



IBFS NEWS

With a focus on the International Business and Financial Services Sector

Newsletter February 2012

Volume 2, No.1

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The Inaugural Meeting of RCG Americas of FSB



Delisle Worrell

The Financial Stability Board (FSB) has established Regional Consultative Groups (RCG) for the major areas of the world and a form of outreach to non-members of the FSB. The RCG for the Americas met on December 2, 2011 in Mexico City. The mandate of the RCGs is to support implementation of FSB decisions and to provide input into FSB policy. The RCGs may be invited to submit papers to the FSB, and non-FSB member Co-chairs of RCG may be invited to attend FSB meetings. The FSB's expectations of RCGs are the same as commitments made by FSB members.

The meeting agenda included an update on the FSB work plan, including the process of identification of weaknesses in the international financial system and coordinated efforts to improve the framework of macro prudential surveillance. More robust banking supervision methodologies are being implemented, including Basel 2.5 and 3, identification of Globally Systemically Important Financial Institutions (GSIFIs), and measures to address the lacunae caused by shadow banking.

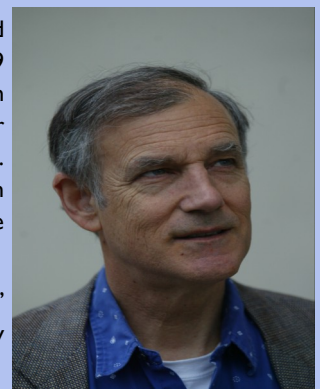
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FATF Revised Recommendations Will Have Importance for International Service Providers

The Financial Action Task Force has been meeting among its members and other stakeholders (private sector groups) to revise its 40 + 9 Recommendations on Anti-Money Laundering (AML) and Counterterrorism Financial (CTF) Regulation. For instance, the banking industry and bar associations have participated in discussions with FATF over the revisions. FATF is expected to finalise and publish the revised recommendations in February 2012. Among the important issues is the fact that tax offenses will be included as a predicate crime in money laundering.

This will require financial service providers to conduct "Know Your Customer" and "Customer Due Diligence" (CDD) as well as "Suspicious Activity Reporting" (SAR) in a way that deals with tax crimes as a predicate offense.

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Bruce Zagaris

The Inaugural Meeting of RCG Americas of FSB

By Dr. DeLisle Worrell*

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The meeting also heard of the global economic uncertainty and the continuing vulnerabilities of the international financial system. Members of the RCG commented on the policy responses and the prospects for a revival of advanced economies. The outlook remains unpromising, because the policies most often suggested are either inadequate (switching demand from the West to China) or unlikely to be implemented (a restoration of confidence in EU financial markets).

The meeting discussed cross border supervision issues, including conflicts between home and host supervisors. Basel 2.5 has had an undesirable side effect in some countries. With markets in disequilibrium, banks are deleveraging; this tendency is aggravated by Basel 2.5, which requires additional capital for market risks. What is more, home country sovereign debt may be rated more risky than some foreign debt. This could dry up domestic capital markets, which depend on government bond activity.

A paper on the Caribbean perspective on international financial reform was presented at the meeting. The paper (which can be found at www.centralbank.org.bb), by myself and Mr. Shane Lowe (Research Officer, Central Bank of Barbados), emphasises the im-

portant role of the International Financial Centres (IFCs) of the Caribbean in the economic diversification of our tourism-based economies. It looks at what Caribbean countries would like to come out of global initiatives for financial reform.

Shane and I show that Caribbean IFCs compete very successfully on the global scene, on the basis of our systems of financial regulation, which have been favourably reviewed by the World Bank and IMF, and which are being upgraded to best international standards in accordance with the recommendations of those institutions.

**Dr. DeLisle Worrell is Governor of the Central Bank of Barbados*

FATF Revised Recommendations Will Have Importance for International Service Providers

By Mr. Bruce Zagaris*

The Financial Action Task Force (FATF) has been meeting among its members and other stakeholders (private sector groups) to revise its 40 + 9 Recommendations on Anti-Money Laundering (AML) and Counterterrorism Financial (CTF) Regulation. For instance, the banking industry and bar associations have participated in discussions with FATF over the revisions. FATF is expected to finalise and publish the revised recommendations in February 2012. Among the important issues is the fact that tax offences will be included as a predicate crime in money laundering. This will require financial service providers to conduct Know Your Customer and Customer Due Diligence (CDD) as well as Suspicious Activity Reporting (SAR) in a way that deals with tax crimes as a predicate offence. Much of the FATF discussion has concerned Recommendations 33 (transparency of legal persons and institutions) and 34 (beneficial ownership information with respect to trusts). For the most part the FATF is strengthening the core requirements, such as CDD and SARs, while simultaneously broadening the scope of activities (i.e., tax crimes and nuclear proliferation) and persons covered. Once the revisions are complete, FATF and FATF-style bodies will resume their mutual evaluations.

Small international financial jurisdictions (SIFJs) must be careful to try through both their governments and other stakeholders to participate at all phases (policy-making, implementation and enforcement) and comment on the work of the FATF, so that the AML/CTF regime operates with fairness. Until now, the metropolitan

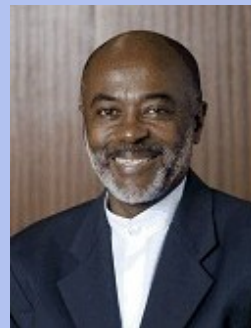
countries have dominated the policymaking, implementation, and enforcement and used the soft law standards to gain market share by blacklisting and issuing countermeasures against SIFJs while giving a free pass to the largest members (e.g., the U.S.). SIFJs must simultaneously participate in the policymaking, so that their governments and private sectors are ready to revise their AML/CTF laws, as Canada has recently done, while ensuring the existence of a level playing field in the application of the standards. SIFJs can best participate by directly engaging either directly with FATF or alternatively indirectly through a regional group, such as the Caribbean Financial Action Task Force (FATF), the CARICOM Heads of Government,, the International Tax and Investment Organization (ITIO), the Commonwealth Secretariat, and civil society groups, such as the Society of Trust and Estate Practitioners and the International Bar Association.

AML/CTF will continue to expand and demand more reconsideration and revision of laws and practices governing the movement of money. SIFJs and the region need to commit more resources to financial regulatory matters if they want to stay ahead of international regimes. The best way to stay ahead is for the Caribbean Institute of Services at the University of the West Indies, Cave Hill, to conduct courses on these matters. Already, there exist instructions from Barbados and the region to teach most of the courses. They should continue to perfect the online courses and programme, so that people within CARICOM and the world can take the courses remotely. Offering these courses will also facilitate the market and resources for teaching other financial and services courses at the Institute.

** Mr. Bruce Zagaris is an Attorney-at-law and a partner of the firm Berliner Corcoran & Rowe LLP, Washington, D.C., as well as an adviser to the Government of Barbados.*



A Proposal from the Commonwealth Secretariat and the IFC Forum



Harold Codrington

Edited by Harold Codrington, Deputy Governor, Central Bank of Barbados

1. Background

A meeting was held on 21 October 2011 organised by the Commonwealth Secretariat and the IFC Forum (a private sector grouping), at which it was agreed that small IFCs would be better placed in dealing with international issues affecting them if there was greater coordination and communication among their governments, drawing on private sector input. Conference calls were held in November and December 2011 with interested parties resulting in agreement that a proposal should be put to governmental principals to establish an Intergovernmental Forum for Small International Financial Centres.

2. Justification for the Proposal

The strategic landscape in the field of international tax cooperation has changed significantly since 2009. This has been driven by the involvement of the G20, a return to threats of sanctions against “uncooperative jurisdictions” and the setting up of the Global Forum on Transparency and Exchange of Information for Tax Purposes (GFTEI) with its associated peer review and reporting process. Notwithstanding some positive developments, such as representation in FSB regional groups, a gap still exists between the importance of small IFCs in the global economy, and the representation of their interests in policy formation.

It is felt that current circumstances provide a persuasive reason for forming a grouping, possibly a more formal organisation, of small IFCs, which would be more effective in informing and developing the positions of its members, and in being heard within international fora and more generally. The prospect of enhanced organisation among small IFCs has been welcomed by both the Foreign and Commonwealth Office (FCO) and OECD representatives.

The Proposal includes sections on Objectives and Benefits, Membership, Structure, Operation and Financing. A draft has been discussed by interested parties and a revised version will soon be circulated.

Participants in the conference calls represented the Isle of Man, Guernsey, the Cayman Islands, Barbados and the British Virgin Islands.

TIEAs vs. DTAs: Striking the Right Balance

By Ms. Françoise L.M Hendy *

The world is rightly preoccupied with increasing bilateral and multi-lateral mechanisms to enable state authorities to request and provide tax information on their residents.

Unfortunately, this opportunity to galvanise countries that provide an enabling environment for the cross-border movement of goods, services and capital to level the playing field in relation to this central feature of a re-branded global economy has given rise to a view that such countries should focus their negotiating energies on instruments exclusively concerned with the codification of the means of tax information exchange.

In turn this has led to the conclusion that the Tax Information Exchange Agreement (TIEA) - a special purpose vehicle that deals only with the mechanics of information exchange – should usurp the central role of tax treaties in the economic strategy of low-tax countries like Barbados which provide foreign and local investors with a network of such agreements as a central feature of its international business and financial services product mix.

The pressure on tax treaty countries to suspend their tax treaty agenda in favour of the untested yet politically expedient TIEA as a means of receiving the seal of approval from the OECD and G-20 has been felt from domestic and external proponents of the view that there is but one means to achieve the now universally accepted strategy for disciplining the excesses of financial services liberalization.

That Barbados did not abandon its tax treaty programme in favour of concluding TIEAs over the twelve months between the announcement of the new tax information standard by the G-20 and the country assessment by the OECD Peer Review Group has meant that Barbados' receipt of the new G-20 stamp of approval has been delayed by several months.

This delay has not however, been without value inasmuch as Barbados has concluded additional tax treaties reflecting the 2008 standard of tax information exchange with Spain, Portugal, Vietnam, Iceland, Bahrain, Chile, Singapore, Belgium, Czech Republic and there have been protocols to existing treaties with the United Kingdom and Canada. Such has been Barbados' activity during this time that the country is in the process of finalising tax treaty negotiating dates with Burkina Faso, Kenya, the United Arab Emirates, San Marino, the Slovak Republic, Costa Rica, Colombia, Brazil, Morocco and Qatar.

Moreover, Barbados has also recognised the utility of the TIEA with countries where such an agreement is necessary not just to provide the bilateral means of providing tax payer information but as a precursor to tax treaty talks. It has therefore also concluded TIEAs with France, Germany and the Kingdom of Denmark.

The balance between the pursuit of domestic economic policy and the execution of international obligations is a delicate one and is as much informed by past experiences as it is by future expectations. Achieving this sometimes unsteady equilibrium means that a country must be prepared to take and manage the risks associated with doing that which allows it to achieve its goals within the context of a similar pursuit by the other 180 countries that comprise the international community of states.

The complexity of this exercise has and will continue to be played out in the area of international business and financial services. Competing national and domestic priorities are a fixed feature of Barbados' small, open and competitive economy. For this reason the case for the 'phased' implementation of international norms and regulations must continue to be at the heart of Barbados' financial services discourse if we are to prevent the derailment of our sure and steady march to developed country status.

**Ms. Françoise L.M Hendy is a Tax and Investment Attorney with Invest Barbados and Lead Negotiator, Barbados Tax and Investment Treaty Negotiating Team.*

The Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011 (MLFTA)

By Mrs. Cheryl Greenidge*



Cheryl Greenidge

Key Changes

Barbados is one of 29 members of the CFATF, a body which aims to assist members in implementing the global standards on anti-money laundering and terrorist financing, developed by the FATF. The CFATF dates back to 1990 and is one of eight FATF Associate members/FATF Styled Regional Bodies (FSRB). As is set out in the organizations' Memorandum of Understanding, CFATF members agreed to participate in a programme of mutual evaluations conducted in accordance with documented procedures. Evaluations allow among other things, for a mechanism to track compliance with global standards, by identifying any gaps in the national Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) programme and making recommendations for improvement. Barbados, like all other CFATF members save St. Martin which is due to be assessed this year, was subject to a 3rd round of such evaluations, findings of which were finalised in 2008 and which spurred the latest revisions to the MLFTA.

The 2009 FATF Methodology for assessing compliance with the FATF 40 Recommendations + 9 Special Recommendations requires that basic obligations associated with specific Recommendations must be implemented by law or regulation, that is primary and secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. The MLFTA 2011 comes after careful consideration by the Financial Working group of the Anti-Money Laundering Authority (AMLA) chaired by the Central Bank of Barbados, of the 2008 CFATF Mutual Evaluation Report. The Act consolidates those legislative changes deemed necessary to meet these basic obligations and appends Schedules containing amendments to other key legislation. The latter changes are not captured in the following summary of key changes to the MLFTA itself.

Some Key Changes in MLFTA, 2011

- A transaction includes an attempted or aborted transaction; a business transaction includes a business arrangement and an occasional transaction; an occasional transaction is defined as a financial or other relevant transaction other than one conducted or to be conducted in the course of an existing business arrangement and includes a wire transfer.
- A business transaction record includes inter alia account files and

business correspondence files in respect of the transaction.

- Requirement to establish and verify the true identity of a customer by means of reliable documents, data or information from an independent source where:
 - ☐ The customer requests the institution to enter into a business arrangement or conduct an occasional transaction with the customer
 - ☐ Doubt exists about the veracity or adequacy of customer identification data previously-obtained in respect of the customer or
 - ☐ There is suspicion of money laundering or financing of terrorism in connection with the customer
- Where it appears that a customer is acting on behalf of another person, requirement to establish and verify the true identity of the customer and the person on whose behalf the customer may be acting by means of reliable documents, data or information from an independent source. Additionally, the financial institution is required to establish that the customer is authorised to act on behalf of the person in the capacity and in the proposed business arrangement or occasional transaction.
- Prohibition of simplified or reduced identification, verification of identity and ongoing due diligence procedures where there is suspicion of money laundering or financing of terrorism in connection with a customer.
- Requirement to establish and maintain business transaction records of all business transactions for at least 5 years from termination of the business arrangement or the transaction, where the latter is an occasional transaction; or such longer period as directed.
- A financial institution must within such time as may be specified by the Director of the Financial Intelligence Unit (FIU), or in the absence of a specified time, within a reasonable time, comply with any instruction issued or request made by the Director.
- Financial institutions to closely examine transactions in the course of a business arrangement to determine whether the transactions are consistent with their knowledge of the relevant customer, commercial activities, risk profile and source of funds, where required.
- Explicit coverage of non-financial business entities and professions such as independent attorneys-at-law and accountants engaged in specified transactions.
- Mandatory reporting obligation to provide information to the FIU which may be relevant to an investigation of, or prosecution of a matter or be of assistance to the enforcement of the Act to the FIU; and provision for immunity for financial institutions that share said information with the FIU and report suspicious and unusual activity to the FIU.
- Introduction of pecuniary penalties available to all domestic regulatory authorities.

At the last CFATF Plenary in 2011, the combined legislative and other reforms earned Barbados a graduation to less stringent monitoring under the mutual evaluation programme.

**Mrs. Cheryl Greenidge is the Deputy Director, Bank Supervision Department, Central Bank of Barbados.*

Legislative Update

By Dr. Trevor A. Carmichael, Q.C.*



Trevor A. Carmichael

It is now a truism with universal recognition that an international financial centre (IFC) will only thrive and deliver maximum feasible output if its legislation is safe, user-friendly and current. In the area of the law of trusts, Barbados, like other IFCs is making efforts to keep this legislative thrust effective and active. In this regard, a draft piece of Foundations legislation has been submitted to policy-makers for consideration, and Private Trust Company legislation is also being advanced. More recently Limited Liability Company legislation has been the organised public focus of relevant business and professional groups.

The mature IFCs have already taken important strides in these pieces of legislation. It is now approximately 15 years since the Private Trust Company (PTC) was introduced as a mechanism for dealing with multigenerational wealth planning. It is often a means whereby settlors who are not very familiar with the trust structure are able to gain comfort with the informality of the structure. For example in Bermuda, the PTC is exempt from licensing requirements and it is usually an exempted company. Similarly the British Virgin Islands (BVI) PTC is also a user-friendly structure although it differs in some aspects from its Bermuda counterpart. In the BVI, the PTC

is incorporated as a business company and may have one Director who need not be resident in the BVI. No government approvals are required, and in the typical BVI method and custom, incorporation may take place within twenty-four hours.

In the field of the Limited Liability Partnership (LLC) Mauritius a jurisdiction not as old Bermuda, Cayman, BVI or indeed Barbados, is already making strident efforts to introduce such legislation. It recognises that with its hybrid French / English legal system and its myriad of tax treaties, it may further benefit from the LLC structure which was approved in the Mauritius Parliament in October 2011. It will also supplement its existing regulations which allow for the PTC, as well as its attractive trust legislation.

Barbados must make accelerated efforts in settling on the form of legislation needed in these areas, and ensuring early implementation.

For since the existing local policy and the conventional wisdom are the attraction of internationally-mobile capital of the high net worth variety, it may only reach maximum feasible utility with "state of the art" legislation.

**Dr. Trevor Carmichael Q.C is an Economist and Attorney-at-Law. He is Principal of Chancery Chambers, Barbados and has written extensively in the areas of Law, Economics and Public Policy.*

International Business Sector Showing Resilience

By Mr. Henderson B. Holmes*



Henderson B. Holmes

Despite significant challenges in the domestic and international arenas in relation to how international entities in Barbados conduct their business, the sector has proved extremely resilient.

Registrations of new entities during 2011 indicate that as an international business jurisdiction the island is not only maintaining its attractiveness for the majority of those entities registered here, but is experiencing growth year-on-year in spite of the global economic crisis.

These findings are significant for a number of reasons, not least of which is that the registration and license fees paid by these entities continue to inject millions of dollars in much-needed foreign exchange into the economy. The registration and license fees aside, international business continues to be the most consistent and reliable provider of foreign exchange into Barbados because these companies do not earn their income here and therefore must bring in foreign exchange to cover all of their operating expenses.

This stable growth in one of the island's economic pillars is good news but we cannot deny the challenges presented to Barbados as a result of changing global market rules and conditions. The greatest challenge is coming from our traditional source market, Canada, and its new policy in relation to TIEAs which provide some tax free jurisdictions with a formidable advantage. However, Barbados continues to work assiduously to grow its network of treaties within emerging markets such as Latin America and Africa, as well as amend its existing protocols with our more mature partners to ensure that we remain a jurisdiction of choice for international entities seeking global expansion solutions.

**Mr. Henderson B. Holmes is the Executive Director Barbados International Business Association*



Neville Pollard

Note from the Administrative Editor

We are happy to present to you our readers the new and revamped IBFS Newsletter. The Newsletter will be published quarterly in the months of February, May, August and November.

We will focus on matters which we believe would be of interest to you particularly in the areas of economics, law, international business and finance. We would also welcome articles from our readers which should not exceed 700 words. We look forward to receiving your feedback as we continuously strive to improve our product to serve you better.

Correspondence can be sent to Neville.Pollard@centralbank.org.bb

Editorial Team

Dr. DeLisle Worrell, Governor

Mr. Harold Codrington, Deputy Governor

Mr. Matthew Williams-Rawlins, Website Operations

Mr. Neville Pollard, Administrative Editor