relate in any way to the non-compliance with ML/TF provisions by co-operative credit unions. **On this basis, The Bahamas is re-rated as largely compliant with R. 35.**

3.2. Progress on Recommendations which have changed since The Bahamas' Mutual Evaluation Report

66. Since the adoption of The Bahamas' MER, the FATF has amended Recommendations 5, 7, 8, 18 and 21. This section considers The Bahamas' compliance with the new requirements and how the country is addressing the deficiencies included in the MER.

3.2.1. Recommendation 5 (originally rated LC)

67. R.5 was amended since The Bahamas' assessment and criterion 5.2 bis was included so that TF offences should include financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. Section 15(1)(d) of The Bahamas' ATA, 2018 does not cover financing the travel of individuals who travel for the purpose of planning or preparation of terrorist acts and persons receiving financing to travel to a State other than their States of residence or nationality.

68. Additionally, the factor underlying the rating of LC for Recommendation 5, which is that the fine for the offence under the ATA is not proportionate to the penalty for ML has not been addressed. **As a result, The Bahamas remains largely compliant with R.5.**

3.2.2. Recommendation 7 (originally rated PC)

69. In June 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the proliferation financing-related UNSCRs.

70. The Bahamas cited the ATA, 2018 as the legislative instrument to treat with targeted financial sanctions in relation to proliferation and address the deficiencies noted in the MER. However, it appears that the sections cited by the Bahamas treat with targeted financial sanctions in relation to terrorism and terrorist acts as opposed to proliferation of weapons of mass destruction (WMDs). Additionally, it is uncertain whether the definition of “terrorist act” was meant to include proliferation to allow for application of Part IV-Implementation of United Nations Security Council Resolutions. Moreover, the International Obligations (Economic and Ancillary Measures) (Implementation of United Nations Security Council Resolutions) (Afghanistan) Order, 2018 (IOEMA Orders) were referred to but not provided for review, which further confuses the legislative landscape as to whether the regime for Targeted Financial Sanctions (TFS) in relation to Proliferation Financing (PF) fall within the ATA, 2018 or the IOEMA Orders.

71. **As a result, The Bahamas remains partially compliant with R.7.**

3.2.3. Recommendation 8 (originally rated PC)

72. In October 2016, R.8 was substantially amended. The revised Recommendation requires a more systematic understanding of the risk in the Non-Profit Organisations (NPOs) sector.

73. The Bahamas has implemented measures requiring limited periodic reviews of NPOs and outreach functions to raise awareness among NPOs. However, there is no requirement to work with NPOs to develop and refine best practices or encourage NPOs to conduct transactions via regulated financial channels. With regard to supervision and regulation of NPOs, The Bahamas requires the registration of NPOs and has mandated record keeping and information requirements regarding administration, management and financial activities of NPOs. The measures are prescriptive and not risk-based.

74. There are no measures for a competent authority to monitor compliance of NPOs, however there are sanctions for violations by NPOs.

75. Procedures for effective co-operation, co-ordination and information-sharing among appropriate authorities or organisations that hold relevant information on NPOs are being formulated. While law enforcement agencies have investigative powers there is no indication as to investigative expertise and capability to examine NPOs suspected of or either being exploited by, or actively supporting terrorist activity or terrorist organisations. The Registrar has full access to information on the administration and management of registered NPOs. The point of contact for international requests for information on NPOs is the Attorney General and there are procedures for handling international requests for information. **Consequently, Recommendation 8 remains as partially compliant.**

3.2.4. Recommendation 18 (originally rated PC)

76. In its 4th MER, The Bahamas was rated PC with R.18. The technical deficiencies related to the lack of programs to combat ML/TF risks; Group wide programs against ML/TF and Group subsidiaries, branches compliance with AML/CFT requirements.

77. All FIs (including credit unions, insurance companies and securities entities) within The Bahamas are now required to implement AML/CFT programmes which have regard to ML/TF risks that are commensurate with the scope of its activities. Section 19 of the FTRA, 2018 requires FIs to develop and implement preventive procedures related to identified risks and credit unions and securities entities are now required to comply with ensuring their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country requirements where the minimum AML/CFT requirements of the host country are less strict than those of the home country.

78. Section 21(1) of the FTRA, 2018 addresses the obligations set out in criterion 18.2(a) and (c) relative to having policies and procedures for sharing information required for CDD purposes and ML/TF risk management and adequate safeguards on confidentiality and use of information exchanged. Subsection (3) of section 21 allows for compliance officers conducting group-level AML/CFT functions to request account and transaction information of facility holders from branches and subsidiaries. It is inferred that this would allow for sharing of information and analysis of transactions or activities which appear to be unusual (where it was done) as required in sub-criterion 18.2(b), however, this is not explicitly stated in the legislation.

79. Moreover, there is no requirement for branches and subsidiaries to receive such information from group level functions when relevant and appropriate to risk management. Section 21(1) provides for safeguarding of confidentiality and use of shared information

80. **On this basis, The Bahamas is re-rated as largely compliant with R. 18.**

3.2.5. Recommendation 21 (originally rated C)

81. In November 2017, R.21 was amended to clarify that tipping off provisions are not intended to inhibit information sharing under R.18.

82. In accordance with sections 30 of the FTRA, 2018 and 14(b) of the POCA, 2018 a person commits an offence if he knows or suspects that any disclosure under these sections has been made or an action has taken by the FIU in relation to anything under these sections, he makes a disclosure that would likely to prejudice an investigation which might be conducted. Based on these provisions, the sharing of information under R.18 in no way prejudices any investigation that may be conducted. Therefore, tipping off provision under s.30 of the FTRA and s.14 (b) of POCA does not inhibit information sharing under R.18.

83. **The Bahamas therefore remains compliant with R.21.**

3.3. Brief overview of progress on other Recommendations rated NC/PC

84. The Bahamas reported progress in the other Recommendations rated NC/PC. Recommendation 24 (PC), a number of changes have been made, including the FTRA, 2018 and continue to be made, including the drafting of the Companies (Beneficial Ownership) Regulation, 2018.

4. CONCLUSION

85. Overall, The Bahamas has made good progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on thirteen Recommendations.



86. Ten Recommendations remain PC. The Bahamas fully addressed the deficiencies in Recommendation 2, 10, 12, 17 and 30 which are re-rated as C. The Bahamas has also addressed most of the technical compliance deficiencies identified on Recommendations 1, 15, 18, 23, 25, 32 and 35, such that only minor shortcomings remain, and these Recommendations are re-rated as LC. Recommendation 6 is upgraded to PC.

87. Recommendation 21 remains rated C; Recommendation 5 maintains the rating of LC and Recommendations 7, 8, 19, 22, 26, 27, 28 and 33 remain rated PC.

88. In light of The Bahamas' progress since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

Table 2. Technical compliance with re-ratings, November 2018

| | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|
| R 1 | R 2 | R 3 | R 4 | R 5 | R 6 | R 7 | R 8 | R 9 | R 10 |
| LC | C | C | C | LC | PC | PC | PC | C | C |
| R 11 | R 12 | R 13 | R 14 | R 15 | R 16 | R 17 | R 18 | R 19 | R 20 |
| LC | C | C | C | LC | LC | C | LC | PC | C |
| R 21 | R 22 | R 23 | R 24 | R 25 | R 26 | R 27 | R 28 | R 29 | R 30 |
| C | PC | LC | PC | LC | PC | PC | PC | C | C |
| R 31 | R 32 | R 33 | R 34 | R 35 | R 36 | R 37 | R 38 | R 39 | R 40 |
| LC | LC | PC | C | LC | LC | LC | LC | LC | LC |

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

89. The Bahamas will remain in enhanced follow-up on the basis that it had a low or moderate level of effectiveness for 7 or more of the 11 effectiveness outcomes (CFATF Procedures, para. 83(a)). According to the enhanced follow-up process, The Bahamas will continue to report back to the CFATF on progress made to strengthen its implementation of AML/CFT measures.



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Anti-money laundering and counter-terrorist financing measures in The Bahamas

1st Enhanced Follow-up Report & Technical Compliance Re-Rating

This report analyses The Bahamas' progress in addressing the technical compliance deficiencies identified in the CFATF assessment of their measures to combat money laundering and terrorist financing of May 2017.

The report also looks at whether The Bahamas' has implemented new measures to meet the requirements of FATF Recommendations that changed since its 4th Round Mutual Evaluation assessment.