



IBFS NEWS

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The Way Forward After the Revised FATF Recommendations



Mr. Bruce Zagaris

On February 29, 2012, the U.S. Treasury Financial Crimes Enforcement Network (FinCEN) issued an advance notice of proposed rulemaking (ANPR) to solicit public comment on a wide range of questions pertaining to the possible application of an explicit customer due diligence (CDD) obligation on financial institutions, including a requirement for financial institutions to identify beneficial ownership of their account-holders.

The FinCEN press release explained that an express CDD program rule is an aspect of a broader U.S. Department of the Treasury strategy to enhance financial transparency in order to strengthen efforts to combat financial crime. Enhancing financial transparency to address such ongoing abuse of legal entities requires a broad approach. Other key elements of this strategy include improving the availability of beneficial ownership information of legal entities created in the United States and facilitating global implementation of international standards regarding CDD and beneficial ownership of legal entities.

The ANPR considers codifying, clarifying, consolidating, and strengthening existing CDD regulatory requirements and supervisory expectations, and establishing a categorical requirement for financial institutions to identify beneficial ownership of their account-holders, in order to enhance efforts to combat money laundering, terrorist financing, tax evasion and other financial crimes. **Continued on Page 2**

Risk-Based Approach & Implementing the New FATF Standards

The 2012 FATF Recommendations now include an overarching Recommendation which relates to how countries are to apply risk to their AML/CFT implementation strategy. The fact that this is now the first Recommendation of the Standards is not accidental and countries and policy makers need to take note. In addition, the risk based approach is a critical element of Recommendation 10 on Customer Due Diligence (CDD) and is perhaps the most complex of the Standards to implement (and assess). The Interpretative Notes to Recommendations 1 and 10 are integral in understanding the challenge ahead. The risk based approach has for some time been purported as being superior in identifying risk hot spots that are not being effectively managed, and which may further obliterate the profits and capital of an entity, including a financial institution. **Continued on Page 2**



Mrs. Cheryl Greenidge



The Way Forward After the Revised FATF Recommendations (Continued)

FinCEN believes an effective CDD programme should provide a financial institution with enough information to develop a customer risk profile that can then be used by the financial institution to identify higher-risk customers and accounts, including customers and accounts subject to special or enhanced due diligence requirements. The financial institution also should apply appropriate internal controls to identify and investigate unusual and suspicious activity and make an informed decision whether or not to file a suspicious activity report (SAR). In the event that a financial institution files a SAR, CDD information collected could enhance the information included in the SAR and thereby enhance law enforcement's ability to initiate and pursue the successful investigation and prosecution of criminal activity.

Implementation of the CDD changes would be expensive and require significant changes in financial institution procedures, systems and current practices. Practical difficulties exist in implementing the likely changes: obtaining reliable and verifiable beneficial ownership information; the problem of communicating complex ownership definition to customers; and the difficulty of conducting CDD on the owner of assets when the U.S., unlike other countries, does not have reliable public sources for legal entity ownership and does not yet require states to maintain reliable ownership information. Another criticism of the ANPR is that the government should conduct an analysis of the costs to financial institutions of compliance with existing Bank Secrecy Act/AML requirements and the proposed changes compared to the benefits to the government.

The ANPR may not come into force for one or two years, given the cycle of the ANPR, followed by a Notice of Proposed Rulemaking ("NPR"), addressing the comments received in response to the ANPR. The NPR would have the full text of the proposed regulatory language and provide another opportunity for public comment. Barbadian professionals will want to work with their affiliates in the U.S., consider making comments, monitor and anticipate these changes.

As Barbados reviews the FATF revised recommendations and prepares to adopt the changes required, it will want to consider the ANPR and the changes other countries are proposing. In this regard, on April 11, 2012, the European Commission issued a report on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. Barbados will want to ensure that there exists a level playing field, so that the onshore financial jurisdictions, such as the U.S., also adhere to the FATF revised recommendations.

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

Risk Based Approach & Implementing the New FATF Standards (Continued)

The risk based approach (RBA) should therefore lead to the deployment of a commensurate amount of resources towards mitigating risks. How is the RBA first of all to be implemented? How will measures taken by a country be assessed? How will supervisors assess what is done from one financial institution to another?

The FATF is expected to issue guidance along with a revised country assessment Methodology. Supervisors will need to review guidelines and their examination techniques. Compliance officers will need to lead on adjusting the entity's AML/CFT programme and applying the relevant fit for their operations.

While the Standards attempt to provide a consistent framework, it is recognized that we are not dealing with homogeneous national frameworks and financial systems but that country circumstances determine implementation.

Recommendation I requires a country to identify, assess and understand the ML and TF risks. Higher risk should equate to enhanced action, while lower risk translates into simplified measures. As was the case in the earlier version of the Recommendations, countries may also, in strictly limited circumstances and where there is a proven low risk of ML/TF, exempt types of financial institutions or activities or designated non-financial businesses and professionals (DNFBPs) from certain Recommendations. While this is appealing, in balance, countries should also identify those cases of vulnerability to ML/TF risk. Recommendation I reaches down to financial institutions and DNFBPs (lawyers, notaries and other independent legal professionals and accountants) by placing obligations on these persons to similarly identify, assess and act to mitigate risk.

An important structural change is the positioning of the Recommendation on cooperation and coordination as the only other Recommendation in Part A of the revised Recommendations. This Recommendation works in tandem with Recommendation I as it calls for national policies to be informed by risk assessment exercises that are regularly reviewed, and for policy makers and all relevant competent authorities to work together, in an effective manner.



This Article will only draw the readers' attention to one other Recommendation as it relates to the RBA - Recommendation 10. This Recommendation is second only to Recommendation 37 on Mutual Legal Assistance in terms of its length and addresses anonymous accounts, when customer due diligence should take place, and what CDD measures are to be taken using a risk-based approach that accords with Recommendation 1 as well as the Interpretative Notes. Before proceeding, it is noteworthy that it is only required for financial institutions to be required by law to conduct CDD but the decision on how to impose specific obligations may be accomplished either by law or other enforceable means. This is an interesting development which may or may not relate to low compliance ratings in the just concluded Round 3 evaluations of both FATF and other countries. While several countries have already completed legislative reform based on the old rules, the question at hand is how are countries with outstanding fixes under the old rules to proceed?

The Interpretative Note to Recommendation 10 is very detailed and seems to extend the obligations on financial institutions and DNFBPs beyond the confines of the worded Recommendation. How? By virtue of the obligatory language employed. For example, the Interpretative Note states that when performing CDD on persons acting on behalf of a customer, financial institutions should also be required to verify that any person purporting to act on behalf of the customer is so authorised and should identify and verify the identity of that person. Readers may recall that this requirement was framed as a legal obligation under the earlier version of the FATF Recommendations. The definition of should gives it the same meaning as must. The Interpretative Note covers: Customer Due Diligence and Tipping off; CDD - Persons Acting on Behalf of a Customer; CDD for Legal Persons and Arrangements; CDD for Beneficiaries of Life Insurance Policies; Timing of Verification; Existing Customers; and the Risk Based Approach. For higher risk scenarios, when assessing the ML/TF risks attention is to be paid to types of customers, countries or geographic areas and particular products, scenarios, services, transactions or delivery channels where examples of potential high risk situations are presented. Similarly, when examples of potentially lower risk situations are shown, financial institutions should further factor in what are termed as risk variables (e.g. purpose of the account and level of activity and transaction size). Examples of what is meant by enhanced and simplified CDD is given. It is hoped that the level of detail now embedded in the Interpretative Notes do not become so hard-coded into guidance issued by competent authorities that it discourages the application of discretion and the shaping of indicators that are useful and based on the actual circumstances.

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



The Joint Policy Working Group: What is it?

By Ricardo Knight



Mr. Ricardo Knight

The Joint Policy Working Group (JPWG) is an advisory committee to the Minister of International Business and International Transport. The current JPWG has been operational since June 1, 2008 and comprises representatives from the private and public sector who advise the Minister on matters related to the development of the international business sector as it deems fit or as maybe referred to the group by the Minister.

The group has the power to establish an ad hoc working committee with a maximum of eight and a minimum of five persons and is provided with secretarial services by the International Business Unit, whose Director is an Ex-Officio member of the group.

The eclectic array of volunteer members who constitute the group are Ricardo Knight who serves as Chairman, Ms. Liza Sodha as Deputy Chairman, Dr. Trevor Carmichael, Ben Arrindell of Cidel Bank & Trust Inc, Tyson Thompson of the OSS Financial Services Group, Marlon Yarde of the Barbados Stock Exchange, Ian Carrington CEO of the Financial Services Commission, Ms. Sandra Payne of Invest Barbados, Ms. Tamara Hurley of the Bank Supervision Department at the Central Bank of Barbados, Ms. Avonda Carrington of the Ministry of Finance, Kaeron Venner, the Director of International Business of the International Business and Henderson Holmes of the Barbados International Business Association.

* Mr. Ricardo Knight is the President of Towner Management Group (TMG) and currently serves as Chairman of the Joint Policy Working Group.

The Group of International Finance Centre Supervisors (GIFCS)

By Marlene E.A. Bayne*



Mrs. Marlene Bayne

The Group of International Finance Centre Supervisors (GIFCS), formerly the Offshore Group of Banking Supervisors (OGBS) was established following the first International Conference of Banking Supervisors held in London in 1979, on the advice of the Basel Committee on Banking Supervision. At that time domestic centres saw considerable expansion of international loan bookings through Offshore Centres for tax reasons. Countries were concerned that the banks for which they were responsible might be at risk since their subsidiaries or branches in offshore centres, through which loans were booked, were not subject to a sufficient standard of supervision.

The Group was formed in October 1980 and the first meeting was held in Basel, Switzerland when representatives of a number of offshore centres met with members of the Basel Committee. Barbados was a founding member and membership currently totals 18 jurisdictions.

While maintaining a close working relationship with the Basel Committee on Banking Supervision, the Group developed into a body which represented the interests of member jurisdictions on anti-money laundering and the regulation of trust and company service providers. In the mid-1990s the Group became an observer body attending meetings of the Financial Action Task Force on Money Laundering and Terrorist Financing, and in 2002 the Group published a best practices paper on the Regulation of Trust and Company Service Providers.

In March, 2011 the Group decided to better reflect the scope of its activities through a change in its name from the Offshore Group of Banking Supervisors (OGBS) to the Group of International Finance Centre Supervisors (GIFCS).

The Group's objectives are to:

Enable members to identify and discuss issues of mutual interest, establish an identity of purpose and share knowledge and experiences.

Participate with relevant international organisations in setting and promoting implementation of international standards for the supervision of financial services and for combatting money laundering/terrorist financing.

- Encourage members to apply high standards of supervision based on internationally-accepted principles.
- Promote a general raising of standards among member

jurisdictions through a peer group approach and mutual independent evaluation.

- Agree and promote a positive, constructive and coordinated response to the approaches made by other supervisory authorities for assistance.
- Promote the adoption of the Group's Statement of Best Practice for trust and company service providers.
- Promote the adoption of the principles of the Group's paper on hedge fund regulation.

On an on-going basis, each member produces a Summary Statement on its jurisdiction which forms the basis for peer reviews and encouragement for improvement in compliance standards. These statements detail:

- Changes to supervisory structures and scope.
- Developments in implementation of Basel Core Principles for effective bank supervision.
- Changes in legislation and practices in the areas of anti-money laundering and combatting of financing of terrorism, and
- Outcomes of recent independent assessments on the country's compliance with international standards.

The Group sits on the Basel Anti-Money Laundering Expert Group, and has worked with the World Bank on developing anti-corruption measures. It is currently undertaking a review of its operations in an effort to re-engineer itself and is seeking to expand its membership.

The Group has noted a global recognition that international financial centres are an integral part of the global financial community. Past concerns regarding the quality of regulation in international financial centres have been addressed by way of independent assessments which have shown vast improvements in the quality of regulation. In addition, during the recent crisis, the deposit-gathering activities of banks in the GIFCS member jurisdictions and the upstreaming of those funds to the parent banks proved to be of great value to the parent banks many of whom were facing liquidity problems.

* Mrs. Marlene Bayne is Director, Bank Supervision Department, Central Bank of Barbados.



FATCA concerns for 2013 and Beyond By Henderson Holmes*



Mr. Henderson Holmes

As the deadline for the implementation of the United States Foreign Account Transfer Compliance Act (FATCA) nears, some international business entities and domestic companies have expressed to the Barbados International Business Association (BIBA) concerns regarding the potentially onerous nature of the reporting requirements being imposed on them by the US Inland Revenue Service.

The companies affected by FATCA include commercial banks, credit unions, trust companies, mutual fund companies, and life insurance companies, that hold investments or other accounts for US citizens, 'green card' holders, US tax residents, or entities with more than 10% US ownership.

Indeed, such companies registered in Barbados are not alone in their concerns as similar rumblings are being heard within the Caribbean Community (CARICOM). Late in April, the CARICOM Secretary General Irwin LaRocque met with the CARICOM Caucus of Ambassadors in Washington DC, to discuss FATCA's impact on the Community.

The issues raised by the CARICOM Secretariat echoed some of the same concerns expressed during a recent seminar held by BIBA for members and non-members who operate in the international financial arena. Not only did the CARICOM Secretariat acknowledge that FATCA demands extensive reporting requirements by any institution doing business with persons or entities with US interests, but there was also concern that compliance could contravene local laws to which the banking and financial institutions are obligated in some jurisdictions.

BIBA is pleased to see this matter engaging the CARICOM Secretariat and would like to echo calls made in other Caribbean jurisdictions for the CARICOM Heads of Finance to come together on this matter. The governments of Canada and Ireland have already approached the US to negotiate a way by which their financial institutions could report directly to their local tax collection authorities, while closer home the Cayman Islands have also approached the US directly on this matter. We feel that a collective approach by the CARICOM governments would be a stronger negotiating position than that of any individual nation. Should such a negotiation succeed, this would provide the English-speaking Caribbean, and by extension Barbados, with a competitive advantage over similar small international finance jurisdictions.

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

IBFS Seminar Targets Key Issues, Solutions By Laurie Blackman*



Ms. Laurie Blackman

Earlier this year, the Central Bank of Barbados (CBB) held its second annual seminar on the International Business Financial Services (IBFS) sector at the Lloyd Erskine Sandiford Centre, examining topical issues, current challenges, and the essential supporting roles ascribed to various public sector agencies.

The slate of presentations reflected concerns about the ongoing global economic uncertainty, swiftly changing international regulatory guidance, and changes in law and practices abroad --- all of which force Barbados to be nimble and dynamic in its responses.

Discussion throughout the day underscored the need for Barbados to stay 'on top of our game, while consistently monitoring new developments at the global level, as well as what is happening in specific jurisdictions. The way forward includes ongoing collaboration and exchange of information among key players, and maintaining vocal and active participation in the various consultative groups and watchdog agencies where we have gained representation.



A brief look at the key issues raised:

1 – Ensuring that Barbados data and statistics are included in a wider pool of global investment and competitiveness reports to further enhance our image as an investment location.

2 – Drilling down further into the 60% Corporate Tax take to explore correlations between geographic origins of the companies and the places where Barbados is experiencing the most competition from TIEAs; this information would also fuel our ongoing efforts to develop the most appropriate strategies for the markets represented.

3 - A new National Strategic Plan for the IBFS Sector is on the cards, and the Charter of International Business and the Joint Policy Committee are channels to work through to resolve some of the longstanding issues, in anticipation that a facilitative environment could eventually be one of our comparative advantages.

4 – Monitoring effective processes being used by competitor jurisdictions to identify those worthy of emulation -- particularly where legislative procedures and business facilitation are concerned.

5 – Making our legislative processes more responsive to the needs of the sector is still an issue, and the Bar Association, BIBA, and ICAB should continue working collaboratively to influence the office of the Chief Parliamentary Counsel.

6 – The establishment of a Central Revenue Authority in Barbados is being proposed to support adherence to FATCA, but several logistical issues are likely to delay this process.

7 – There are a number of non-traditional markets which Barbados should be pursuing, but preparation is first needed in the area of language capability and the development of sensitization campaigns highlighting our investment opportunities.

8 – Barbados has a responsibility to facilitate the continuing education and development of professionals who work in the sector, as this will not only enhance its image as an investment location, but would also lead to advocacy and much-needed research. This suggestion is relevant not only for those in accounting, tax and legal fields, but also for the cadre of persons who should be recruited in the areas of marketing, brand promotion, communications and customer relations for “Brand Barbados”.

Although other government agencies in Barbados may have primary responsibility for the promotion and development of the sector, the Central Bank of Barbados will continue to work quietly to lend its support to these agencies as always. It is hoped that successful implementation of some of the solutions proposed this year will fuel discussion in the 2013 seminar.

* Ms. Laurie Blackman is the Librarian, Research Economic Analysis Department, Central Bank of Barbados.



Tax Information Exchange Agreements – Status January 2012

By John Haag*

The below group of countries is a listing of states with Canadian Tax Information Exchange Agreements (TIEAs) in force from January 2012.

It was also recently announced that the Toronto Stock Exchange (TMX) has acquired a minority interest in the Bermuda Stock Exchange. The acquisition was rationalised in part by the fact that Bermuda now has a TIEA with Canada and this was expected to stimulate commercial activities of Canadian enterprises in Bermuda

IN FORCE

- Anguilla
- Bahamas *
- Bermuda *
- Cayman Islands *
- Guernsey *
- Isle of Man
- Jersey *
- Netherland Antilles
- St. Kitts and Nevis
- St. Vincent and the Grenadines
- San Marino
- Turks and Caicos Islands *
- Dominica

SIGNED BUT NOT YET IN FORCE

- Aruba
- Costa Rica *
- Saint Lucia



UNDER NEGOTIATION

- Antigua and Barbuda
- Bahrain
- Belize
- British Virgin Islands *
- Brunei
- Cook Islands
- Gibraltar
- Grenada
- Liberia
- Liechtenstein
- Montserrat
- Uruguay
- Vanuatu

Notes competition for Barbados *

- * Mr. John Haag is Barbados' International Business Consultant in Canada

10 Fast FACTs about FATCA by Françoise Hendy*



Ms. Françoise Hendy

10 Fast FACTs about FATCA

1. FATCA = Foreign Account Compliance Act
2. It is a behaviour modification technique to find U.S persons 'offshore' and reinforce the global trend towards greater transparency and information exchange.
3. FATCA's extensive reporting requirements have been deliberately designed to turn 'fiduciary intermediaries' into 'tax intermediaries' precisely because they have access to information.
4. Compliance is to be enforced through the application of a 30% withholding tax on withholdable payments to non-participating or non-expected non-US Foreign Financial Institutions (FFI), Foreign Financial Entities (FFE); or recalcitrant account holders.
5. Withholdable payments to which FATCA will apply include U.S source income and may be extended to non-U.S source income through the proposed application of the 'pass through' concept.
6. FFIs and FFEs that are 'per se' FFIs or FFEs; enter into FFI or FFE agreements with the U.S IRS; or are 'deemed' to be compliant with FATCA rules will be exempt from the application of the rules.

7. Group penalties will be applicable even if one FFI or FFE member is non-compliant

8. Six OECD countries have started talks with the US to enter into agreements to become FATCA partners. FATCA partners are likely to be limited to OECD countries as the U.S has stated a preference to use the provisions of its TIEAS and not FATCA agreements with its TIEA partners.

9. Institutions and entities within a FATCA- country partner will report to the local revenue authority and not the U.S IRS, be deemed to be a participating FFI or FFE and therefore not subject to the 30% U.S withholding.

10. FATCA is due to come into force in 2013.

<http://franhendy.com/2012/05/10/10-fast-facts-about-fatca/>

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