

# AML Compliance Issues in Latin America & Caribbean



IIR Anti-Money Laundering | September 2006



A presentation by

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### **Definition** (per OECD 1998)

- Low or no taxes on business or investment income
- No withholding taxes
- Light and flexible incorporation and licensing regimes
- Light and flexible supervisory regimes
- No need for financial institutions and/or corporate structures to have a physical presence
- An inappropriately high level of client confidentiality based on impenetrable secrecy laws; and
- Unavailability of similar incentives to residents



# OECD LATAM/Caribbean Tax Havens, FSF Rating

Anguilla - *Group III*

Antigua and Barbuda - *Group III*

Argentina

Aruba - *Group III*

Bahamas - *Group III*

Barbados - *Group II*

Belize - *Group III*

Bermuda - *Group II*

British Virgin Islands - *Group III*

Cayman Islands - *Group III*

Costa Rica - *Group III*

Dominica

Grenada

Guatemala

Mexico

Panama - *Group III*

St. Kitts & Nevis - *Group III*

St. Lucia - *Group III*

Saint Vincent & Grenadines - *Group III*

Turks & Caicos Islands - *Group III*

US Virgin Islands



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## Improvements

- Reputation Risks increase with focus on drug trafficking and money laundering
- FATF 40 Recommendations – head office mandate
- MLAT with USA and others
- Codes of Conduct developed by professional associations

## Risks

- New areas of business, new service providers
- Institution specific policies and procedures
- Market Penetration increased through the World Wide Web
- Mobility of clients through internet banking



## Geopolitical Environment

- Unfunded Social Programmes
- Focus on Services as a means of economic growth
- Competitive in financial services
  - Cayman Islands top 5 banking centre
  - Bermuda leader in global insurance
  - Bahamas leader in wealth management
- Competitive in economic contribution
  - Bermuda 49,500
  - United States 42,000
  - Cayman 33,200
  - Bahamas 20,000

## Unprecedented Demands – OECD, FSF, FATF

- The establishment of exchange of information mechanisms
- Appropriate access to information
- Availability of information



# Exchange of Information Mechanisms

COUNTRY	FIU	TIEA	MLAT
Anguilla	Yes	No	In effect 11/9/90
Antigua and Barbuda	Yes	Yes	In effect 7/1/99
Aruba	Yes	Yes	In effect
Bahamas	Yes	Yes	In effect 7/18/90
Barbados	Yes	Yes	In effect 3/3/00
Belize	Yes	No	Signed 9/19/00
British Virgin Islands	Yes	Yes	In effect 11/9/90
Dominica	Yes	Yes	In effect 5/25/00
Jamaica	Yes**	Yes	In effect 7/25/95
Mexico	Yes	Yes	In effect 05/3/91
Panama	Yes	No	In effect 9/6/95
Saint Kitts and Nevis	Yes	No	In effect 2/23/00
St. Vincent & Grenadines	Yes	No	In effect 9/8/99
Trinidad & Tobago	Yes**	Yes	In effect 11/29/99
Turks & Caicos	Yes**	No	In effect

## Grounds for Access to Information

- Predicate Offense
- Regulatory Breach \*\*
- Information re: USA Federal Tax Offense



# Financial Intelligence Units – Spotlight on Bahamas

## Suspicious Transactions Reports – 2001 – 2006 (to date):

	2001	2002	2003	2004	2005
<b>Received</b>	246	160	176	145	177
<b>Open - FIU</b>	5	7	21	41	53
<b>Closed - FIU</b>	154	93	96	63	68
<b>Forwarded to Police</b>	87	60	59	41	56

## Suspicious Transactions Reports – By Reporting Entity 2001 – 2004:

	2001	2002	2003	2004	Totals:	
<b>Domestic Bank (only)</b>	41	50	55	24	170	(23%)
<b>Bank (dom &amp; offs)</b>	74	52	61	58	245	(34%)
<b>Offshore Bank</b>	109	45	44	52	250	(34%)
<b>Other</b>	22	13	16	11	62	(9%)
<b>Total</b>	246	160	176	145	727	(100%)

Budget of \$650k to \$1,000k

Staff Complement : 15



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# Availability of Information – Corporate Vehicles & Bearer Shares

Anguilla*	Dominica	Netherlands Antilles
Antigua and Barbuda	France	Niue
Aruba	Germany	Panama
Austria	Guatemala	Portugal
Belgium*	Ireland	Saint Kitts and Nevis
<u>Belize</u>	Italy	Saint Vincent and the Grenadines
British Virgin Islands*	Korea	Samoa*
Canada	Liechtenstein	Seychelles
<u>Cayman Islands</u>	Luxembourg	Spain
China	Macao, China	Switzerland
Cook Islands	Marshall Islands	Turkey
Costa Rica	Montserrat	Turks & Caicos Islands
Cyprus	Nauru	United Kingdom
Czech Republic	Netherlands	United States
Denmark		Uruguay

Countries underlined have immobilised

\* Planning to immobilise or eliminate



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## OECD Countries

Yes : Canada, Ireland (for investment companies)

No : England and Wales, Luxembourg, New Zealand, Switzerland, USA

## OFCs

Yes : Bahamas, Bermuda, Cayman, Anguilla, St. Kitts

No : BVI, St. Vincent



# Availability of Information – Trusts

<u>OECD</u>	<u>Trust Services Regulated</u>	<u>Settlor</u>	<u>Beneficial Owner</u>
Canada	No	Yes	Yes
Ireland	No	Yes	Yes
United Kingdom	No	Yes	Yes
Luxembourg	N/A	N/A	N/A
New Zealand	No	Yes	No
Switzerland	No	Yes	Yes
USA (Delaware)	No	Yes	For tax purposes
<u>OFC</u>			
Anguilla	Yes	Yes	Yes
Bahamas	Yes	Yes	Yes
Bermuda	Yes	Yes	Yes
BVI	Yes	Yes	Yes
Cayman	Yes	Yes	Yes
St. Kitts	Yes	Yes	Yes
St. Vincent	Yes	Yes	Yes



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## Regulatory Agencies

- Central Bank of the Bahamas – 1965
- Registrar of Insurance - 1971
- Securities Commission of The Bahamas – 1995
- Inspector of Financial & Corporate Service Providers – 2000
- Compliance Commission – 2000

## Key Protocols

- Comprehensive Guidelines
- Physical Presence for financial institutions in 1999
- On-site inspection began in 1999 (AML focus)
- Consolidated Supervision in 2001 (Std of home country)
- Admin. Information Sharing for Regulatory Purposes in 2001



### Re-evaluation in 2005

- Some OFCs are well supervised and cooperate
- Compliance levels in OFCs are, on average, better than other jurisdictions
- Supervisory strength correlates with higher income levels in OFCs
- Deficiencies found more frequently in OFCs with low income levels
- Over 80% of OFCs met the standard for cooperation and information exchange in banking & insurance
- Weaker implementation in securities arena



## ASSESSMENT OF THE SUPERVISION AND REGULATION OF THE FINANCIAL SECTOR/FINANCIAL SECTOR STABILITY ASSESSMENTS: **Bahamas (2004)**

There has been very substantial progress towards the development of an effective regulatory regime in The Bahamas. This has been reflected not only in the body of legislation that was enacted in December 2000, but also in the structural and operational arrangements put in place by the agencies that have been entrusted with supervisory responsibilities. The progress made by the Central Bank of the Bahamas and the Securities Commission has been impressive, due in large part to strong leadership and professional, dedicated staff. This process has placed a considerable burden on both the agencies themselves and on the private sector institutions that they regulate. The majority of the pain of this transformation appears to be over, but there remain a number of issues still to be resolved.

The assessment confirmed the preliminary impression of the earlier Fund mission in January 2002 that the overall regulatory structure in The Bahamas is complex, involves an excessive number of agencies, and places a considerable pressure on limited technical and financial resources. While the respective agencies have worked hard to develop agreements to rationalize the processes as far as possible, there is a need to introduce some specificity into the statutory authority that authorizes the cooperation. Therefore, it is important that the review of the overall regulatory structure, proposed by government, be pursued with some urgency.

With respect to the measures to combat money laundering, the mission noted the extensive provisions introduced since June 2000. The mission considers that the industry should be encouraged to develop a more risk-based approach to certain issues, but within an overall framework that demands high standards of customer identification on a very broad basis.



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## ASSESSMENT OF THE SUPERVISION AND REGULATION OF THE FINANCIAL SECTOR/FINANCIAL SECTOR STABILITY ASSESSMENTS: Barbados (2003)

Systemic risks in the financial sector are generally contained, although the sector faces considerable challenges both in the short- and medium-term. Indicators of the health of the banking system and sensitivity analysis suggest that the system is resilient and fundamentally sound. Stress tests indicate that credit risk is the primary source of vulnerability, but it would take a 90 percent increase in NPLs and full provisioning, for the system to breach the statutory capital adequacy requirement. Off-shore banks are, to a large extent, insulated from the domestic banking system and their deposit taking activities are highly circumscribed, thereby limiting their potential to destabilize the domestic financial system. Capital markets remain underdeveloped and appear to present little systemic risk, given the low level of activity in the market.

Preparations for capital account liberalization should involve prudent macroeconomic policies and other well sequenced measures to foster efficient markets and strengthen supervision and regulation. The mission also found a high degree of observance of the IMF's Code of Good Practices on Transparency in Monetary and Financial Policies. The authorities have worked hard to develop an effective framework for anti-money laundering and combating the financing of terrorism (AML/CFT).



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## ASSESSMENT OF THE SUPERVISION AND REGULATION OF THE FINANCIAL SECTOR/FINANCIAL SECTOR STABILITY ASSESSMENTS: Bermuda (2005)

With the transfer of insurance supervision to the Bermuda Monetary Authority (2002), the BMA became the single regulator for financial services, in continuation of a process for strengthening the entire supervisory framework. Legislative reforms since 1998 have updated banking supervision and brought investment firms and collective investment schemes under regulation. The BMA has increased its staff resources, enhanced staff training, and strengthened supervision of the overall system. The anti-money laundering and combating the financing of terrorism (AML/CFT) framework was also enhanced.

The financial, regulatory, and supervisory framework is well developed in banking, the key areas of securities regulation, and AML/CFT. Some deficiencies were noted in the assessment of insurance. The potential for compromise to the independence of the supervision and the need for increased resources were issues in all the assessments.



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## ASSESSMENT OF THE SUPERVISION AND REGULATION OF THE FINANCIAL SECTOR/FINANCIAL SECTOR STABILITY ASSESSMENTS: Cayman (2005)

Currently, there are no macroeconomic vulnerabilities and risks that could have implications for the effectiveness of prudential safeguards or the stability of the financial system. There is a comprehensive set of laws, which governs the financial sector. These laws are supported by a body of professional lawyers and judges. The court system is efficient. Although the Cayman Islands has not established its own accounting standards, there is a professional body of accountants and auditors which use US-GAAP or IAS (IFRS) for their audits. CIMA's supervision of other financial sectors and markets is generally efficient.

In broad terms, the supervisory regime in term of IOSCO objectives and principles of securities regulation reflects those of developed countries. It is influenced by EU legislation and rules, given the Islands' connection with the United Kingdom. The legislative framework for insurance supervision has been in place since 1979, with the first enactment of the Insurance Law. The current version of this law is the fifteenth revision, and it now contains a wide range of grounds for supervisory intervention and an appropriate range of remedies. The Insurance Division of CIMA has clearly made rapid progress in upgrading its legal base and working practices, but further progress is still needed to give a substantive legal or regulatory base to some of the more central prudential requirements. The Cayman Islands authorities have devoted substantial attention and resources to improving the country's anti-money laundering legal and institutional framework and effective supervision of due diligence requirements since it was identified by the FATF as a non-cooperative country and territory in June 2000. (Removed in 2001 and monitoring ceased in 2002). Both the authorities and the financial sector continue to take steps to improve the quality of anti-money laundering and combating the financing of terrorism measures to achieve conformity with the FATF 40+8 Recommendations.



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## ASSESSMENT OF THE SUPERVISION AND REGULATION OF THE FINANCIAL SECTOR/FINANCIAL SECTOR STABILITY ASSESSMENTS: Trinidad & Tobago (2005)

TTO's financial system is relatively large and structurally complex, demonstrating both sophistication and oligopolistic concentration. Although it does not appear to be vulnerable to immediate-term macroeconomic shocks, its risk profile has evolved. Over the last decade, the contractual savings sector has replaced banking as the single largest segment and a few regionally active, mixed activities conglomerates have become dominant. Stress tests and the assessment of compliance with Basel Core Principles indicate that the banking system is well capitalized and profitable, but is vulnerable to the potential macroeconomic impact of a sharp fall in energy prices. Sharp reversals in equity prices may adversely affect the insurance and pension sectors. Rising levels of connected exposures in some conglomerates have increased the risk of contagion. The system also appears to have acquired some reputational and financial risk through the concentration of investments in the CARICOM area.

Given a regionally active, complex financial system, the segmentation of the core legislative, regulatory, and supervisory framework suggests the urgency of reform in these areas. Changes are required to (i) facilitate consolidated supervision and regulation of financial institutions, including their cross-border activities; and (ii) transform the supervisory structure, including financial reporting, into a more integrated and risk-based framework. Financial institutions' own risk management techniques are also lagging behind their evolving cross-market and cross-border intermediation patterns.



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# Terrorist Financing

COUNTRY	OAS Treaty
Anguilla	n/a
Antigua and Barbuda	Yes
Aruba	n/a
Bahamas	Yes
Barbados	Yes
Belize	Yes
British Virgin Islands	n/a
Dominica	No
Jamaica	Yes
Mexico	Yes
Panama	Yes
Saint Kitts and Nevis	Yes
St. Vincent & Grenadines	Yes
Trinidad & Tobago	Yes
Turks & Caicos	n/a



## Watch This Space

- FATF 9 Special Recommendations
- Remittances
- PEPs expansion to non-bank & trust
- DNFBPs (Financial & Corporate Providers)
- IOSCO MMOU
- Insurance Sector
- Micro Financing



# Key Points

- Do not generalize – Delete definition of OFC
- Income levels influence
- Role of financial services in economy
- Region is making the right choices
- Patriot Act demands current information



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