



Anti-Money Laundering and Counter-Terrorist Financing Measures

The Bahamas

**4th Enhanced Follow Up Report &
Technical Compliance Re-Rating**

December 2021





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THE BAHAMAS 4th ENHANCED FOLLOW-UP REPORT

1. INTRODUCTION

1. The 4th Round mutual evaluation report (MER) of The Bahamas was adopted in July 2017. This is The Bahamas' 4th 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. 2, 7, 8 and 15. 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 4th FUR

2. The MER and First Follow Up Report rated The Bahamas as follows for technical compliance:

Table 1. Technical compliance 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	LC	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).

Source: The Bahamas' Mutual Evaluation Report, July 2017 and First Follow Up Report, December 2018, <https://www.cfatf-gafic.org/cfatf-documents/4th-round-meval-reports/8383-the-bahamas-4th-round-mer/file>
<https://www.cfatf-gafic.org/documents/4th-rd-follow-up-reports/the-bahamas-2/10985-the-bahamas-1st-fur>

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 Deputy Executive Director and the CFATF Secretariat's Mutual Evaluation Team:

- Salisha Ali, Financial Research Officer, Trinidad and Tobago Securities and Exchange Commission, Trinidad and Tobago.
- Elisabeth Lees, National Coordinator on behalf of the Anti-Money Laundering Steering Group, Cayman 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.

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:

- a) addressing certain technical compliance deficiencies identified in the MER, and
- b) implementing new requirements where the FATF Recommendations have changed since The Bahamas' assessment (R. 2, 7, 8 and 15).

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:

- R. 2, 6, 7, 8, 19, 22, 24, 26, 27, 28 and 33 which were rated PC; and
- R. 15 which was rated LC.

7. As a result of this progress, The Bahamas has been re-rated on Recommendations 6, 7, 19, 22, 24, 26, 27, 28, and 33. For Recommendations 2, and 8, the ratings remain and for Recommendation 15 the rating has been downgraded.

3.1.1. Recommendation 6 (originally rated NC)

8. In its 4th Round MER, The Bahamas was rated NC with R.6 which was re-assessed in the First Follow Up Report (FFUR) and re-rated PC as deficiencies relative to mechanisms to communicate or provide guidance to FIs and DNFBPs (referred to as financial institutions in The Bahamas), identifying a specific competent authority with the responsibility for UNSCR 1267/1989 and limited measures to propose designations of persons or entities to the United Nation's 1267/1989 or 1988 Committees were addressed. Outstanding deficiencies related to procedures for designation, access to funds by designated persons and procedures for de-listing. Additionally, the procedures for freezing of funds or other assets were deficient and there was no indication that freezing occurs without delay. The existing procedures to delist and unfreeze were not publicly known.

9. Section 3A(1) of the International Obligations (Economic Ancillary Measures (IOEAM) Amendment Act, 2019 provides for UN Security Council Resolutions to take effect in Bahamian law from the date of adoption by the United Nations Security Council (UNSC). Under this Act, every person is required to comply with sanctions imposed by UN Resolutions. To address the deficiencies regarding the procedures for listing and de-listing, The Bahamas amended Regulations 16 and 17 of the Anti-Terrorism Act (ATA) Regulations (2019). The amendments require the Attorney General to (a) follow procedures utilizing standard forms contained in the Procedures for Listing released on May 7, 2021; (b) to apply to the appropriate UNSC Committee for the removal of a name from the list as outlined in the Procedures for Delisting released on October 22, 2020; and (c) provide as much relevant information as possible on the individual or entity proposed. These procedures are publicly available.

10. Section 45 of the ATA (2018) provides for the right of an individual or entity to apply to the Court of Law of The Bahamas regarding a designation by order under the ATA. The right to challenge the listing by submission of a petition to the Office of the Ombudsperson of the United Nations is also contained in Regulations 24 and 25 of the ATA Regulations 2019. The Attorney

General is also required under this provision to notify the designated individual or entity of a delisting. Procedures for the de-listing in accordance with UNSC Resolution 1373 released on May 7, 2020 are publicly available. The Procedures include the Competent Authority to whom applications should be directed and where there is un-freezing, the applications are determined in the court of law. Mechanisms for addressing false positives are contained in Regulation 23 of the ATA Regulations (2019) and the IOEMA Orders (Afghanistan and Iran).

11. Regulation 22 of the ATA Regulations (2019) provides for the application of exemptions for access to frozen funds and assets for basic and extraordinary expenses. The Attorney General must notify the appropriate UNSC Committee of the request and can grant such exemption in the absence of a negative decision within a specified period. This exemption which requires the respective UNSCR approval allows for exemptions to be applied without such approval (Regulation 22(4) of the ATA Regulations).

12. With regard to designations under the UNSC Resolution 1988, procedures for a review are included in the Procedures for de-listing released on October 22, 2020. According to the Procedures, the request should be sent to the 'focal point for delisting' (which is not specified). While the ATA Regulations list 9 focal points, none of them nor their contacts appear in the procedure document.

13. Communication of the respective UNSC listing of designated entities and individuals is executed by the National Identified Risk Framework Coordinator (NIRFC) who must immediately circulate to the IRF Steering Committee. The ATA states the Steering Committee, which includes the Supervisory Authorities in The Bahamas, is required to then circulate the list to financial institutions (financial institutions and DNFBBs). However, the provision does not specifically refer to de-listings. Also, while the Procedures for De-Listing states the competent authority (which in the ATA is defined as the Attorney General) shall cause to be circulated' the notification of de-listing, it does not specify which competent authority is responsible.

14. **On this basis, The Bahamas is re-rated as largely compliant with R.6.**

3.1.2. Recommendation 19 (originally rated PC)

15. The Bahamas was rated PC with R.19. The technical deficiency related to the absence of an obligation to apply enhanced due diligence (EDD) proportionate to the risk posed by countries for which this is called for by the FATF. There were no provisions for applying countermeasures proportionate to the risk countries for which this is called for by the FATF and independently of any call by the FATF. Further, there were no measures to advise entities under the Securities Commission of The Bahamas (the SCB) and the Insurance Commission of The Bahamas (the ICB) of concerns about weaknesses in the AML/CFT system of countries.

16. The FTRA requires financial institutions to apply EDD measures, that are effective and proportionate based on notifications by the IRFSC. The IRFSC is mandated by Section 6(3) of the POCA to maintain surveillance of the FATF designation of high-risk jurisdictions, have regard to reports from financial institutions and advise financial institutions of their obligations to conduct EDD on transactions emanating from jurisdictions or foreign financial institutions named by the IRF Steering Committee and FATF. The enhanced measures are required to be effective and proportionate to the risks identified. Further, guidance has been issued by Supervisory Authorities, including the SCB) and the ICB) and published on their respective websites advising financial institutions supervised of their obligation to conduct EDD for higher-risk jurisdictions.

17. According to section 13 of the FTRA financial institutions are required to take mitigating measures when conducting business relationships or transactions with jurisdictions deemed higher risk by the IRF Steering Committee. Such mitigating measures should be appropriate based on risk assessed. ICB licensees are obligated under Section 6 of the POCA to apply EDD

once advised by the IRFSC and FATF. Also, notices are issued to the licensees requiring that necessary action be taken to identify and report within 24 hours of receiving the notice. The SCB also issues notices to its licensees and registrants upon publication of the FATF public statement regarding jurisdictions under increased monitoring. Licensees and registrants are therefore encouraged to assess and consider the risk of the jurisdiction

18. The SCB and the ICB are both supervisory authorities under the FTRA in The Bahamas with responsibility of AML/CFT supervision of their respective licensees defined as financial institutions in accordance with Section 3 of the FTRA.

19. **On this basis, The Bahamas is re-rated as compliant with R. 19.**

3.1.3. Recommendation 22 (originally rated PC)

20. In its 4th Round MER, The Bahamas was rated PC with R.22. The deficiencies related to no direct provisions to put in place risk management systems to determine whether a customer or a beneficial owner is a PEP and to conduct ongoing monitoring of that relationship; No requirement to identify and address ML/TF risks derived from technological developments or new delivery mechanisms and business practices; measures do not include specifically doing a risk assessment and taking appropriate measures to manage and mitigate the risk; and no provisions in CC Codes to have information on the level of country risk or for groupwide CCD requirements and mitigation measures. Further, the record keeping retention requirements are specific to completion of the transaction rather than after termination of the account.

21. Having repealed the Financial Transaction Reporting (Gaming) Regulations (2014) and amended the definition of financial institutions in Section 3 of the FTRA (2018), all DNFBPs (including casinos and gaming houses) are obligated to apply CDD measures established in law according to R10 (including R10.2(c)). Further, they are to understand and obtain appropriate information on the purpose and intended nature of the business relationship. Additionally, all DNFBPs have an obligation to identify and address ML/TF risks derived from technological development or new delivery mechanisms and business practices as well as to identify and assess the risk that may arise in the relation to products, services, transactions and delivery channels.

22. The Codes of Practice issued by the Compliance Commission (the CC) to specific sectors (Lawyers, Accountants, Real Estate Brokers and Land Development and Dealers in Precious Material and Precious Stones) are enforceable and include the requirements to identify and assess the ML/TF risks that may arise in relation to, for the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products and take appropriate measures to manage and mitigate the risks. Further to Sections 6(3), 7 - 9 and 14 of the FTRA, the Codes of Practice issued by the Compliance Commission also sets out the measures for conducting transactions with third parties.

23. Section 14(1) of the FTRA requires FIs to have in place appropriate risk management systems to determine whether a facility holder or beneficial owner is a PEP; Section 14(1)(a) of the FTRA creates the requirement for approval from senior management prior to establishing or continuing a business relationship with a PEP; and section 14(1)(b) and (c) of the FTRA places the requirement to take reasonable measures for the identification of source of wealth and source of funds and conduct of enhanced ongoing monitoring of the relationship. These requirements apply to FIs and DNFBPs. Additionally, the Compliance Commission has issued Codes of Practice to DNFBPs which contains adequate provisions in dealing with domestic PEPs, international organisation PEPs or family members or close associates of all types of PEPs.

24. **The Bahamas is therefore re-rated as compliant with R.22.**

3.1.4. Recommendation 24 (originally rated PC)

25. The Bahamas was rated PC with R.24 in its 4th Round MER.

26. The deficiencies related to (i) no requirement for the Registrar General to collect beneficial ownership information nor are legal entities obliged to retain the same; (ii) There are no measures for nominee directors of IBCs nor for nominee shareholders and directors of any other legal entities; (iii) There is no requirement for beneficial ownership information to be kept five years after the company is dissolved or ceases to exist; (iv) There are no specific measures or process in place to monitor the quality of assistance received from other countries with regard to basic and beneficial ownership information; and (v) No assessment of ML/TF risks associated with types of legal persons that can be created.

27. In 2018 The Bahamas enacted the Register of Beneficial Ownership Act (ROBO)², which is available online and fully in effect. The legislation establishes a secure search system for the purpose of every registered agent to maintain a database of the required particulars on the beneficial ownership of a legal entity for which it has responsibility, as well as mandates that legal entities comply with beneficial ownership requirements. The Beneficial Ownership Secure Search system (BOSS) can be utilized by legal entities without a registered agent for filing of beneficial ownership information. This system is monitored by the Compliance Unit of the Office of the Attorney General.

28. The process as well as the forms for recording beneficial ownership information are publicly available. The process for competent authorities and law enforcement (LEAs) to obtain beneficial ownership (BO) information is outlined in the ROBO Act. Section 12(5) states the results shall be provided within 15 days unless notified the request is urgent in which case the information shall be provided within one hour or such other time period as agreed with the LEA or one of the authorities listed under s12(6). Therefore, the LEAs are entitled to direct access to the CA for requesting BO information. Where a request is made under s12(6) by the listed authorities (not including LEAs), there must be certification that the search is proper and lawful and in compliance with the legislation governing the affairs of the authority making the request (S12(8) of the ROBOA).

29. International Business Companies (IBCs), Foundations, Exempted Limited Partnerships and Executive Entities are required to engage a licensed agent and the ROBO requires that BO information be collected, verified and uploaded by the registered agent. Licensed agents must maintain accurate CDD information (basic information) under the FTRA (S6 and S7). There are provisions that require the licensed agent to notify the Registrar immediately when an IBC changes its registered office and other details kept by the Registrar. The CA places a requirement on companies to maintain a list of members with specified shareholdings, changes to company name, address and directors must be filed with the Registrar. The specific provisions for companies to notify the Registrar within specified timeframes (i) file the list of members with specified shareholdings within 14 days of a General Meeting (S58 CA); (ii) where there are increases the number of its shareholders or members (S9(3) CA); change of directors (S91 CA); change of name (S14 (3) CA); and change of registered address (S17(3) CA). Any remaining companies incorporated in The Bahamas under the Companies Act are required to maintain a registered office and submit BO information (S19(1) CA). Additional provisions also state, for example, that legal entities commit an offence under s8 ROBOA when they do not notify the registered agent or the Registrar General of those persons identified as beneficial owners and registrable legal entities. Though not specified that a natural person is obligated or will cooperate with competent authorities, the provision for 'any remaining companies' applies. Every company

² It is have confirmed that none of the previous legal provisions relative to 24.6 and 24.7 were repealed and there were no changes. The introduction of ROBO Act serves to augment The Bahamas' beneficial ownership regime.

must keep a register of directors at the registered office containing names, addresses and occupations (S80(4) CA). Companies (including nominees of domestic companies) are required to maintain a registered office and are required to maintain basic information at the office including the memorandum, articles and amendments, minutes of meetings and resolutions of shareholders, a register. (s17, s18 Companies Act (CA)). All records of the company are kept at the Registered office including the certificate of incorporation. The Register of Members is maintained at the Registered Office (s56 CA). This includes the register of shareholders, the names, addresses and occupations of members, a statement of shares, the date at which the name of any person was entered on the register as a member and the date on which any person ceased to be a member.

30. Where the nominee is a Bahamian company, they must be licensed and must maintain the required information under the requirements of the FTRA and the ROBOA. Where companies and IBCs have a nominee shareholder who is not a Bahamian company the BO obligations would apply in relation to the registered agent, although there are no specific requirements in relation to recording nominee status in the company registry.

31. The basic regulating powers (contained in the Articles & Memorandum of Articles) of each type of company, including IBCs, are required to be filed timely with the Registrar. Under s13 IBCA, the Memorandum must include (a) the name of the company; (b) the location in The Bahamas of the registered office of the company; (c) the location in The Bahamas of the registered agent of the company; (e) the currency in which shares in the company shall be issued; (f) in the case of a company limited by shares, a statement of the authorised capital of the company setting forth the aggregate of the par value, if any, that the company is authorised to issue and the amount, if any, to be represented by shares without par value that the company is authorised to issue; (g) in the case of a company limited by guarantee, a statement regarding costs, (i) in the case of an unlimited liability company, a statement that the liability of the members is unlimited; (j) a statement of the number of classes and series of shares, the number of shares of each such class and series and the par value of shares with par value (k) a statement of the designations, powers, preferences and rights, and the qualifications, limitations or restrictions of each class and series of shares that the company is authorised to issue. Amendment to the Memorandum must be filed with the Registrar within 28 days (s18 of the IBCA). Executive entities and Foundations, under the Foundations Act must have a licensed agent under the respective legislation. Changes to basic regulating information for executive entities, foundations and ELPs including change to registered address, change of name, change of nature and purpose of business are stated in the EEA, FA and ELPA with specified timeframes outlined. The changes must be filed with the Registrar. Obligations under S6 and S7 of the FTRA ensure that licensed agents maintain accurate CDD information. The basic regulating powers are publicly available.

32. Section 11(1) of the ROBO requires a legal entity to notify its registered agent of the change in BO information within 15 days of becoming aware of a change. Likewise, IBCs are required to notify the Registrar of changes (S.37 of the IBCA). Further, Section 11(2) of the ROBO places the obligation on the registered agent to cause the updated information to be entered into the database immediately on being notified or otherwise becoming aware of a change relating to beneficial owners. Section 4 of the ROBO mandates that every registered agent take reasonable steps to verify the beneficial owners of each legal entity in respect of which a notification is made. Every FI (including registered agents) must identify the identity of the beneficial owner and where this is a corporate entity the obligation is for those beneficial owners who have a controlling interest³. This information must be kept accurate and current. For a domestic company, the requirement is to file the BO information with the Registrar. The requirement to maintain BO

³ Defined in S2 of the FTRA to mean direct or indirect shareholders acting individually or as a group holding ten percent or more of the voting rights and shares in the entity.

information for five years after which the company is dissolved or otherwise ceases to exist is in place for executive entities, foundations, IBCs and ELPs. Where the company under the CA is wound up by supervision of the court, the court directs in relation to the disposal of books accounts and documents of the company and liquidators. Where the company has been wound up voluntarily, after five years the responsibility for the custody of books, accounts and documents ceases. Therefore, domestic companies must also keep the records for 5 years.

33. Legal entities under the ROBOA commit an offence, which carry penalties of fine and imprisonment, when they fail to notify the registered agent or the Registrar General of those persons identified as beneficial owners and registrable legal entities and changes to same. There are a range of offences and penalties in relation to basic and beneficial ownership obligations. Whilst some of the penalties in relation to basic regulatory information do not appear to be dissuasive, the failure to comply with BO requirements and the penalty of a fine of \$250,000 or imprisonment for five years or both is more substantial. Offences under the FTRA for FIs cover the various offences committed by breaching the requirements and carry penalties of up to \$200,000 for the financial institution and \$50,000 for an individual and are imposed in a proportionate manner, although they could be more dissuasive for a financial institution.

34. A ML/TF desk-top risk assessment of legal persons conducted in 2018 examined and described the types of legal persons and arrangements. However, the desk-top risk assessment did not consider inherent risk, the methodology was not explained and therefore it is unclear how the risk rating of medium was established. Further, the review did not provide the risk rating of the types of legal persons or how these are distinguished.

35. In addition to the LEAs and the FIU, BO information may be requested by a designated officer of named authorities (S12(6) ROBO): the Office of the Attorney General (the Central Authority for international requests), the Central Bank of the Bahamas, the Compliance Commission, the Securities Commission of The Bahamas and the Insurance Commission of The Bahamas pursuant to the ROBO. S12(5) of the ROBO states the results shall be provided within 15 days unless notified the request is urgent in which case the information shall be provided within one hour or such other time period as agreed between the requesting authority (including law enforcement) and the officer designated to use BOSS. Additionally, the FIU is able to provide information (with appropriate caveat) relating to the commission of a specified offence (under the POCA and ATA) to the Commissioner of Police. The Criminal Justice (International Co-operation) Act allows the Attorney-General to provide information to a requesting authority in respect of legal persons and arrangements by way of formal international cooperation. Under the Central Bank of Bahamas Act, the CBB may exchange information with any regulatory authority in the Bahamas, an overseas regulatory authority and a foreign financial institution. However this is restricted to an authority exercising the corresponding functions of the Bank. The CC may disclose to an overseas regulatory authority information to enable the authority to exercise its regulatory authority, where particular safeguards (S35(6)(b) FTRA) are in place. The sections of the law allowing for indirect sharing with non-counterparts were not provided.

36. The CC, the ICB and the CBB have Standard Operating Procedures that include procedures and protocols for requests for information. These include an internal review of information received, completion of an assessment form, acknowledgement of receipt and provision of feedback on the quality. Provisions for monitoring the quality of assistance provided by formal international requests under the CJICA via the Central Authority were not provided.

37. Taking into account the risk and context of the Bahamas, and the numerous improvements made in the other criteria, such as the strengthening of the beneficial ownership regime and the work that has commenced on the risk assessment the overall conclusion is of minor shortcomings.

Therefore, The Bahamas is re-rated as largely compliant with R.24.

3.1.5. Recommendation 26 (originally rated PC)

38. In its 4th Round MER, The Bahamas was rated PC on R. 26. The technical deficiencies related to the lack of provisions for the ICB to approve changes in management positions at insurance companies and ongoing fit and proper assessment of management. A risk-based supervision framework had not yet been developed by the SCB and the CBB was yet to complete same for the credit union sector. Though the ICB had a risk-based approach it was not clear that this incorporated all aspects of ML/TF risks.

39. The Bahamas amended Sections 28(1)(g) and 30 of the Insurance Act in 2021 (Act No 11 of 2021) which now require changes to beneficial ownership and senior management of registered companies to take effect upon approval by the Commission.

40. The CBB implemented a risk-based AML/CFT supervisory framework in July 2018. The supervision of Money Transmission Businesses (MTBs) and Credit Unions was fully integrated in this risk-based programme in June 2019. A sectoral AML/CFT risk assessment was also conducted for the Credit Union sector in 2018 which informed the intensity and frequency of supervision activities for the sector. Those identified as higher-risk entities are subject to enhanced monitoring. As at December 31, 2020, The Bahamas has conducted on-sites for 56% of Credit Unions operating in the sector.

41. A paper on the Domestic Banking System provided findings of a study conducted by the CBB on ML/TF risk in the financial sector. The study, which considered the country's ML/TF risk, was used to inform the supervision of banks and trust companies. Additionally, the CBB AML Supervisory Framework 2.0 has implemented an annual data return for supervised financial institutions effective December 31, 2019. This allows for the ongoing collection of data for updating the CBB's supervisory programme for the sector as well as the risk assessments of supervised FIs (including MTBs and Credit Unions).

42. The SCB has developed and implemented a risk-based approach to supervision which is documented in the Risk-Based Supervision Framework. It establishes a risk framework for the identification and monitoring of risks related to the operations of its licensees and registrants under the Securities Industry Act, 2011 and the Investment Funds Act. In September 2019 the SCB continued and expanded on the implementation of risk-based supervision with the development and launch of an electronic risk assessment/monitoring tool, SOFY, that automates the risk assessment and continuous monitoring of licensees and registrants. The SCB went live with SOFY in September 2019 for licensees and registrants to submit information. The SCB also established its Risk Analytics and Examinations Department (RED) by combining its Inspections Department with a newly created Risk Analytics Unit with a total staff of 18 persons. The mandate of RED is to analyze the risk of all licensees and registrants with particular focus on the continuous monitoring of financial soundness, market conduct and compliance with international principles relating to the industries regulated by the Commission and AML/CFT/PF. Further to a mandate issued by the SCB in March 2019, registrants and licensees: 240 of 267 (90%) of FCSPs; 152 of 152 registered SIA firms (100%); and 62 of 62 Investment Fund Administrators (100%) have submitted self risk assessments. In 2019, the SCB completed 98 examinations or 87% of their licensees. The development of the SCB's examination, supervision and enforcement priorities takes into consideration a review of its examination findings, 2019 risk ratings of licensees and areas of risk inclusive of other factors.

43. In 2019 the ICB introduced an AML/CFT/CPF template to consider ML, TF and PF risk during the onsite examinations. Further, the ICB conducted risk assessments of the insurance companies under its supervision and have considered the risk identified in supervision. The frequency and intensity of on-site and off-site AML/CFT supervision of insurance companies are determined based on the licensee's risk profile. The ICB has also issued AML/CFT Guidance to the general insurance sector requiring that due diligence measures be implemented. The ICB has

established their “Guidelines for Assessing General Fitness and Propriety” which outlines general considerations and processes when assessing fitness and propriety. These Guidelines also include conditions for continued fitness and propriety testing.

44. The Bahamas is therefore re-rated as compliant with R.26.

3.1.6. Recommendation 27 (originally rated PC)

45. The Bahamas was rated PC for R.27. The deficiencies were regarding the Supervisor’s ability to impose sanctions for breach of regulatory obligations. Particularly, the CBB was unable to impose sanctions on Credit Unions for AML/CFT breaches while the SCB did not have powers to impose sanction for AML/CFT breaches.

46. Under Section 57 of the FTRA (2018), the CBB and the SCB can impose administrative penalties on supervised financial institutions for non-compliance with the POCA and FTRA. The FTRA also outlines the criteria for determining the penalty to be imposed.

47. Section 5 of The Bahamas Cooperative Credit Union Act (2015) outlines the CBB’s authority as the supervisor for Credit Unions in The Bahamas. Supervision powers include: conduct of on-site examinations of co-operative credit unions (Section (5)(2)(f)) and preparation and issuance of guidelines concerning the prevention of money laundering and financing of terrorism (Section (5)(2)(h)). The regime was introduced in December 2018 with the issuance of a Guidance Note to supervised FIs, that included the schedule of penalties setting out the range of sanctions and corresponding penalty amounts

48. The SCB formalized its sanctioning regime in 2019 by issuing its AML/CFT/CPF penalty schedule to licensees and registrants via its website. The SCB’s Assessment of Administrative Penalty Policy establishes the policy on the assessment penalties imposed for breaches identified during supervision.

49. The Bahamas is therefore re-rated as compliant with R.27.

3.1.7. Recommendation 28 (originally rated PC)

50. The Bahamas was rated PC with R. 28. The technical deficiencies were that the Supervisor or licensing authority for dealers in precious metals and dealers in precious stones did not have the powers to prevent criminals and their associates from holding significant interest or holding management function. There were minimal measures for the supervision of FCSPs. The Gaming Board was not required to supervise on a risk-sensitive basis. The Compliance Commission and the Gaming Board had not adopted a regime for administrative penalties.

51. Sections 4 and 32(2) of the FTRA states which entities are obligated to comply with the AML/CFT/PPF obligations in The Bahamas. Also, the FTRA sets out the respective Supervisory Authorities for FIs (as defined in Section 3 of the FTRA) which include DNFBPs. DNFBPs are required to register with the Compliance Commission on a prescribed form and are also required to provide identifying information and other business information. During the registration process and on a continuous basis the Compliance Commission conducts a review of beneficial owners, directors and senior management as part of the Fit and Proper assessment. The Fit and Proper assessment also includes the conduct of background checks via the Royal Bahamas Police Force, online sources and compliance screening technology. Section 16 of the Compliance Codes issued by the Compliance Commission, which are enforceable pursuant to Section 37 of the FTRA, outlines the procedures for the Fit and Proper assessment. DNFBPs under the remit of the CC also conduct fit and proper tests themselves as the CC Codes require that DNFBPs ensure their key persons are fit and proper. These Compliance Codes are published on the Compliance Commission’s website.

52. Dealers in Precious Metal and Dealers in Precious Stones are listed as a DNFBP in The Bahamas. They are licensed by the Revenue Department of the Ministry of Finance and subject to AML/CFT supervision by the Compliance Commission in accordance with the FTRA.

53. The SCB, which is the supervisor for financial corporate service providers (FCSP) conducts a fitness and propriety assessment during the licensing process. Applicants are required to complete the prescribed application form published on the website that indicates the required information and documentation to be submitted for each shareholder, beneficial owner, officer or director. Section 16 of the FCSP Regulations (2020) outlines the factors that are considered in the determination of fitness and propriety.

54. Section 57(1) of the FTRA gives AML/CFT Supervisory Authorities in The Bahamas the power to impose administrative penalties on any financial institution (DNFBPs) and employee, director or senior management for failure to comply with provisions of the POCA. The legislation also outlines those factors the Supervisory Authority should consider when determining the penalty for the breach. The Notice of Enforcement, Sanctions & Penalties is published on the Compliance Commission and the Gaming Board's websites, the latter of which contains the schedule of administrative penalties. The Compliance Codes issued to the supervised entities of the Compliance Commission contain the schedule of administrative penalties.

55. **On this basis, The Bahamas is re-rated as compliant with R.28.**

3.1.8. Recommendation 33 (originally rated PC)

The Bahamas was rated PC with R.33. The technical deficiencies were that comprehensive statistics were not maintained on matters relevant to the effectiveness and efficiency of the AML/CFT systems, namely: (i) ML/TF investigations, prosecutions and convictions; (ii) property frozen; seized and confiscated; and (iii) mutual legal assistance and other forms of cooperation made and received. Also, updated annual reports from the Financial Intelligence Unit (FIU) were not accessible on The Bahamas governments website.

56. The Financial Crime Unit has enhanced its processes to capture comprehensive statistics regarding investigations, prosecutions and convictions as well as property frozen, seized and confiscated. These statistics are maintained and reported to the IRF Steering Committee at weekly meetings chaired by the Attorney General. As such, statistics were provided on persons charged with ML, ML prosecutions and ML convictions for the period 2015 to 2021. In December 2018, a case management solution-based system to track progress was introduced in the International Unit in the Office of the Attorney General for the management of all international requests received for legal assistance from international partners. As of 20 February 2019, all mutual legal assistance and criminal justice requests for assistance matters have been entered into the case management system and updating of matters is ongoing. Since the implementation of the case management system, the International Unit has been able to prioritise matters and collate statistics more efficiently and within a timely manner. The FIU is a member of the Egmont Group and cooperates on an ongoing basis with other FIUs to exchange information confidentially with counterparts. Statistics on these can be obtained from the FIU's Annual Report.

57. In accordance with the Financial Intelligence Unit Act (2000) the FIU is required to prepare and submit to the Minister on or before June 30th of each year a report reviewing the work of the FIU. Annual reports from 2001 to 2018 have been prepared, submitted and are publicly available on the official website of The Bahamas' FIU. Each annual report contains details on the performance of the FIU including information statistics about the number of STRs, received (and their categorization etc.), the number closed and the number referred to the Financial Crimes Unit of the Royal Bahamas Police and on the regulatory system in The Bahamas, international and regional affiliations and the FIU's structure and administration. The 2019 Annual Report was

prepared and is due to be presented to the House of Assembly before it is made publicly available. The publication of the 2019 and 2020 annual reports have been delayed due to COVID-19 restrictions.

58. Statistics in relation to OFIU requests (incoming and outgoing) are contained in the annual report of the FIU. Statistics in relation to other forms of cooperation and TF investigations, prosecutions and convictions were not provided.

59. **On this basis, The Bahamas is re-rated as largely compliant with R.33.**

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

60. Since the adoption of The Bahamas' MER, the FATF has amended Recommendations 2, 7, 8 and 15. This section considers The Bahamas's compliance with the new requirements and how the country is addressing the deficiencies included in the MER.

Recommendation 2 (originally rated PC)

R.2 was revised in October 2018 to require countries to have cooperation and coordination between relevant authorities to ensure compatibility of AML/CFT requirements with Data Protection and Privacy rules. The amended Recommendation further requires a domestic mechanism for the exchange of information.

The Bahamas was rated Partially Compliant in R.2 in the 4th Round MER and subsequently re-rated Compliant in the First FUR after legislation and policies were amended based on the completed NRA. The National Identified Risk Framework Strategy which was approved in April 2018 outlines The Bahamas' approach to addressing primarily ML, TF, PF and related financial challenges and illustrates the Government's priorities and objectives in dealing with other identified risks.

S4 to S6 of the POCA sets out coordination mechanisms in The Bahamas with responsibility for national AML/CFT policies. A Ministerial Council established pursuant to S4 of the POCA is the policy making body comprised of the Attorney General (Chair), Minister of National Security, Minister of Foreign Affairs, Minister of Finance, and the Minister of Financial Services, Immigration, Trade and Industry. This Council has responsibility, among others, to determine the identified country risk and make recommendations to ensure effective implementation of the Identified Risk Framework.

The IRF Steering Committee (National AML/CFT Task Force) established pursuant to S6 of the POCA, is a functional/operational multi-agency body comprised of the NIRFC, representatives from designated Competent Authorities (including the FIU, DPP, law enforcement bodies and Supervisory Authorities) and such other person or statutory body (with regulatory functions of financial institutions) the Attorney-General considers would contribute to its objectives. The IRF Steering Committee reports to the Ministerial Council and has responsibility to periodically coordinate national risk assessment, maintain surveillance of FATF pronouncements regarding country risk, advise FIs of obligations to apply EDD to transactions emanating from jurisdictions or foreign FIs named by the Steering Committee and coordinate measures to identify, assess and understand the impact of Parts IV, V and VI of the POCA (all related to confiscation and forfeiture).

S5 of the POCA establishes the NIRFC who chairs the IRF Committee. The NIRFC is also responsible for liaising with regulators to ensure adherence with the IRF, directing public training on identified risk and report on the IRF Steering Committee's activities. The Ministerial Council, the IRF Steering Committee and the NIRFC all have identifiable roles and functions in the AML/CFT coordinating activities in The Bahamas.

The Data Protection Act (2003) (the DPA) does not prohibit cooperation and coordination between relevant authorities regarding AML/CFT requirements. The IRF Steering Committee is comprised of representatives of 13 Competent Authorities with operational functions and responsibilities in The Bahamas' AML/CFT framework. Among earlier mentioned responsibilities, the IRF Steering Committee also coordinates the development, regular review and implementation of national policies and activities designed to mitigate identified risks (defined in the POCA as “*corruption, cybercrime, human trafficking, money laundering, or financing of proliferation of weapons of mass destruction, terrorism or financing of terrorism or such other risk as the Minister may prescribe by regulations*”). The Bahamas' data protection and privacy rules allows for cooperation and coordination between the members of the IRF Steering Committee as S5(e) of the Data Protection Act, 2003 (the DPA) states that the DPA does not apply to personal data pending civil, criminal or international legal assistance procedures and S9(e) of the DPA states that S8 (Right of Access) shall not apply to personal data. As such the AML/CFT requirement are compatible with data protection rules.

On this basis, The Bahamas maintains a rating of compliant with R.2.

3.2.1. Recommendation 7 (originally rated PC)

61. The Bahamas was rated PC for Rec.7. The deficiencies identified included: (i) freezing obligations in IOEAMA derived Orders were not required to be done without delay; (ii) Freezing obligations in IOEAMA derived Orders are only applicable to banks and FIs in The Bahamas and do not extend to all natural and legal persons; (iii) Funds or other assets jointly owned or controlled or derived or generated by funds or other assets are not covered as required; (iv) There are no mechanisms to ensure that all nationals or any person or entity within The Bahamas comply with the Orders under the IOEAMA; (v) Mechanisms for communicating designations to FIS and DNFBPs is limited to the CBB and its licensed FIs and is not done immediately upon taking such action; (vi) Provisions to report on freezing actions limited to one time on licensees of CBB rather than ongoing for all FIs and DNFBPs; (vii) No measures for monitoring and ensuring compliance of FIs and DNFBPs with orders under the International Obligations (Economic and Ancillary Measures) Act (the IOEAMA); (viii) No de-listing measures in accordance with UNSCR 1730; (ix) There are no publicly known procedures to unfreeze funds or other assets of persons or entities with the same or similar names as designated persons or entities; (x) No specific mechanisms for communicating de-listings and freezing to FIs and DNFBPs; and (xi) There were no measures in the IOEAMA or both orders providing for addition of interest or other earnings to the accounts frozen pursuant to UNSCRs 1718 and 2231.

62. R.7 was amended in November 2017 to reflect the changes made to the UNSCRs on proliferation financing that were also reflected in the Interpretive Note and Glossary.

63. Section 44 of the Anti-Terrorism Act (2018) (the ATA) was repealed and replaced in 2019 and sets out the procedures that apply to financial institutions upon receipt of the list of designated entities. The provision now places the obligation on financial institutions and ‘any person’ (meaning *other legal entities or any natural persons*) to freeze assets, funds held by the designated entity without delay. However, the provision does not specify that freezing be done ‘without prior notice’.

64. The amended Section 44 of the ATA requires that financial institutions freeze funds (includes ‘funds’ of a designated person or entity or funds held on behalf of a designated entity or person (s43)) held in the name of the designated entity, inform the Attorney General and the FIU of details of such funds and inform the designated entity that the funds have been frozen, without delay. Funds are broadly defined under Section 2 of the ATA and include any interest in such assets, economic resources or property. The freezing obligations that exist immediately are broad. Under s9 of the ATA it is an offence where any person directly or indirectly, wilfully

provides or collects funds, provides financial services or makes such services available in person or attempts to do so with the intention or knowledge that the funds are to be used in whole or in part in relation to the development of nuclear, biological or chemical weapons for use in terrorist attacks, distributing or supplying such weapons or training persons to produce chemical weapons for terrorism or by a terrorist organisation commits. While this creates a general prohibition on providing funds to facilitate proliferation financing, it does not specify prohibitions in relation to UN listed entities.

65. The definition of funds at Section 2 of the ATA is broad and includes ‘any interest’ in such asset, economic resources or property and therefore includes funds jointly owned, the IOEAMA Orders (secondary legislation) refer to funds directly or indirectly owned or controlled. The IOEAMA is however only secondary legislation which cannot supplant the ATA.

66. Section 43 of the ATA sets out the provisions for the designation of entities in The Bahamas. The National Identified Risk Framework Coordinator (NIRFC) has responsibility for maintaining the list of designated entities, maintaining contact with the Ministry of Foreign Affairs, circulating the list of designated entities immediately to IRF Steering Committee and maintaining a consolidated list of all orders issued by the court under Section 45(3) of the ATA. Upon receipt of the list from the NIRFC, the IRF Steering Committee members, which include the Supervisory Authorities, are required to take steps to publish and communicate the list to the general public and all financial institutions. The Bahamas demonstrated that circulation of the list by the NIRFC is done within twenty-four hours.

67. The CBB, the ICB, the SCB, Gaming Board and CC are recognized under S2 FTRA 2018 and S2 POCA as supervisory authorities. Compliance with targeted financial sanctions and the ATA are monitored through the conduct of off-site and on-site inspections. It should be noted the Regulators updated their examination procedures to cover compliance with the ATA 2018 and testing began in the 2019 examination cycle. Section 57 of the FTRA provides for penalties for breach of the FTRA or POCA. The penalties include fines for both companies (US\$200,000) or employee, director or senior manager (US\$50,000).

68. Regulation 23 of the ATA Regulations (2019) addresses instances of false positives as it states the Attorney General may allow the funds and other assets or resources of individuals or entities with the same or a similar name as listed entities to be unfrozen, pursuant to a Court Order. Once the Attorney General is satisfied that the individual or entity is not the actual list entity, a Court Order is sought to unfreeze the funds. The procedures to unfreeze are publicly known.

69. Section 62 of the ATA provides for the protection of the rights of bona fide third parties acting in good faith.

70. Delisting Procedures issued by The Bahamas dated October 22, 2020 contain procedures for de-listing requests pursuant to UNSCR 1730 to the Focal Point.

71. The Order made under the IOEAMA does not expressly permit the addition to the accounts frozen of interests or other earnings due on those accounts.

72. **As a result, The Bahamas is re-rated as largely compliant with R.7.**

3.2.2. Recommendation 8 (originally rated PC)

73. The Bahamas was rated PC for Rec.8. 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. At the time of the MER, The Bahamas had not developed regulation, guidance and other measures for the NPO Sector. Also, sanctions were not sufficiently dissuasive.

74. The Bahamas' Non-Profit Organisations Act (2019) (the NPOA) that went into force on August 30th 2019 requires NPOs to register in accordance with Section 7 of the said Act. Section 2 of the NPOA defines an NPO as '*a body of persons whether incorporated or unincorporated, formed and established for the purpose of promoting public policies or objects that are religious, charitable, educational, scientific, environmental, historical, cultural, fraternal, literary, sporting, artistic, athletic or promoting health, and whose gross annual income or any part thereof, if any, and other income are applied to the promotion of those objects, and there is a prohibition of any dividend or refund of contributions to its members, but excludes a religious or charitably founded school registered with the Ministry of Education, and any organisation with political objectives*'. As a preliminary assessment NPO applications are reviewed at the point of registration and then categorized based on several criteria: (1) annual turnover in excess of \$75,000; (2) directors abroad; and (3) Cross border movement of cash and activities (overseas branches/affiliation). Of the 685 NPOs registered, 152 have been assessed with 7 being categorized as high risk.

75. NPO registration commenced in May 2020 and 685 are registered. A certification of registration is valid for two years (Section 7 of the NPOA) and NPOs have the option of renew same at which point the risk profile of the NPO will be re-assessed. The Compliance Unit of the Office of the Attorney General has responsibility for monitoring compliance with the NPO Act.

76. A Working Group, comprised of representatives from Civil Society, Regulators, the FIU, law enforcement, Officer of the Attorney General and the Registrar General's Department, was established for the purpose of conducting a risk assessment of the NPO sector using the World Bank Tool. The assessment is expected to commence soon and will also be used to ascertain which NPOs fall within the FATF definition of an NPO and the nature of threats posed by terrorist entities to the NPO sector. These functions are supported by the provisions of the NPOA at Section 18 to 28 which pertain to record-keeping and reporting.

77. The NPOA provides for a Registrar who shall be responsible for the administration of the NPOA. Section 4 of the NPOA outlines the functions of the Registrar which includes, among others, to receive, consider and process applications for registration as a non-profit organisation; to ensure that the financial records relating to a non-profit organisation are preserved for a minimum of five years; to enhance the accountability of non-profit organisations to donors, beneficiaries and the general public; to promote public trust and confidence in non-profit organisations; to encourage and promote the effective use of charitable resources; and to educate and assist non-profit organisations in relation to matters of good governance and management.

78. Pursuant to the NPOA, one of the Registrar's functions is to educate and assist NPOs in relation to matters of good governance and management including issuing guidelines or recommendations on the best practices for NPOs, fiduciaries and other persons concerned with NPOs, issuing model rules and providing information to NPOs about their rights, duties and obligations under the NPOA. As such, the Compliance Unit conducted two outreach sessions in August 2020 to raise awareness of potential vulnerability of NPOs. A session was also conducted in September 2020 for religious organisations with over 100 representatives in attendance. Topics covered at the sessions included:

- i. FATF Recommendation 8
- ii. Overview of CFATF Mutual Evaluation Findings on The Bahamas' compliance with Recommendation 8
- iii. The Non-Profit Organisations Act, 2019 and its Amendments
- iv. "Statutory Guidance for existing and new NPOs"
- v. United Nations Security Council Resolutions/Sanctions Lists

- vi. The Anti-Terrorism Act
- vii. NPO Risk Assessment and Compliance Tools

Training for NPOs is ongoing with sessions to be conducted annually.

79. Though there is a requirement, there was no evidence to demonstrate work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities. Also, whilst there is an obligation to maintain financial records under Section 9 of the NPOA, there was no specific mechanism to encourage NPOs to conduct transactions via regulated financial channels, wherever feasible.

80. Section 16 of the NPOA states the Registrar may, from time to time conduct on-site inspections of the business of that non-profit organisation for the purpose of satisfying himself that the non-profit organisation complies with the provisions of the NPOA. There is no evidence that the Registrar utilises a risk-based approach to supervision or monitoring. The Bahamas indicated that upon completion of the risk assessment of the remaining NPOs (only 152 out of 685 had been risk assessed at the time of submission), those NPOs deemed high risk for TF / PF will comprise the sub-set of the NPOs for vigorous oversight in accordance with the FATF Recommendations. No documentation to this effect was provided.

81. While the Registrar has the requisite powers and the Compliance Unit charged with the responsibility and is well resourced to execute functions in accordance with Section 16 of the NPOA, there was no evidence that NPOs are being monitored for compliance with NPOA requirements. The supervision powers of the Registrar is not as broad as examining those NPOs 'suspected of being exploited by or actively supporting terrorist activity or terrorist organisations. Under Section 15 of the NPOA the Registrar can impose a maximum administrative fine of BAH\$5,000 if after an investigation it is proven an NPO has failed to produce financial records as required. An additional BAH\$500 is imposed for each day the breach continues. There are also sanctions under Section 27 of the NPOA where an NPO deliberately provides inaccurate information to the Registrar that is purported to be in compliance with a requirement of the NPOA or alters, conceals, or destroys a document required to be maintained or withholds information requested by the Registrar or fails to discharge a duty imposed under the NPOA. Whilst administrative fines are limited to financial records, there are criminal sanctions available for other breaches. The Registrar has powers to remove an NPO from the register under Section 12 of the NPOA.

82. **As a result, The Bahamas maintains a rating of partially compliant with R.8.**

3.2.3. Recommendation 15 (originally rated LC)

83. Recommendation 15 was substantially revised in October 2019 to include virtual assets (VAs) and virtual asset service providers (VASPs) leading to amendments in criteria 15.3 to 15.11. The new requirements included obligations for countries to take a risk-based approach to supervision of VASPs and to ensure preventive measures are commensurate with risks identified, that competent authorities take the necessary legal and regulatory measures and ensure a range of proportionate and dissuasive sanctions are applicable to VASPs, their directors and senior management.

84. The Digital Assets and Registered Exchanges Act (2020) (the DARE) is administered by the SCB for the regulation and supervision of digital assets (DAs), digital asset businesses (DABs) and their activities to ensure development and continuation of digital asset activities and the development and maintenance of investor protection standards. DAB is a developing industry and The Bahamas has implemented some measures for the sector. The definition of DABs in The Bahamas, as stated at S6 of the DARE, meets the FATF definition of VASP. Section 7 of the DARE prohibits any 'person' from carrying on or being involved in a DAB in or from within The

Bahamas unless registered or licensed by the Commission. The definition of “person” provided at Section 2 of the DARE includes a natural person, company, partnership, trust, association and any other legal entity, whether corporate or incorporate.

85. Section 6 (3) of the POCA 2018, places the requirement through the functions of the Identified Risk Framework Steering Committee which includes, to coordinate a national risk assessment periodically to identify, assess and understand the identified risks and ensure that such assessments are updated and relevant, and The Bahamas is currently conducting a comprehensive assessment of the ML/TF risks in its jurisdiction associated with DABs and/or DASPs. The definition of financial institutions at Section 3 of the FTRA was amended to include DABs and DASPs. As such, DAs and DASPs are required to undertake risk assessments prior to the launch of new products, business practices and new technologies as well as take to appropriate measures to manage and mitigate these risks in accordance with obligations at Section 5 of the FTRA. The provisions in Section 5 of the FTRA requires financial institutions to identify and assess their ML/TF risks that arise in relation to the development of new products and new business practices, including new delivery mechanisms and the use of new developing technologies.

86. Registration and regulation of DABs are outlined in the DARE. Section 8 sets out the registration process for DABs and Section 9 includes the process for persons who are already registered or licensed under the Securities Industry Act, as an investment fund administrator under the Investment Funds Act, licensed as a financial or corporate service provider under the Financial and Corporate Service Providers Act (Ch. 369) and intends to provide DAB as an additional activity. Section 16 sets out the criteria for the Commission's approval or refusal of such applications. The SCB's functions and powers are outlined in Section 5 of the DARE. DABs are required to provide information on the identity of applicants at the point of registration. Section 2 (2) of the DARE states those factors that the SCB should regard in determining whether a person is fit and proper.

87. There are provisions at Sections 7 and 9 of the DARE that prohibit any person from (i) carrying on or being involved in a DAB unless that person is a legal entity registered in accordance with the DARE and (ii) offering services as a digital token exchange unless registered under the DARE. This authority gives the SCB broad powers to take action to identify natural and legal persons that carry out DAB activities without the requisite license or registration and apply appropriate sanctions. The Bahamas submitted the SCB has established robust processes by which the Commission is able to identify unregistered persons engaged in activities regulated under DARE. These processes include: the ability of the public to file complaints with the SCB and the SCB following up with investigations; the SCB own surveillance and enforcement program identifying potential unregistered persons and investigating them; and in cases where it is determined that unregistered persons may be carrying out registrable activity, public notices are issued, and a criminal complaint is filed with the police. However, procedures to reflect these measures were not provided.

88. Based on the functions of the SCB set out in Sections 4, 5 and 39 of the DARE, the definition of financial institutions stated in the FTRA and Section 26 of the DARE, which requires DABs to implement and maintain policies and procedures to ensure compliance with the POCA, ATA and FTRA, DABs and DASPs in The Bahamas are regulated by the SCB for compliance with AML/CFT requirements. The SCB's 2021 Examinations, Supervisory and Enforcement Priorities dated May 10, 2021, includes “persons” registered under the DARE. Sections 42 and 46 gives the SCB the authority to impose sanctions when instances of non-compliance with the DARE are identified in supervision. These sanctions appear to be proportionate and dissuasive.

89. Section 3 of the FTRR amended the occasional transaction threshold to include DASPs to a sum equal to or exceeding BAH\$1,000 (USD\$1,000). With regard to requirements under R.16, the FTRR (Wire Transfers) places the obligation on the originating financial institution to obtain

and retain the required originator and beneficiary information, submission of the information to the beneficiary VASP/financial institution immediately and securely. The information on clients' transactions can be obtained by law enforcement via Court Orders under the POCA and the FIU can do so via production orders subsequent to receiving an STR. The definition of "funds" or "property" at S.2 of the POCA 2018 and the definition of "wire transfers" in S.2 of the FT(WT)R, 2018 includes virtual asset transfers. Law enforcement can obtain information on clients' transactions via Court Orders under the POCA and the FIU can do so via production orders subsequent to receiving an STR. The ATA was amended in 2019 to include the definition of a designated person or entity. Section 44 of the ATA and Regulation 8 of the ATA Regulations require financial institutions to maintain, review and monitor the lists of designated persons or entities identified by the United Nations Security Council Committees and take freezing actions and to also to immediately stop payment or transaction of funds, assets or economic resources. Also, financial institutions are required to file a STR with the FIU and monitor the transactions, accounts and relationships of a designated person of entity and notify the FIU of any attempts by or on behalf of the designated or listed entity to carry out transactions.

90. The SCB is a member of the International Organization of Securities Commissions (IOSCO) and is an "A" signatory to the IOSCO MMoU ("MMoU"). The MMoU sets an international benchmark for cross-border cooperation and provides robust tools for combatting cross-border fraud and misconduct. Further, the SCB is a signatory to IOSCO's EMMoU ("EMMoU") which is considered the global benchmark for international cooperation in the enforcement of securities laws and regulations. Unlike the MMoU, the EMMoU allows for the sharing of audit work papers, the ability to freeze assets and the ability to obtain and share existing internet service provider records, among other things. Additionally, the SCB is a member of IOSCO's FinTech Network and a member of the Global Financial Innovation Network.

91. The requirements outlined in Sections 43, 44 and 70 of the ATA apply to DABs and DASPs based on the amendment to the definition of financial institutions to include such entities. Monitoring for compliance is undertaken by the SCB in its role as the Supervisory Authority. DABs and DASPs are subjected to the communication mechanisms, reporting obligations, and monitoring referred to in C6.5(d), 6.5(e), 6.6(g), 7.2(d), 7.2(e), 7.3, and 7.4 (d).

92. The SCB has not established guidelines in relation to the DARE Act, 2020 which will assist all VASPs in applying national measures to combat money laundering and terrorist financing, and, in particular, in detecting and reporting suspicious transactions.

93. **The Bahamas is downgraded to partially compliant with R.15.**

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

94. Notwithstanding this assessment, The Bahamas has no other Recommendations rated NC/PC requiring an update.

4. CONCLUSION

95. Overall, The Bahamas has made significant progress in addressing technical compliance deficiencies identified in its MER. As such, the jurisdiction has been upgraded on R.6, 7, 19, 22, 24, 26, 27, 28 and 33. R.15 was downgraded to partially compliant as The Bahamas did not adequately address the new requirements. The rating was maintained for two Recommendations: R.2 and 8; while none are rated NC. The Bahamas fully addressed the deficiencies in Recs. 2, 19, 22, 26, 27 and 28 which are rated as C.

96. 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 2021

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	<i>LC</i>	<i>LC</i>	<i>PC</i>	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	<i>PC</i>	LC	C	LC	<i>C</i>	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	<i>C</i>	LC	<i>LC</i>	LC	<i>C</i>	<i>C</i>	<i>C</i>	C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	LC	<i>LC</i>	LC	LC	LC	LC	LC	LC	LC

97. 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 (11 in total) (CFATF Procedures, para. 84). According to the enhanced follow-up process, The Bahamas will continue to report back to the CFATF on progress to strengthen its implementation of AML/CFT/CPF measures.



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December 2021

Anti-Money Laundering and Counter-Terrorist Financing Measures in The Bahamas

4th 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 July 2017.

The report also looks at whether The Bahamas has implemented new measures to meet the requirements of FATF Recommendations that changed since 2017.

Follow-Up Report