<u>Enhancements to The Bahamas' Anti-Money Laundering Regime: the Financial Transactions Reporting Act, 2018</u>

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Introduction

In the Mutual Evaluation Report of July 2017, the Caribbean Financial Action Task Force ("CFATF") identified substantial gaps in The Bahamas' legal and regulatory regime relating to Anti-Money Laundering/Combating the Financing of Terrorism ("AML/CFT"). The Bahamian Government has sought to improve the AML/CFT regime in The Bahamas through the recent enactment of the Financial Transactions Reporting Act, 2018 (the "FTRA"). The FTRA, which came into force on 25th May, 2018, repeals and replaces the Financial Transactions Reporting Act of 2000 (the "2000 Act") and provides enhanced provisions to address the gaps identified in the CFATF's Mutual Evaluation Report.

The FTRA imposes mandatory obligations on financial institutions operating in The Bahamas to (i) verify the identity of existing and prospective customers and clients; (ii) maintain verification and transaction records for prescribed periods; and (iii) report suspicious transactions, which involve the proceeds of criminal conduct.

Significant Enhancements under the FTRA

The FTRA retains a number of provisions from the 2000 Act, but contains new and enhanced provisions regarding (i) financial institutions' risk assessment and internal control obligations; (ii) oversight of foreign branches and subsidiaries; (iii) prohibition of conducting business with shell banks (i.e. banks which have no physical presence in the jurisdiction in which they are incorporated and licensed); (iv) establishment of anonymous facilities; (v) establishment of correspondent relationships; and (vi) sanctions and offences for non-compliance with the provisions of the FTRA.

Obligations for Financial Institutions

The following provides a non-exhaustive list of the notable obligations for financial institutions operating in The Bahamas under the FTRA:

1) Risk Assessment: Every financial institution must (i) take appropriate measures to identify, assess and understand its identified risk in relation to its facility holders; and (ii) develop and implement a comprehensive risk management system, which incorporates continuous identification, measurement, monitoring and controlling of identified risks. Additionally, every financial institution should ensure that the outcomes of its risk assessments are documented in writing, kept up-to-date and made available to relevant regulatory bodies upon request.

2) Customer Due Diligence: Every financial institution must undertake customer due diligence, identification and verification measures when opening client accounts or establishing a business relationship with a facility holder, which includes identifying and verifying the beneficial owners of a facility. In this regard, financial institutions shall not establish or maintain anonymous accounts or accounts in fictitious names. Additionally, financial institutions should ensure that they undertake risk based on-going due diligence throughout the course of each business relationship and enhanced customer due diligence measures in certain scenarios.

3) Record Keeping: Every financial institution must maintain all books and records with respect to its facility holders and transactions including, *inter alia*, records obtained through customer due diligence measures, documents evidencing the identity of facility holders and beneficial owners and records of all domestic and international transactions. All of those records shall be maintained for not less than

five years after the business relationship has ended or from the date of the transaction.

4) Internal Controls: Every financial institution must develop and implement procedures for the prevention of activities related to identified risks, as well as designate a compliance officer at the senior management level to be responsible for the implementation and on-going maintenance of its internal procedures and controls. No financial institution shall deal with a shell bank. Further, a financial institution shall require foreign branches and any subsidiaries over which it has control to implement the requirements of the FTRA to the extent that the applicable laws and regulations in the jurisdiction where the foreign branch or subsidiary is domiciled so permit.

5) Suspicious Transactions: Every financial institution must report suspicious transactions as soon as practicable to the Financial Intelligence Unit.

Offences and Penalties

Any financial institution, which includes a director, partner, officer, principal or employee thereof, which fails to comply with its obligations under the FTRA, commits an offence and is liable upon summary conviction to imprisonment for a term of up to five (5) years or to a fine of up to five hundred thousand dollars ($500,000.00) or both. Further, any financial institution convicted of an offence is subject to additional regulatory sanctions and measures and may also be banned from conducting business for a period of time.

The FTRA also introduces administrative penalties for non-compliance with its provisions. In this regard, fines range from fifty thousand dollars ($50,000.00) for individuals to two hundred thousand dollars ($200,000.00) for companies.

Conclusion

With the enhanced provisions contained in the FTRA, financial institutions in The Bahamas are encouraged to continuously review their risk assessment, customer due diligence and internal controls and measures to ensure that they remain compliant with the FTRA and the Regulations promulgated thereunder.