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Money Laundering and the Harmful Tax Competition

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account in excess of \$28.8 million that he was laundering. And what will that \$28.8 million will get him? Certainly, not what the Michigan drug dealer got!

Make no mistake in spite of a lapse in political will or understanding, the world is indeed trying. There is, of course, the UN Convention, of 1989, the Basel Principles, G-7, the EC Directive of 1991, and the Financial Action Task Force of which Mexico, Brazil, and Argentina are observers to their work. These are but a few of recent global initiatives. It is enough? Unfortunately, the fact is, governments have failed miserably, and if you can think of how governments can go about doing it better, then they could use the help if they are willing to consider the advice.

With all the fiscally tolerant states out there, what is the success rate of government? What is the success rate of the United States or Mexico or Canada or Brazil in stopping the money, the drugs? Are governments successfully taking the profits from organized crime? The European Union announced its success rate and it is pitiful. The United States as well as the rest of the Americas, and Pacific Rim can boast of not much greater success. So, for every dollar that is used for drugs on the streets, most will go back to organized crime. If that is not enough, enter the Internet and the Republic of Cyber, wherein we have a recipe for anarchy, and that anarchy will pose enormous problems with respect to worldwide childhood pornography, stalking, hackers, taxes, customs and the like. Do governments know how to cope with it? If they do, they are keeping it a damn good secret.

XIV. MONEY LAUNDERING AND THE HARMFUL TAX COMPETITION

*Peter D. Maynard**

First, I want to express my warm congratulations and profound thanks to Dean Jon Mills, the other persons present of the College of Law and UF Community, Governor MacKay, Fletcher and Nancy Baldwin, Mike and Buff Gordon, JoAnn Klein, Linda Baldwin, Fran Morton, all the others who have been responsible for this very valuable, and I hope annual, conference.

I should like to invite you all to a three-day conference in Nassau this year, May 24th-26th, 2001, which would canvass similar issues, trade, ADR, human rights, judicial system reform, financial crimes, legal education. It is called "Forum 2001 and Beyond," organized by the fifteen

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or so Bar Associations over which I preside in the Organization of Commonwealth Caribbean Bar Associations.

I would like to renew the challenge given this morning by the Secretary of State, to “think outside the box.” Indeed, also to get beyond the historic baggage of “our way or the highway” mentioned by Governor MacKay.

Indeed, the bad news makes the headlines, so I am going to talk a little bit about the good news, and how those who are doing well need some reinforcing. I am the Caribbean person, and so I am going to focus primarily on the Caribbean, but my remarks also extend to some other countries.

I am going to tell you a little story about money laundering. There is something called “harmful tax competition.” You have heard about the OECD report and the Edwards reports, and other reports about harmful tax competition. But frankly, to my mind, that is an oxymoron, because it is legitimate to reduce your tax expenditures. They are exactions, not voluntary contributions. At the same time, one should stay within the law. Some years ago, this was the theme of a conference in London and it was believed that all offshore centers should be closed down. At the same time, the Inter-American Development Bank (IDB) and the Caribbean Development Bank and other financial institutions in the region, stated that the comparative advantage of the area in the 21st century is in services. Services including banking, finance, IT and tourism. The Caribbean countries have almost without exception — I am referring specifically to the English-speaking Caribbean countries — dealt with rule of law questions and corruption questions quite effectively and they continue to allocate resources to this area. Continuing attacks on sovereignty occur, and they are not helpful. In other words, the David and Goliath approach is not helpful, does not work, and in any case, David won. The private business sector on both sides of the Rio Grande and also both sides of the Florida Straits, want anxiously to move on, particularly in those areas where there has been a concerted allocation of resources in this effort without much of a return.

So, blacklists of countries are developed, which often have a very negative impact upon the reputation of the countries and on business generally. This article refers to a list prepared as a result of the FATF efforts. Most of the countries of the region have been cooperating with Financial Action Task Force. But they have still to deal with the very negative fallout. At the same time, we have a booming economy. And so again, there is the desire to move on.

Offshore financial centers cover quite a wide variety of countries. They are all quite different. Those in the Caribbean, however, can be divided into roughly two groups, of those which impose anti-money laundering penalties

generally, and those who impose them only for drug trafficking offenses. The minority of countries, such as Jamaica, for example, restrict their anti-money laundering measures just to the drug offenses.

Most of the countries in the region have adopted their laws from the UK legislation, which looks a lot like the legislation in this country. Assisting another to retain the benefit of crime, acquisition and possession of and use of criminal proceeds, transferring proceeds, failure to disclose, tipping off, are all offenses one typically finds.

I think it is important to recognize that offshore financial centers are very much like onshore financial centers. The distinction is blurred. Many clients I come across have Delaware companies. Delaware companies do a lot of the same things that the companies do in the jurisdictions that I am speaking about.

The UK holding company may be used by the Arab investor for tax reasons. The terminology of choice now is international financial center, because it really does not matter whether you are onshore or offshore. The distinction is very blurred. They are all doing pretty much the same things, but in a more highly regulated environment.

One area, for example, which some attention has been given to is the international business company. There are a number of proposals which have been made to address international concerns, and these are likely to be brought into effect, I would say, certainly within the next eighteen months to make the international business company more transparent.

There are quite a number of adjustments which are being made. But I think it is important to understand that taxation is not a part of the culture of many countries. That is hard to appreciate for the person who thinks there are only two certain things in life, death and taxes. Within the context of the Bahamas, for example, it was 1727, when the first Parliament came into effect. We had never imposed taxation on individuals or companies, nor on dividends, interest, salaries, gifts, capital gains or inheritance. So this is not something new for the Bahamas, this has been the case since its organized Parliamentary existence.

There are other taxes, such as sales tax, customs duties, which are important from the point of view of our discussion this morning, and a real property tax. Their non-tax or their low-tax status is something that has been the case for quite a long time. It is not a new invention.

Over the past two-three decades there has been quite some activity in the Bahamas. I will focus on the Bahamas as a case study among the Caribbean countries. In particular, two years ago, the Bahamas launched the Bahamas Financial Services Board to address these issues and it has been extremely active.

But even prior to that, the bankers themselves, in 1985, invoked a code of conduct, which implements know-your-customer rules and of course since then a lot of attention has been placed on know-your-employee as well. There is indeed quite a lot of activity apart from governmental efforts to address this very same point and to preserve the reputation of the financial center.

Some of these have been mentioned already by Professor Baldwin, but indeed, all of these, in particular the 1998 Basle statement of principal straight through to the European Community directives, have indeed been implemented in the context of the Bahamas.

The Bahamas is also a member of or works closely with other international organizations, which are mentioned, the Caribbean Financial Action Task Force, the Global Program Against Money Laundering, the United Nations Drug Control Program, the Organization of American States and its Convention Against Corruption, the CARICOM, the Caribbean Customs Law Enforcement Council, the Centre Interministerial de Formation Anti Drogue (CIFAD), the Association of Caribbean Chiefs of Police, the Commonwealth Secretariat, Secretary of Interpol and many other organizations.

The companies have pretty much done and are doing all that can be reasonably expected of them. However, they continue to see attacks, such as the Harmful Tax Competition idea, which does a great deal of damage in terms of development of this sector.

The Bahamas has had a very elaborate anti-money laundering law since 1996. The offenses, as I mentioned earlier, include a range from failure to keep and retain records to the money laundering offense or a failure to disclose a suspicion of money laundering. The framework administratively looks very much like in the United States and other countries. There is the front-line staff and a compliance officer. It is quite a large group of very highly trained compliance officers throughout the Caribbean and a supervisory authority or the Attorney General. There is a tendency in the Bahamas to have quite a heavy administrative burden but it is done quite cheerfully in the expectation that it will result in dividends in terms of improving the county's reputation.

The Bahamas now has a new stock exchange and is expanding its financial sector and there are rules governing the securities industry. These are guidance notes in respect of all aspects of the securities industry.

There are also extensive regulations imposed under the money laundering act. Indeed, the number of supervisory authorities have been appointed, been designated, including the Central Bank, the Registrar of Insurance, the Gaming Board, Securities Board, the Registrar of Companies and the Treasurer. Recently, an act to provide for the

enforcement of external orders — in other words, confiscation orders obtained in the United States was passed in May of last year.

There are a number of cases which have come about. I have talked on the first one, the BCCI case, which occurred several years ago. It is remarkable that the Bahamas was one of the first countries to take regulatory action against BCCI, to close down BCCI in the Bahamas. That is symptomatic of the importance which the government has placed on this area.

There are many cases which have proceeded before the courts. This is an example of one where Americans were charged with forgery, fraud, and conspiracy. One difficulty, and I do not want to suggest that there are not continuing difficulties, is a lack of resources and indeed the police themselves need additional resources to provide the proper investigation. But the good news is that only clean money is welcome. The regional governments have committed massive resources to make that clear. It is time to dramatically expand trade services and relationships.

XV. ECONOMIC CRIME AND ORGANIZED CRIMINALITY IN SOUTH AMERICA

*George Millard**

Considering Latin America as an interactive bloc economically, and even taking into account all the regional differences, it cannot be denied that certain criminal activities, as financial offenses are intensely reflected in all nations.

In seeking out the relationship between the various forms of criminality, the extraordinary importance which drug trafficking assumes throughout the continent becomes immediately obvious. Criminal actions starting from the plant cultivation, whether it be coca or poppy or even marijuana, extrapolate all the frontiers causing differentiated economic impact. The producing countries are a source of wealth for the peasants and related workers. This same wealth extends itself, forming a production chain linked to drugs. It almost becomes an obligation to specialize in various activities, from the transportation, and continuing with the refining in the laboratories, then on to the local commercialization, or its preparation for export which is a journey into other markets.

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