ANTI-MONEY LAUNDERING

A. Caribbean Community Calls on President Obama to Solve Problem of Bank De-risking, But Days Later Bank of America Terminates Correspondent Relationship with Belize Bank

By Bruce Zagaris

During the meeting between the heads of government of the Caribbean Community and U.S. president, Barack Obama, on April 9, 2015 in Jamaica, the prime minister of Antigua and Barbuda, Gaston Browne, called attention to the unfair and unsubstantiated labelling of the Caribbean region as a high-risk area for financial services and the resulting loss of correspondent relationships. President Barack Obama reportedly said he is committed “to examine the complaints and go through, in very concrete ways, where our concerns are and how our governments can work together”.1 However, on April 27, Bank of America announced it has decided to cancel its correspondent banking operation with the domestic and international branches of the Belize Bank.2

During the heads of government meeting between CARICOM and President Obama on April 9, 2015, Prime Minister Browne highlighted that the CARICOM region’s banking sector was facing a new and potentially devastating threat. He warned that the Caribbean region is being labelled as a high-risk area for financial services. Banks in the U.S. and Europe are being made to evaluate risks versus rewards when doing business with CARICOM indigenous banks and banks within its offshore sector. He called on the Conference to establish a committee of Finance Ministers to address this issue because unless the matter is dealt with urgently, indigenous banks will be forced to close their doors. The situation is “unfair and it is unjust,” the Prime Minister said.3

Meanwhile, the Caribbean Association of Banks (CAB) said it fully supports Prime Minister Browne’s remarks. The CAB highlighted that correspondent banking relationships are vital in enabling key economic and financial transactions, such as remittances, foreign direct investments and international trade in goods and services, which constitute some of the key drivers to sustain the region’s growth and development. Hence, the CAB said “the loss of these vital relationships can render our region unbankable and ultimately destabilize all sectors of our economies.” The CAB belies the issue is a threat to national security for the various jurisdictions in the region. The CAB promised to remain vigilant on this matter and to continue to collaborate with CARICOM and other stakeholders toward a resolution.4

1. Bank of America Terminates Belize Bank’s Correspondent Relationship

On April 27, 2015, Bank of America reported that it has cancelled its correspondent banking operation with Belize Bank. The annual International Narcotics Control Strategy Report identified over 60 countries, including several Caribbean jurisdictions as “countries of primary concern” for money laundering and financial crimes.

Following an unfavorable risk audit, the Bank of America said it will terminate its correspondent relationship with Belize Bank starting April 30. Thereafter, Belize Bank will not be able to execute international wire transfers and

1 Caribbean banks look forward to resolution of correspondent banking issue, CARIBBEANNEWSNOW, April 22, 2015.
2 Bank of America cancels Belize correspondent banking operation, STEP, April 27, 2015.
4 Id.
bank drafts in U.S. dollars. Belize Bank is Belize’s largest bank, controlling about half the local banking sector, as well as having a large corporate presence.5

At the Summit of the Americas meeting two weeks before, Belize’s Prime Minister Dean Barrow warned that U.S. de-risking was causing a crisis in the Eastern Caribbean and that the region’s financial and trade architecture cannot survive the withdrawal of U.S. correspondent relationships.6

Belize authorities and its regional partners are involved in diplomatic talks with the U.S. authorities and financial institutions, warning them of the disruptive effects of de-risking on small, trade-dependent economies.

Simultaneously, Belize Bank’s chief executive Lyndon Guiseppi said the bank is seeking a new correspondent banking partner, and expects to have one in three months. In the meantime Belize Bank has received “alternative options.” Belize’s other domestic banks – Scotia Bank Belize, Atlantic, First Caribbean and Heritage – are all authorized by the Belize Central Bank to deal in foreign exchange by wire transfers, bank drafts, letters of credit and bank guarantees and are not affected.7

With respect to Belize on November 20, 2013, the Caribbean Financial Action Task Force (CFATF) called for countermeasures against Belize and Guyana, which have strategic deficiencies, and works with them to address those deficiencies that pose a risk to the international financial system. CFATF required Belize to implement all the outstanding issues within its Action Plan including 1) addressing its customer due diligence requirements, 2) implementation of its counter financing of terrorism (CFT) framework, 3) extension of the AML/CFT framework to designated non-financial businesses and professions (DNFBPs), 4) addressing issues with the operational independence of the FIU and 5) prohibiting dealings with shell banks. On May 29, 2014, CFATF issued a release, finding that Belize has since brought into force significant mechanisms to address its AML/CFT deficiencies. Belize and the CFATF should continue to work together to ensure that Belize’s reform process is completed, by addressing its remaining deficiencies and continue implementing its Action Plan. The problem areas identified by CFATF may well have been a consideration with respect to Bank of America’s decision to terminate correspondent relations with the Belize Bank. Another potential issue that Bank of America may have had with Belize Bank is the fact that it does international banking and has various products that may give rise to risks, especially in the context of financial regulatory standards which have been below international standards.

2. Correspondent Bank Issues in General

A recent study of the Inter-American Development Bank indicates that as the international effort against money launder increases, individuals and businesses conducting legitimate international financial transactions are bearing the brunt of measures meant to counter illegitimate ones. Countries designated as having weak anti-money laundering (AML) regulations encounter substantial challenges maintaining correspondent banking relations. Recent experiences have demonstrated that meeting the AML standards, albeit necessary, is not enough to persuade financial institutions to keep international financial relations. In particular, banks are increasingly cautious with respect to international fund transfers through correspondent banks. Jurisdictions such as Jamaica, even if they meet AML standards, encounter challenges to use banks for correspondent services.8

There are several reasons to avoid having correspondent banking relations with certain financial institutions. For instance, if the correspondent bank is risky in itself, due to the difficulty the respondent has in effectively

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5 Bank of America cancels Belize correspondent banking operation, supra.
6 Id.
supervising the AML capacity of the correspondent. Another problem is that the risk of a transaction depends on country-specific factors, especially the strength and enforcement of a sound AML system and the type of clients. Money services businesses are one category that is perceived as more vulnerable to money laundering. As a result of the risks, respondent banks may simply decide to end correspondent banking relations to avoid risks. The tendency to avoid perceived risks makes resolving the problem challenging. Countries must attain the highest possible level of compliance with AML standards as well as developing a communication strategy that effectively conveys that the government and private sector recognize and embrace the money laundering issue and are committed to the implementation of AML efforts.\(^9\)

With respect to due diligence and correspondent banking, on October 26th, 2009 the Caribbean Association of Banks, Inc (CAB), formerly known as the Caribbean Association of Indigenous Banks (CAIB), issued its Caribbean AML/CTF Principles for Correspondent Banking, in Trinidad and Tobago, to coincide with the AML training provided by CAB’s strategic partner, the Florida International Banking Association (FIBA) AML Institute. These Principles were developed by CAB’s Advocacy Committee for the purpose of promoting the standards and reputation of Caribbean financial institutions.

The Caribbean Principles constitutes a global guidance on the establishment and maintenance of internationally accepted banking standards to prevent money laundering and the financing of terrorism. “The application of these Principles will serve to enhance the integrity of Correspondent Banking relationships”, says Mr. Larry Howai, Chief Executive Officer, First Citizens Bank, a member bank of the CAB whose Board has adopted the Principles.\(^10\)

The board of directors for each bank subscribing to the principles are responsible for: approving written policies and procedures relative to managing AML/CTF/KYC risks; appointing a Compliance Officer; ensuring auditors review levels of compliance; encouraging continuous compliance training; enforcing the reporting of suspicious activity to supervisory authorities.\(^11\)

3. Analysis

Other inherent problems facing many Caribbean jurisdictions are their small size, the informality of some of their economies, and, as a result, the small size of their regulatory regimes. Another problem is that some of their legal regimes are not current. The small size of indigenous banks along with their community-oriented business model does not expose them to recent developments in international AML and financial regulatory matters. Caribbean jurisdictions also are not members of the Financial Action Task Force, the Organization of Economic Cooperation and Development, the Financial Stability Board, the G20, the G8, and the Basle Committee, so they cannot anticipate AML developments. As long as regulatory and enforcement policies in the metropole prioritize stronger AML policies and heavily penalize financial institutions that do not comply, financial institutions will continue to de-risk, notwithstanding statements by financial regulatory officials in the metropole that financial institutions should not de-risk.

The development effect of the FATF 4\(^{th}\) round of evaluations and its initiatives against non-compliant countries and jurisdictions have the likelihood of causing further de-risking due to the rising AML requirements.

Another blow to the Caribbean financial services market was the announcement in March 2015, by the Royal Bank of Canada, Canada’s largest bank by assets, that it was withdrawing from private wealth management services in the Caribbean.\(^12\) To illustrate the potential risks and liabilities of international banks doing private wealth management

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\(^9\) Id.

\(^10\) For additional background on the principles see CAB, CAIB LAUNCHED ITS CARIBBEAN AML/CTF PRINCIPLES IN TRINIDAD AND TOBAGO, http://www.caribbean-principles.com/news.html


\(^12\) Natario McKenzie, Fred: Canadian Banks ‘Not Going Anywhere’, BAHAMAS TRIBUNE 242, March 10, 2015.
business, on April 22, 2015, the RBC revealed that a French judge has referred its Bahamas unit to a French tribunal to face a charge of conspiracy to commit tax fraud.\textsuperscript{13}

A number of Caribbean jurisdictions have incurred reputational losses due to being put on the non-cooperative list of FATF, the OECD, and the Financial Stability Board.\textsuperscript{14} In response to the Financial Stability Forum initiatives, the Caribbean has organized workshops to upgrade the financial regulatory mechanisms for non-bank financial institutions.\textsuperscript{15}

On May 29, 2011, Central Bank governors from the Caribbean Community (CARICOM) as well as Aruba and the Turks and Caicos Islands announced an agreement to collaborate on a report that will, among other things, outline policies to strengthen the resilience of the region’s financial sector. The Central Bank governors meet every six months, under the aegis of the Guyana-based CARICOM Secretariat, to review regional economic performance and to discuss matters of common interest.

“The report will be a collaborative effort between the participating central banks and the Centre, which will also collaborate on early warning systems of distress in the financial system, and policies to strengthen the resilience of the region’s financial sector,” the statement said, adding that it will be financed in part by the Inter-American Development Bank (IDB).\textsuperscript{16}

A major challenge that Caribbean dependent jurisdictions, such as the Cayman Islands, British Virgin Islands, Turks & Caicos, and Anguilla, are facing are demands by the British to establish central registers for beneficial ownership of companies and trusts. So far, they have responded that, if they move to central registers before their competitors in Delaware, Nevada, Wyoming, Singapore, and Hong Kong do so, they will continue to lose their market shares.

The Caribbean indigenous banks have had to cope with a series of extra-regional regulatory challenges. The USA PATRIOT Act in 2001 created a number of new regulatory demands. In March 2010, the passage by the U.S. Congress of the Foreign Account Tax Compliance Act requires substantial new investments in onboarding procedures, training, and other measures to ascertain and report account holders who are U.S. taxpayers. More recently, Caribbean financial institutions must meet the OECD Common Reporting Standard, which has broadened automatic exchange of information with somewhat different standards and therefore requiring additional modifications into the due diligence procedures of the Caribbean financial institutions.

An overriding impediment is that the U.S. and other governments, which control the OECD, FATF, Financial Stability Board, and other international organizations, use the policy-making process to constantly impose new standards and penalize small countries for not meeting the standards, while they themselves do not meet those same standards. The clearest case is that in 2006 the FATF evaluated the U.S. non-compliant for the corporate transparency and gatekeeper provisions. FATF has strengthened the standards. However, the U.S. has not adopted any laws on gatekeeper provisions and the proposed customer due diligence regulations do not meet the FATF, OECD or G20 standards on corporate transparency.

In the meantime, financial institutions and bankers associations in the Caribbean should try to help raise AML and financial regulatory standards and communicate the same. It will take initiatives by both the Caribbean governments, especially the financial regulatory agencies, the private sector (the bankers associations, bar and accounting

\textsuperscript{13} Bruce Zagaris, French Court Charges RBC with Tax Fraud, 31 INT’L ENFORCEMENT L. REP. 120 (April 2015).

\textsuperscript{14} DeLisle Worrell: The initiative of the Financial Stability Board on “non-cooperative jurisdictions” from a Caribbean perspective: Remarks by Dr. DeLisle Worrell, Governor of the Central Bank of Barbados, on behalf of the Caribbean Group at Breakfast with the Managing Director of the International Monetary Fund (IMF), Washington DC, October 10, 2010 http://www.bis.org/review/r101102c.pdf


\textsuperscript{16} CARIBBEAN-Caribbean Financial Stability Report to provide early warnings system, Caribbeannewsnet.com, May 29, 2011.
associations), along with the fiduciaries and chamber of commerce, to continue to raise standards, develop internal organizations, such as the Bahamas Association of Compliance Officers, and communicate their standards both internally and externally. Their professionals also need to professionalize and network with their counterparts worldwide, so that they understand and anticipate changes in financial regulatory regimes and they can communicate these changes and help their own governments to adopt their regulatory mechanisms to meet international regulatory standards while still being able to attract and effectively serve international clients.

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17 In March 1999, Cheryl Bazard (a former Stipendiary and Circuit Magistrate, Legal Counsel with the Attorney General’s Office and private practitioner), Compliance Officer for CIBC (Bahamas) Limited, invited Compliance Officers to explore networking opportunities amongst each other and to promote a culture of compliance within their institutions. Now BACO is an important force in policy work, dialogue with the government, training, and outreach to the international community. For more information on BACO see its website http://bacobahamas.com/about_us.asp