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REMARKS
OF
SENATOR CARL W. BETHEL QC,
ATTORNEY-GENERAL
AT THE
OFFICE OF THE ATTORNEY-GENERAL AND
MINISTRY OF LEGAL AFFAIRS

on the Occasion of the

“OPENING OF THE LEGAL YEAR”

WEDNESDAY, 13TH JANUARY, 2021 AT 10:00 A.M.

LEGAL YEAR 2021

I wish to thank Archbishop Patrick Christopher Pinder, and Bishop Delton Fernander, and all those Reverend Gentlemen and Ladies of the Clergy who have prayed for our country at the advent of this New Year, and for commemorating the Opening of the Legal Year.

I come before this Honourable Court and the Bahamian people to provide a report on my stewardship in 2020 and our goals for the coming year. I will give an update on the FATF Grey List, the EU Black List, and the improvements in the Court of Appeal, and the Office of the Judiciary, as well as the Court Modernization and Reform Initiative (COMRIN). I will also give a brief overview of the work of the Office of the Director of Public Prosecutions, the Office of the Public Defenders, the Industrial Tribunal and the Registrar General Department.

2020 PANDEMIC

1. In “2020”, we embarked a new decade with new hopes and dreams. However, the decade did not continue the way we anticipated. The year “2020” has been an unprecedented and exceptional year, globally. 2020 will essentially be recalled by history as “the lost year¹”
2. In 2020 we were confronted by the outbreak of Coronavirus 19 (“COVID-19”) which has had a profound effect on the Bahamian society and economy; indeed upon the entire world. COVID-19 has taken the lives of more than 150 Bahamians. Let us pause for a moment of reverent silence, to mark the Passing of so many victims of this terrible scourge. As a result of this pestilence, many Bahamians became ill, lost their jobs and found themselves feeling lonely and isolated. As a result of the Pandemic Bahamian culture have been dominated by the need to keep a safe distance. Social

distancing, wearing masks and hand washing have been dubbed “*the new norm*”.

3. The Government of The Bahamas has been forced to take strict measures at an early stage to combat COVID-19, and Bahamians by and large have willingly taken part in this national effort. To date, The Bahamas has been hit by two waves of the infection since March, and in both instances, The Bahamas has coped better than most countries. Indeed, today, as most advanced countries around the globe have been forced to retreat into mass lockdowns, we in The Bahamas have fared somewhat better due to our early and persistent disciplined enforcement of all necessary sanitization, distancing and mask wearing measures. Bahamians have put aside their own interests to protect the elderly and other high risk groups, and in so doing have assisted in saving many lives.
4. My thoughts are with all of the persons who have been affected by COVID-19.
5. Today, I wish to express my sincere gratitude to the essential workers who are on the front line of our fight against COVID-19. Also, to those who have given of their time and efforts, and have worked nights, and weekends to ensure the protection of our citizens and residents, particularly the most vulnerable elderly persons and those with debilitating co-morbidities.

Thank you! Thank you! Thank you!

INTERNATIONAL ARENA

FATF’s Grey List

6. As you may be aware The Bahamas was put into the Financial Action Task Force (“FATF”) Grey List of countries with strategic deficiencies in June 2017 due to the adverse Mutual Evaluation by the

Caribbean Financial Action Task Force (“CFATF”) which was completed in 2015.

7. Earlier in 2020, the FATF agreed an onsite review of The Bahamas’ Money laundering/Combating the Financing of Terrorism/Countering Financing of Proliferation regimes to verify the progress to address the Action Items agreed in September, 2018 with the FATF International Cooperation Review Group of the Americas (ICRG).
8. The ICRG conducted the onsite review on 10th and 11th November, 2020, and the report was circulated to the FATF global network for comments. There were no objections from the FATF Global Network.
9. Accordingly, on 11th December, 2020, the FATF issued its recommendation that The Bahamas be delisted from its Grey List. On 17th December, 2020, the recommendation was considered and approved by the FATF membership.
10. On 18th December, 2020, The Bahamas was delisted from the FATF’s Grey List. And, the Press Release advising of The Bahamas delisting was posted to FATF’s website, stating:

“The Bahamas has strengthened the effectiveness of its AML/CFT system and addressed related technical deficiencies to meet the commitments in its action plan and remedy the strategic deficiencies identified by the FATF in October 2018”.

“The FATF now delists The Bahamas from the list of Jurisdictions under Increased Monitoring. The Bahamas is therefore no longer subject to the FATF’s increased monitoring process. The Bahamas will continue to work with CFATF to improve further its AML/CFT regime.”

European Union Black List

11. Based on the FATF Grey List, the European Union (EU) Commission placed The Bahamas on their Black List in May 2020, effective October 2020.

The Bahamas has completed meetings with several EU countries' Ministers of Finance and high-level officials. It is the intention that these meetings will:

- forge direct bilateral contact with individual countries in Europe, who may not have had traditionally long-standing relationships with The Bahamas,
- establish person to person contact with relevant senior technical officials, and
- assist in making the case for The Bahamas' removal from the EU's blacklist.

With the very able and expert assistance of Her Excellency Maria O'Brien, the Ambassador to Brussels, to-date we have held bilateral zoom meetings with Ministers and senior Justice Officials in Germany, Italy, Cyprus, Slovenia, Hungary, Finland, the Czech Republic and The Netherlands.

The EU's FISMA Directorate sent some concerns with certain aspects of the Register of Beneficial Ownership Act, which have been addressed by an amendment passed in September 2020.

We have held a further meeting with the Director-General of FISMA, Mr. John Berrigan, early this month, and expect some further consultations at the technical level before the end of this month. Should the same prove satisfactory the EU Commission will then consider whether to de-list The Bahamas from the EU Blacklist.

LEGISLATIVE CHANGES

12. The Government of The Bahamas, in order to comply with its international financial obligations enacted or made the following legislation:

- Digital Assets & Registered Exchanges Act, 2020
- Financial & Corporate Services Providers Act, 2020
- Penal Code (Amendment) Act 2020
- Register of Beneficial Owners (Amendment) Act, 2020
- Securities Industry (Contract for Differences) Rules, 2020
- Securities Industry (Take-Over) (Amendment), Rules 2020
- Securities Industry (Corporate Governance) (Amendment) Rules, 2020
- Securities Industry (Anti Money Laundering and Countering the Financing of Terrorism) (Amendment) Rules, 2020
- Financial and Corporate Service Providers (Anti Money Laundering and Countering the Financing of Terrorism) (Amendment) Rules, 2020
- The issuance of the Compliance Commission Guidance Notes for Designated Non-financial businesses and professions regarding United Nations Security Council Sanctions 2020

13. The Register of Beneficial Owners (Amendment) Act, 2020, clarifies the obligations of companies without a registered agent or office regarding The Bahamas Beneficial Ownership Secure Search System, and brought Segregated Accounts Companies “in scope” with the Register of Beneficial Ownership Act.
14. Further, the proposed amendments to the Financial Intelligence Unit Act, and the Virtual Assets Service Providers compendium of legislation are scheduled to be laid and debated in Parliament in early 2021.
15. The proposed amendments to the Financial Intelligence Unit Act were submitted to the Minister of Finance on 14th August, 2020. The amendments would make it clear that any information that comes to the attention of the Financial Intelligence Unit will be shared with foreign Financial Intelligence Units consistent with the provisions of the Egmont Group guidelines and Recommendation 40.
16. Based on the enhanced provisions under the Companies (Amendment) Act, 2019 over 11,000 defunct companies were recently struck off the Companies Register in the third (3rd) quarter of 2019 for failure to comply with statutory requirements amongst other violations. A similar process for another 9,000 additional companies were carried out in 2020.
17. Over 200 backlogged Suspicious Transactions Reports have been closed by the **Financial Intelligence Unit** over the 12-month period ending 30th September, 2020.
18. Also, in March 2020, Phase IV of The Bahamas Beneficial Ownership Secure Search System was instituted for the onboarding of 184 small and medium sized registered agents. Since March 2020, there were 127 kick off training sessions completed, and 117 portals have

been deployed for access by registered agents. A separate e-portal has been established for the capturing of [beneficial ownership] information for companies without a registered agent.

COMPLIANCE UNIT/RISK ASSESSMENTS

19. In February 2020, the Office of the Attorney-General established a Compliance Unit. The Unit is staffed by a Chief Compliance Officer, an Assistant Compliance Officer, a counsel and attorney and a Personal Assistant. The Unit is responsible for monitoring compliance with the Register of Beneficial Ownership Act and the Non-Profit Organisations Act. The Unit has begun preliminary work in implementing a risk-based supervisory regime for Non-Profit Organisations (NPOs) including the risk assessment of NPOs. Further, it has conducted outreach sessions and training programmes for NPOs.
20. With regard to National Risk Assessment, in October 2020, the Group of Financial and Non-Financial Service Regulators formed a working group to scope out the work required to conduct an update to the 2015/2016 National Money Laundering/financing of Terrorism/financing of Proliferation Risk Assessment. It is intended that the updated National Risk Assessment would be completed at Month-end March 2021.

TRAINING

21. Additionally, there has been a focus on training during the COVID-19 disruption by the legal, regulatory and enforcement agencies. Training sought to strengthen and increase capacity to supervise financial institutions and Designated Non-financial businesses and professions; respond to improve international cooperation; and to investigate and prosecute money laundering and terrorist financing cases.

22. For the period of January to December 2020, we have had 120 plus professionals successfully trained by the United Nations Office on Drugs and Crime, Caribbean Community Implementation Agency for Crime and Security, FATF, CFATF, Association of Certified Anti-Money Laundering Specialists, International Compliance Association, and several academic institutions. Also, we have had professional certifications attained in compliance, forensic audits, and investigations.
23. I must commend the hard work of the financial sector regulators, (Central Bank, Securities Commission, Compliance Commission, Insurance Commission, Gaming Board), the Royal Bahamas Police Force, the Royal Bahamas Defence Force, The Bahamas Customs Department, the Financial Intelligence Unit, the Registrar General's Department, the Law Reform and Revision Commission, the Office of the Director of Public Prosecutions, the International Legal Cooperation Unit, the National Identified Risk Framework Coordinator, the Compliance Unit, the Registrar General Department and the Office of the Attorney-General.

JUDICIARY

Court of Appeal

24. The Court of Appeal introduced remote hearings by the Zoom digital platform to dispose of criminal and civil cases and has drafted a Practice Direction which sets out how the digital hearings would occur. The court's website was also upgraded to allow access to audio transcripts.
25. Also, in response to the COVID-19 shutdowns, the Court of Appeal (Amendment) Rules, 2020 were executed to allow the court to conduct videoconference hearings.

26. Further, the existing case database (CAIS) was upgraded to allow for instantaneous electronic uploading of all court documents and skeleton submissions.

Supreme Court and Magistrates Courts

The Office of the Judiciary and the Court Modernization and Reform Initiative (COMRIN)

27. The Office of the Judiciary which is comprised of the Supreme Court and Magistrates Courts have also embraced the use of technology for court hearings.

Integrated Case Management System

28. In collaboration with the IDB and the Citizens Security and Justice Programme, a new Integrated Case Management System will be introduced, which will provide, among other things:

- (i) an electronic filing feature via a secure web portal for authorized users;
- (ii) E- notifications and messaging functionality;
- (iii) integrated digital recording and transcript software that will accelerate the pace of transcript production;
- (iv) allow court officers to manage all aspects in the life cycle of a case via an electronic scheduling feature.

29. Once implemented the Integrated Case Management System (ICMS) will move the Judiciary substantially closer to a paperless court system.

30. On 16th December 2020, a contract was signed to introduce the ICMS for the judicial sector.

Court Services Bill

31. A Court Services Bill has been drafted and Tabled in Parliament. This Bill, once enacted, will enhance the independence of the Judiciary by giving enhanced budgetary, functional and financial autonomy to the Office of the Judiciary. Further, over time all staff who are willing will be migrated from the public service; and placed under the direct control of the judiciary for all purposes related to hiring, promotion and dis-engagement. This will enhance the capacity of the judiciary to manage its staffing, and to promote or discipline employees, without the intervention or delays now being experienced.

E-payment system

32. On 22nd December, 2020 a contract was signed for the Digitization Project for the Courts and also the E Payment system and payment of management solution for the Family Court in the Magistrates Court.
33. The E payment system in the Family Court of the Magistrate's Court is intended to facilitate easier, faster and more accessible payments to the recipients. Persons will be able to make payments online using debit and credit cards both in New Providence and in the Family Islands, thus eliminating the need to attend at the Magistrate Court to stand in line to make payments.

Bail Management System

34. The Office of the Judiciary has partnered with Multi-media Technologies Ltd to introduce a software solution that will streamline the bail process.
35. In November 2020, Parliament enacted the Bail (Amendment) Act, 2020 ("the Act"). The Act amended the Bail Act to increase the jurisdiction of a magisterial court to grant bail in certain cases; to provide for the making of rules for regulating the procedure for

applying for bail and for connected purposes. The Act provides that persons charged with an offence or persons presently on bail must register with the Bail Management System.

36. The Bail Management System is an electronic system which:
- (a) provides an efficient and secure mechanism through which applications for bail may be made;
 - (b) monitors reporting requirements as a condition of bail with respect to a person granted bail;
 - (c) alerts the respective authorities where there has been non-compliance with a reporting requirement as a condition to the grant of bail.

Once implemented this system will greatly enhance the capacity to effectively track persons on bail, who persist in criminal behaviour.

Director of Public Prosecutions

Early this year the Office of the DPP finally completed its move to new and separate Office premises. The new ODPP is situated in Charlotte House, and marks a real and symbolic enhancement of the independence of the DPP in the exercise of the prosecutorial discretion, which was vested in him, subject to very limited and transparent exceptions, by the Constitutional amendment passed by this Government.

The DPP continues to improve the performance of our prosecutors. I am proud to confirm that in 2020 the conviction rate increased from 80% in 2019, to 87% in 2020.

18 *nolles prosequi* were entered in 2020; 3 in respect of deceased defendants.

In 2020, a total of 87 defendants pleaded Guilty to offences, ranging from Murder, Attempted Murder, Armed Robbery, Rape. Stealing, Receiving and Indecent Assault.

The ODPP has also implemented a fully digital Case Management system for the first time with its bespoke programme, written by Bahamian technical experts, called **Digital Court Calendars**. This system was designed by former Police Superintendent Theresa Hanna with the most able technical assistance of a young technical genius in DTAD named Anthony Rolle. I thank them for their outstanding contribution to case management.

I wish to commend the DPP and his hard-working Deputy and Assistant Directors, and prosecutors on their hard work and continued successes.

The Law reform Commission

The year 2020, was one of the most eventful in recent memory in The Bahamas. Apart from dealing with the effects of the ravages of Hurricane Dorian on our islands, we had to confront, early in the year, the life-threatening and rampant spread of the infectious Coronavirus disease (“COVID-19”) to The Bahamas.

Indeed, March 2020, was the first time in the history of The Bahamas, that circumstances existed for the making of a proclamation by the Governor-General declaring a state of public emergency in The Bahamas.

In all of this, the Law Reform Commission, led by Commissioner Dame Anita Allen, with the most able assistance of the Director of Law Reform, Tina Roye, together with Counsel such as Ms. Lamysa Cox, Ms. Tleca Rolle and Cherita Symonette, have rendered excellent service in the drafting of almost innumerable Orders and amendments. The Nation owes a debt of gratitude to these professionals for the tireless efforts and expertise.

In addition to these efforts, the Commission successfully drafted suites of new Laws which have been enacted in 2020.

The list of all Acts passed this year comprises 41 Acts:

The Register of Beneficial Ownership (Amendment) (No.2) Act, 2019 (*No. 1 of 2020*);

The Investment Funds (Amendment) Act, 2020 (*No. 2 of 2020*);

The Tax Appeal Commission Act, 2020 (*No. 3 of 2020*);

The Supplementary Appropriation (2019/2020) Recurrent Account Expenses) Act, 2020 (*No. 4 of 2020*);

The Supplementary Appropriation (2019/2020) (Capital Development Account Expenses) Act, 2020 (*No. 5 of 2020*);

The Companies (Amendment) Act, 2020 (*No. 6 of 2020*);

The Bahamas Registered Stock (Amendment) Act, 2020 (*No. 7 of 2020*);

The Appropriation (Revenue Account Expenses (2020/2021) Act, 2020 (*No. 8 of 2020*);

The Appropriation (Capital Development) (2020/2021) Act, 2020 (*No. 9 of 2020*);

The Tariff Amendment Act, 2020 (*No. 10 of 2020*);

The Excise Amendment Act, 2020 (*No. 11 of 2020*);

The Value Added Tax (Amendment) Act, 2020 (*No. 12 of 2020*);

The Stamp Tax (Amendment) Act, 2020 (*No. 13 of 2020*);

The Customs Management (Amendment) Act, 2020 (*No. 14 of 2020*);

The Business Licence (Amendment) Act, 2020 (*No. 15 of 2020*);

The Real Property Tax (Amendment) Act, 2020 (*No. 16 of 2020*);

The City of Nassau Revitalization (Amendment) Act, 2020 (*No. 17 of 2020*);

The Financial Administration and Audit (Amendment) Act, 2020 (*No. 18 of 2020*);

The Boat Registration (Amendment) Act, 2020 (*No. 19 of 2020*);

The Port Authorities (Amendment) Act, 2020 (*No. 20 of 2020*);

The Fisheries Resources (Jurisdiction and Conservation) (Amendment) Act, 2020

The Bank and Trust Companies Regulation Act, 2020 (*No. 22 of 2020*);

The Protection of Depositors (Amendment) Act, 2020 (*No. 23 of 2020*);

The Central Bank of The Bahamas Act, 2020 (*No. 24 of 2020*);

The Road Traffic (Amendment) Act, 2020 (*No. 25 of 2020*);

The Register of Beneficial Ownership (Amendment) Act, 2020 (*No. 26 of 2020*);

The Financial and Corporate Service Providers Act, 2020 (*No. 27 of 2020*);

The Digital Assets and Registered Exchanges Act, 2020 (*No. 28 of 2020*);

The Bail (Amendment) Act, 2020 (*No. 29 of 2020*);

The Juries (Amendment) Act, 2020 (*No. 30 of 2020*);

The Defence (Amendment) Act, 2020 (*No. 31 of 2020*);

The Correctional Services (Amendment) Act, 2020 (*No. 32 of 2020*);

The Penal Code (Amendment) Act, 2020 (*No. 33 of 2020*);

The Companies (Amendment) (No.2) Act 2020 (*No. 34 of 2020*);

The International Business Companies (Amendment) Act, 2020 (*No. 35 of 2020*);

The Foundations (Amendment) Act, 2020 (*No. 36 of 2020*);

The Property (Execution of Deeds and Documents) Acts, 2020 (*No. 37 of 2020*);

The Rule Against Perpetuities (Abolition) (Amendment) Act, 2020 (*No. 38 of 2020*);

The Parliamentary Elections (Amendment) Act, 2020 (*No. 39 of 2020*);

The Fisheries Act, 2020 (*No. 40 of 2020*);

The Immigration (Amendment) Act, 2020 (*No. 41 of 2020*).

I thank the Commission for their most important contributions to good governance and to the legislative agenda of the Government.

The Registrar-General's Department

Unfortunately, the COVID-19 pandemic has had a turbulent effect on the Registrar General's Department.

Prior to the start of the pandemic, the recording of deeds and documents was done in 14 days, with a goal of lessening that time. Unfortunately, due to the mandated closures of the Department as a result of the lockdowns and the implementation of the shift system, the time has increased to in excess of eight weeks.

In all Ministries and businesses, the rollout of services has had to be adjusted. The Registrar General's Department was no exception. Consequently, during the lockdowns the Department implemented an email system for the submission of Company and Intellectual Property applications. When the Department resumed "normal business" on 29th June, 2020 the email system remained in place along with the implementation of a drop box service for Companies, IP, Deeds and Documents and Marriage Duplicate Registers. Birth registration, death and marriage certificates and marriage licence services are now accessed by appointment. These measures were put in place for the safety of the staff and customers and we ask the public to respect these new policies.

In May, 2020 it was discovered that the Department's AS400 system, that houses the civil and corporate registries had been breached in October, 2019. In response to the attacks, the Department of Transformation and Digitization, along with the Royal Bahamas Police Force (RBPF), Cloud Caribe Ltd. and Registrar General's Department (RGD) immediately collaborated to improve security at the Registrar General's Department.

This included the reconfiguration of existing hardware components to ensure that external users could no longer directly access RGD servers. Forty-five (45) computers with obsolete operating systems were removed from the network. The computers in the Registrar General's Office in Grand Bahama were also upgraded.

Password policies have been strengthened and user profiles of both internal and external clients have been reviewed and improved access controls put in place.

In July, 2020 IBM was engaged to undertake an assessment of the software and hardware in the network in tandem with penetration testing by IDB Consultants. As a result IBM made 35 observations/findings with accompanying

recommendations. 80% of the critical recommendations have been implemented to date.

Remediation activities are ongoing and the Registry's systems are being upgraded in phases. We are in the process of hardening the environment to reduce vulnerabilities thereby making the systems, including the applications more secure.

In November, 2020 in conjunction with the Department of Transformation and Digitization, the Registrar General's Department launched a pilot project which allowed the public to apply for birth, death and marriage certificates online. There have been some hiccups along the way, but I am advised that it is scheduled to go live on 25th January, 2021.

I wish to commend the Registrar-General, Mrs. Sallyanne Lockhart-Pratt on the excellent service that she continues to deliver, even in the most trying times.

The Industrial Tribunal

In 2020, despite the Pandemic, two new Court facilities were constructed for the Industrial Tribunal. In Grand Bahama new premises were constructed in new rental premises, marking the first time on that Island that there was a separate facility to house the Tribunal. Similarly, in New Providence, a new Court facility was completed in Saffrey Square to remove Madam President from the deteriorating physical conditions in the former 'Swift Justice' Building.

Significantly, under the leadership of President Indira Francis the filing system of the Tribunal has been entirely digitized. By this revolutionary initiative, in the development of what has been called the first "Smart Court" the President has thrust the Industrial Tribunal to the very forefront of the digitization of legal services in The Bahamas and,

indeed, the Caribbean Region; which is now being pursued by the entire judiciary in The Bahamas.

The Tribunal has also substantially reduced its backlog to what we might call an irreducible minimum. Speed, efficiency and a ‘user friendly’ environment now characterize the Industrial Tribunal as a worker friendly and effective instrument of justice in securing the protections enshrined in the Employment Act to thousands of ordinary Bahamian workers.

My Lord, in closing I extend my very best wishes to the Judiciary, and all who serve the cause of Justice in our civil and criminal courts, for all that is good, all that is kind, all that advances civility, justice, equity and good governance in this New Year; as we all look forward with humble confidence, by the Grace of God, to a new, better and healthier tomorrow.