

Cooperation Between Banking Supervisors: The Perspective of The Bahamas

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1. Country Background

- 1.1. The Commonwealth of The Bahamas is a sovereign nation, with a population of just over 300,000, lying southeast of the United States. There are some 30 inhabited islands out of a total of around 700. The two most populated are New Providence (with the capital, Nassau) and Grand Bahama.
- 1.2. The Bahamas achieved self-governance from the United Kingdom in 1964 and independence in 1973. It is a parliamentary democracy, and the economy is based largely on the tourism (*60 percent of GDP*) and financial services sectors. Per capita income is around \$15,000.
- 1.3. The Bahamas is a significant financial services center offering a wide range of products and services, being particularly strong in private banking and trust business. The authorities are very aware of the ever-present threat to our financial system from money launderers and terrorists. Apart from the important need for information sharing for the cross-border supervision of financial institutions, we also understand the need for countries to share information to assist one another in fighting financial crime.
- 1.4. The Bahamas has long sought to adopt appropriate regulatory and anti-money-laundering statutes and guidance. For example, in 1996, The Bahamas was the first jurisdiction in the Caribbean to enact anti-money-laundering legislation. Also in 1996, The Bahamas, as a member of the Offshore Group of Banking Supervisors, endorsed the

“Report on the Supervision of Cross-Border Banking” and took steps to implement the report’s recommendations.

- 1.5. Financial services in The Bahamas are an integral part of a global activity. Most of the institutions licensed here are branches or subsidiaries of foreign-owned groups and have extensive overseas business. Their home-country supervisors have to be provided with sufficient information about the activities and status of these institutions to enable them to adequately conduct consolidated supervision of the financial groups of which they are part.
- 1.6. Similarly, the Central Bank of The Bahamas, as host regulator, must be assured of the financial viability of the parent institution of its licensee, the control and oversight provided by the parent office, and the quality of supervision by the parent bank’s supervisory authority. This is especially important to control the risks from intragroup exposures. Both the home and the host supervisors have a strong mutual interest in the timely flow of information in both directions.
- 1.7. The Bahamas has adopted several formal avenues for cross-border information sharing with foreign government agencies. These include mutual legal assistance treaties (MLATs), memoranda of understanding (MoUs), and several specific statutes. The Bahamas has signed MLATs with the United States, Canada, and the United Kingdom, and is negotiating one with Brazil.
- 1.8. In December 2000, the government of The Bahamas enacted a compendium of legislation codifying existing supervisory practices. The legislation also enhanced the ability of domestic financial services regulators, including the central bank, to share information with foreign regulatory authorities. The Bahamas also enacted legislation permitting (i) Bahamian courts to provide evidence to foreign courts in relation to civil and criminal investigations and proceedings, and (ii) the domestic regulators to share information more effectively.
- 1.9. Previously, the central bank’s ability to respond to requests from overseas regulatory authorities was limited to cases where a customer gave express or implied consent to the disclosure or where disclosure was ordered by a Supreme Court judge.

2. Central Bank of The Bahamas: Status and Legislative Framework

- 2.1. The Central Bank of The Bahamas was established in 1970 by the Central Bank of The Bahamas Act (CBA), which was amended and

reenacted in December 2000. The central bank has a statutory duty to license, supervise, and regulate banks and trust companies doing business in or from within The Bahamas.

- 2.2. The CBA also provides that the Bank shall, subject to any constraints in the Act, “have power to do anything, whether in The Bahamas or elsewhere, which is calculated to facilitate, or is incidental or conducive to the discharge of its duty.” With respect to cross-border information sharing, the CBA sets out the conditions under which the central bank can cooperate with overseas regulatory authorities.
- 2.3. The central bank’s supervisory powers are provided under the Banks and Trust Companies Regulation Act (BTCRA), 2000. This authorizes the bank to facilitate the consolidated supervision of its licensees by permitting their home-country supervisors to conduct on-site inspections in The Bahamas and to exchange relevant regulatory information with them. The act protects the confidentiality of individual customer information but permits the central bank to share regulatory information for specified purposes.
- 2.4. Taken together, the two acts provide the framework for the central bank to share information with domestic and overseas regulators.

3. Cross-Sector Issues Among Bahamas Financial Services Regulators

- 3.1. The central bank is one of five separate domestic supervisory agencies in The Bahamas, which are collectively referred to hereinafter as “the Group.” These agencies have recognized the need for increased cooperation to minimize instances of supervisory overlap and to foster greater efficiency. In October 2002, they signed an MoU to raise efficiency and harmonize regulatory practices.
- 3.2. The MoU also provides for information sharing among the Group—for example, on disclosure of the names and addresses of applicants for licensing or registration and changes of shareholders, directors, or senior officers of financial institutions. Information is to be shared on a timely basis and confidentiality maintained. Regulatory colleges are to be established where institutions or financial groups are regulated by more than one member of the Group.
- 3.3. One hurdle that the Group has encountered is the inability of the central bank—through an anomaly of the law—to share information (for example, on who are the beneficial owners of a licensee) with two

domestic regulatory authorities, namely, the Inspector of Financial and Corporate Service Providers and the Compliance Commission. The two agencies, however, are empowered to disclose nonpublic information to the central bank about the parties they supervise. It is expected that the anomaly will be corrected by a change in the law.

4. Cross-Border Information Sharing

- 4.1. The Bahamas today recognizes the need for all of its domestic regulators to have similar information-sharing powers. Each member of the Group is empowered by statute to disclose to an overseas regulatory authority “. . . information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.” The central bank, uniquely, is empowered to share regulatory information more widely and can include certain noncounterpart overseas regulatory authorities. The stronger and wider powers of the central bank in this regard partly reflect the wider responsibility the central bank has as the regulator for the banking sector, which enables it to “reach” all financial services entities within the jurisdiction. The bank is also the largest, in terms of resources, and most established regulator.
- 4.2. Although it is not essential for the central bank to sign an MoU with a foreign bank regulator before sharing information with that regulator, the central bank has responded to requests to execute MoUs with foreign bank regulators. Five have been signed, with Barbados, Brazil, Costa Rica, Guatemala, and Panama. Others are being negotiated.
- 4.3. Home-country supervisors that wish to conduct on-site examinations in The Bahamas for the purpose of performing consolidated supervision of the branches or subsidiaries they are responsible for must first submit a written request to the central bank. The latter’s approval is predicated on the following criteria:
 - 4.3.1. the supervisory authority is prohibited by its domestic laws from divulging information obtained in the course of the inspection to any other person; or it has given such written undertaking, as the central bank may require, as to the confidentiality of the information obtained;
 - 4.3.2. the supervisory authority has given to the central bank a written undertaking to comply with the provisions of the BTCRA, 2000

- and any condition imposed under the relevant section of that act;
- 4.3.3. the supervisory authority has given to the central bank a written undertaking to use the information obtained exclusively for the purpose of consolidated supervision;
 - 4.3.4. the supervisory authority has given to the central bank a written undertaking that it shall not transmit information (including information relating to criminal or penal matters) obtained during the course of its inspection to any other authorities or bodies without written consent; and
 - 4.3.5. the supervisory authority agrees to subsequently report to the central bank on the general results of the inspection.
- 4.4. The Bahamas has provided clear gateways for information sharing, whether in relation to civil or criminal matters.
 - 4.5. The central bank's information-sharing powers were intended to enable the bank to share information with other regulators for *supervisory* purposes.
 - 4.6. Where a crime is suspected, or there is evidence that one has occurred, there are a number of other legal avenues home supervisors can use to obtain and transmit information relating to criminal offenses to their domestic law-enforcement agencies. These include the mutual legal assistance treaties that The Bahamas has with a number of countries. These treaties set out the procedure for information sharing in the case of criminal offenses and focus on judicial assistance.
 - 4.7. The Criminal Justice (International Cooperation) Act, 2000 also provides a gateway for sharing information relating to criminal investigations and proceedings. This act requires a foreign authority that has responsibility for criminal investigations or proceedings to apply to the Attorney General of The Bahamas for the evidence or information required to assist the foreign entity in its investigation or proceedings. The Bank would, where a criminal offense is discovered or suspected, seek to facilitate disclosure of information through the appropriate legal channels.
 - 4.8. Normally, approval will not be granted for home-country supervisors to review assets under management or information relating to the deposit operations of any individual customers, as such information is not usually required for the conduct of consolidated supervision. The Banks

and Trust Companies Regulation Act, 2000 does provide, however, that information relating to assets under management or to the deposit operations of any individual customer may be disclosed where disclosure is necessary to enable a home supervisor to assess specific risks or to address specific supervisory concerns. In such cases, the central bank would (and has in the past) disclosed customer information and information relating to assets under management. The central bank will first gather the information that has been requested and review it to determine whether it is actually required. If satisfied, the central bank may pass the information on to the home supervisor.

- 4.9. In practice, home supervisors have had no difficulty with this approach.
- 4.10. The arrangements outlined above would be reflected in any MoUs that the central bank has signed with other foreign bank regulators.
- 4.11. In addition, the central bank has the discretion to allow licensees to disclose such class or classes of information to their head offices, branches, and subsidiaries located outside The Bahamas as it may from time to time approve. Under existing legislation, the central bank may only exercise the discretion to approve transfer of information provided that this information is required for the purposes of carrying out “. . . collation, synthesis or processing . . .” of information on behalf of the licensee. Licensees must seek the central bank’s prior approval.
- 4.12. The central bank is aware of the need for the head offices of its licensees to have access to customer information for risk-management purposes, and the central bank has, in practice, granted approval to Bahamian licensees to disclose such information to their head offices where this is required for risk management, to the extent that the existing statutory provisions may be thought not to accommodate such access. The legislative provisions outlined previously do not prevent head offices from carrying out comprehensive risk-management reviews of their groups that include Bahamian branches and subsidiaries. As a matter of practice, Bahamian licensees do transfer information (excluding customer identity) to their head offices for risk-management purposes.
- 4.13. The Governor of the Central Bank of The Bahamas is also empowered to provide information—on the condition that it is needed for the purposes of consolidated supervision—on the beneficial owners, directors, officers, and operations of any licensee of the bank (including inspection reports on the licensee) to the supervisory authority responsible for regulating the head office of the licensee.

- 4.14. From January 1, 2001 through May 31, 2004, 6 foreign supervisory authorities have carried out a total of 37 on-site inspections in The Bahamas of banks and trust companies that they regulate in their home jurisdictions. The Swiss top the table with 26 inspections.
- 4.15. There are also numerous requests from foreign regulatory authorities for cooperation. In 2002, 18 countries made a total of 41 requests for cooperation (with the most frequent coming from the United States, Barbados, and Costa Rica). In 2003, 19 countries made a total of 30 requests, of which 25 were dealt with during the year. In the first 5 months of 2004, there have been a total of 8 requests from 7 different countries. Further details can be found in the central bank's annual reports.

5. Information-Sharing Regime Under Central Bank of The Bahamas Act, 2000

- 5.1. As noted in Section 3, the Central Bank of The Bahamas can share information with overseas regulatory authorities under the CBA, if specified conditions are met.
- 5.2. The CBA defines "overseas regulatory authority" as
 . . . an authority which in a country or territory outside The Bahamas exercises functions corresponding to—any functions of the Bank; or any additional regulatory functions in relation to companies or financial services as the Bank may specify by order including the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.
- 5.3. The CBA defines "regulatory functions" as "functions of the Bank, or other similar functions relating to companies or financial services as may be specified by the Bank."
- 5.4. In practice, the central bank may share information with foreign bank regulators and designated foreign nonbank regulators. With respect to the former, the central bank is governed by the provisions of the BTCRA, 2000 (discussed previously).
- 5.5. For nonbank regulators, parliament has provided that the central bank must specify, by order, the type of functions that an overseas regulatory authority should be carrying out before the central bank may disclose information to them. The CBA provides that the functions must be similar to those of the central bank (i.e., regulatory in nature).

- 5.6. As a result, the central bank, through the Central Bank of The Bahamas (Overseas Regulatory Authorities) Order 2001 (hereinafter referred to as “the Order”), has specified that “an overseas regulatory authority includes an authority, which in a country or territory outside The Bahamas regulates securities markets, securities exchanges and trading in securities.” Currently, therefore, the central bank may disclose information only to foreign bank or securities regulators.
- 5.7. There has not, in practice, been a need to increase the number of foreign (noncounterpart) supervisors with which the central bank may share information. The Securities Commission of The Bahamas presently has no ability to obtain bank records where, for example, an overseas securities regulator alleges insider trading. This is the reason why the central bank has the ability to share information with overseas securities regulators.
- 5.8. At the time that the Order was made, the other financial services regulators of The Bahamas did not have similar provisions for information sharing in their governing legislation. Amendments to their legislation have now been made to allow them to do this; but, unlike the central bank, they are not empowered to request information from persons or entities that they do not supervise.
- 5.9. Although the central bank is empowered to share information with overseas regulatory authorities, the bank must exercise discretion as to whether or not it will, having regard to the objects of the CBA and its specific provisions on this point. Specifically, the central bank must include the following in its consideration:
 - 5.9.1. whether the foreign authority’s request clearly relates to information necessary for the overseas regulatory authority to exercise regulatory functions;
 - 5.9.2. whether the inquiries relate to the possible breach of a law or other requirement that has no close parallel in The Bahamas; and
 - 5.9.3. the seriousness of the matter to which the information relates and how important the information sought is to the inquiries.
- 5.10. If satisfied on these points, the central bank must also satisfy itself as to the confidentiality of the information to be provided. In this regard, the requesting authority must either be subject to adequate legal restrictions on further disclosures (including the provision of an undertaking

of confidentiality). Alternatively, if there are no legal safeguards in the overseas regulatory authority's law against disclosure of information, the central bank may still pass information to the overseas regulatory authority if

- 5.10.1. the bank has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the bank;
- 5.10.2. and the bank is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of that authority's regulatory functions, including the conduct of civil or administrative investigations or proceedings to enforce laws it administers; and
- 5.10.3. the bank is satisfied that the information provided will not be used in criminal proceedings against the person providing the information.

6. Challenges

- 6.1. As shown in the preceding, the central bank has responded to numerous regulatory requests in recent years from banking and securities regulators. The bank's primary challenge has been to protect customer information from inappropriate and/or illegal disclosure—such as by the securities regulator, which, as a matter of practice, passes on information provided to it by foreign regulators to its prosecutorial agencies. The central bank has, however, taken the view that the objects of the CBA, 2000 do not include having the bank share information with foreign agencies that have responsibility for criminal prosecutions.
- 6.2. Where a foreign securities regulator desires, on the exercise of its own discretion, to pass regulatory information to a prosecutor for the institution of criminal investigations or proceedings, the securities regulator would, under Bahamas law, need to obtain the prior approval of the central bank. The central bank's consent would not be unreasonably withheld, and, in the case of criminal proceedings, the bank would request the regulator to use the procedure set out in the mutual legal assistance treaty between the regulator's jurisdiction and The Bahamas or, if there is no treaty in place, to use the procedure set out in the Criminal Justice (International Cooperation) Act, 2000. This approach is designed to both assist the foreign regulator and to safeguard the civil rights of the subject of a criminal investigation or proceeding.

- 6.3. It is the view of the central bank that parliament has made provision for The Bahamas to share information relating to criminal investigations and prosecutions either under its mutual legal assistance treaties or under the provisions of the Criminal Justice (International Cooperation) Act, 2000. The information-sharing provisions of the BTCRA, 2000 and the CBA, 2000 relate to disclosure of regulatory information for regulatory purposes.
- 6.4. Where a foreign securities regulator has conducted an investigation and wishes to institute a prosecution, a request for consent to pass on information provided by the central bank pursuant to a regulatory request should be made at the time a decision is made to commence criminal prosecutions. This approach avoids requested jurisdictions being exposed to “fishing expeditions.”
- 6.5. The Bahamas is engaged in continuous review of the information-sharing provisions of its financial sector legislation to ensure that the jurisdiction is able to cooperate appropriately with the legitimate demands of the ever-changing international environment.

7. Conclusion

- 7.1. The Bahamas remains committed to its adherence to international standards on information sharing. We recognize that these standards are beneficial to the global financial community. The challenge for all states remains balancing the rights of individuals against the need for states and financial conglomerates to access information on individual customers for supervisory or business purposes. The Bahamas will strive to ensure that its financial system is not used to facilitate financial crime. We have demonstrated our willingness to cooperate with other jurisdictions to assist in their investigations of contraventions of their regulatory rules and procedures.