



## **COUNTRY PRESENTATION**

### **BAHAMAS**

Corruption affects everyone and threatens sustainable economic development and jeopardizes the rule of law. Responsible, accountable, and transparent governance is a central challenge for societies seeking to provide equal opportunity and socioeconomic stability for their citizens and The Bahamas is no exception.

The Prime Minister of the Commonwealth of The Bahamas, the Honourable Hurbert A. Minnis at the third CEO Summit of the Americas held in Peru in 2018 opined that:

“As leaders, whether in government or commerce, we can all attest that we are often required to make difficult and sometimes unpopular decisions. This includes the areas of good governance and accountability,”.

He went on to say that in this vein, the government of The Bahamas is undertaking dramatic reforms to include: enhancing provisions for confiscation of assets derived from corrupt means, enhancing the independence and autonomy of the Office of Public Prosecutions, advancing the freedom of information from the government to the public, taking the first steps to establish an Ombudsman’s Office and ensuring an Integrity Commission to spearhead reform and investigate issues related to corruption, financial disclosure, malfeasance and misfeasance, while strengthening the public sector code of conduct and bolstering whistleblower protections.

The first initiative to curtail injustices due to corruption was with the enactment of the Public Disclosure Act, Chapter 9, in 1976, shortly after the Independence of The Bahamas.

This Act, which mandated that parliamentarians disclose their assets, income and liabilities on an annual basis to the Public Service Commission, became deficient due to a number of integrity issues, such as transparency and accountability of public officers.

In 1996 the Bahamian Government signed the Inter-American Convention Against Corruption, which came into force in 2000. On January 10, 2008 The Bahamas acceded to the United Nations Convention Against Corruption and it entered into force on April 9, 2008.

Over the years and in light of our international commitments a number of anti-corruption legislations have since been proposed. Some enacted and are in force, some enacted and await being given force, while some, like The Integrity in Public Life Bill, was drafted and did not progress beyond draft stage.

The Integrity in Public Life Bill was drafted in 2007. It sought to provide for probity, integrity and accountability of persons in public life, the criminalisation within The Bahamas of corrupt practices between persons within The Bahamas and foreign public officials, and for consequential amendments to the Proceeds of Crime Act.

The anti-corruption legislations that were enacted to date are:

- Fiscal Responsibility Act, 2018 (Parts I, II & IV brought into force on January 1, 2019. Part IV will come into effect on 1 July 2019, by Appointed Day Notice (No. 29 of 2018).
- Freedom of Information Act, 2017 (Enacted on 31 March 2017. In force: Information Commissioner and staff - April 21, 2017 and Whistle Blower – March 1, 2018).

### **FISCAL RESPONSIBILITY ACT, 2018**

The Fiscal Responsibility Act, which came in operation on January 2019 in parts, giving force to Parts I, II and IV. Part III will come into operation on July 1, 2019. The Act provides for, amongst other things, the facilitation of effective parliamentary and public scrutiny of the fiscal performance of the Government. The Act also applies to all public

entities, public officers and public office holders responsible for receiving, using or managing public resources, revenues or moneys at all level of Government, including:

- the executives and its agencies, entities and institutions, including all departments and ministries,;
- the legislature and its agencies;
- judiciary and it agencies;
- constitutional and semi-autonomous agencies and special funds under the control of the government;
- decentralized agencies and local governments, including their subsidiary bodies;
- public bodies; and
- government owned or controlled companies and their subsidiaries.

Part II of the Fiscal Responsibility Act stipulates how public finances and resources are to be managed, and provides at section 5 that a public officer or public office holder shall not expend public money, create debt, enter into any commitments or otherwise create liabilities for the Government without lawful authority.

The Act also provides for principles and procedures for Fiscal Management. The Prime Minister, the Minister, and all other Ministers and the heads of Local governments are now accountable to Parliament for the way the Government or local governments carry out their responsibilities with respect to managing fiscal policies.

The Fiscal Responsibility Act further makes provision for the preparation of a fiscal strategy report by the Prime Minister. This report must be submitted to parliament and the Fiscal Responsibility Council by the 3<sup>rd</sup> Wednesday of November of each financial year and is to be published one week after being tabled.

### **FREEDOM OF INFORMATION ACT, 2017**

The Freedom of Information Act, 2017, repealed and replaced The Freedom of Information Act, No. 10 of 2012, which was passed but never brought into force. The objective of the Freedom of Information Act is to ensure general public access to government information.

The Freedom of Information Act was enacted on 31 March 2017. The Act also came into force in parts, with the appointment of an Information Commissioner and staff effective April 21, 2017. The provisions giving effect to Whistle Blowers come into force on March 1, 2018.

The objectives of the Freedom of Information Act, 2017, as outlined in section 4, are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely: governmental accountability; and transparency and public participation in national decision-making by granting to the public, a general right of access to records held by a public authority.

The Prime Minister has indicated that with the exception of certain exemptions, the Act provides the public wide access to records. The Act provides for a number of safeguards such as the protection of an individual's sensitive, personal data and the protection of national security matters, legal privilege and certain government communications.

This access to records will be subject to exemptions that balance the right of access and non-disclosure of governmental or commercial information in the public interest.

In addition to the above Legislations, there are three (3) anti-corruption Bills that have been tabled and await enactment:

- Ombudsman Bill, 2017
- Public Procurement Bill, 2018
- Integrity Commission Bill, 2017.

### **INTEGRITY COMMISSION BILL, 2017**

The Integrity Commission Bill was tabled before Parliament on October 18, 2017. The provisions under this Bill are wider in scope when compared to the shelved Integrity in Public Life Bill. This Bill seeks to provide for the establishment of a body to be known as the Integrity Commission to promote and enhance ethical conduct for parliamentarians, senators, public officials and other persons; to provide measures for the prevention,

detection and investigation of acts of corruption, to repeal the Public Disclosure Act, and for matters connected therewith.

Unlike the Integrity in Public Life Bill, which sought to coexist with the Public Disclosure Act, the Integrity Commission Bill seeks to repeal the Public Disclosure Act, making it the body to which persons in public life disclose required financial information.

Its enactment has been deferred pending public review and comment.

The Integrity Commission Bill as drafted, contains an expanded code of conduct and an expanded list of persons in public life and is aimed at addressing a number of complex corruption-related issues facing The Bahamas and not addressed in the archaic Public Disclosure Act.

The Bill addresses ills that were not contemplated in the 1970s and broadens the scope for impartiality such as:

- establishing an Integrity Commission to replace the Public Disclosure Commission, whose mission is to revamp the modus operandi of the public service by:
  - o putting in place procedures that will curtail opportunities for corruption and inappropriate behaviour by public officers and politicians;
  - o promote and enhance ethical conduct for parliamentarians, Senators and public officers;
  - o provide measures for the prevention, detection and investigation of acts of corruption;
  - o sharing information from investigation with the public;
  - o making recommendation to government to help avoid opportunities for corruption;
  - o educating the public about the dangers of corruption; and
  - o establishing a Code of Conduct for public officers to operation within;
  
- giving the Commission extensive powers and latitude;

- empowering the Commission to make direct referral to an independent prosecutor;
- protection for whistleblowers; and
- allowing for the prosecution and investigation of police actions and complaints thereof.

The Public Disclosure Act focused on assets of political and senior government officials and the disclosure thereof. The Bill in its present form encapsulates groundbreaking legislation which comprehensively details acts of corruption, including the behaviour of public officials with respect to the award of contracts and soliciting or accepting of personal benefit or providing an advantage for another person by doing an act or omitting to do an act in the performance of his or her functions as a public official.

Also of note is that a breach of the Code of Conduct, mentioned earlier, may also constitute an act of corruption or other criminal offense under the 2017 Bill.

The Bill will create an Integrity Commission to supervise the administration of the provisions thereto and oversee the process of public financial declarations.

### **OMBUDSMAN BILL, 2017**

The proposed legislation for an Office of The Ombudsman represents a step forward in the establishment of a more open, fair, and responsive governance in The Bahamas. The Ombudsman's Office is needed to address maladministration in government and the grievances of the public as presently any complaint is made to the employer, who are responsible for the entity that committed the infraction. The Bill provides for a clear and easy means of seeking resolution if aggrieved, the recognition of citizen's rights to involvement in governance. The Ombudsman Office will reach across government offices and entities which were once perceived as protected entities.

## **PUBLIC PROCUREMENT BILL 2018**

Under this Public Procurement Bill, 2018 the public procurement processes in The Bahamas, which has been chided by the US State Department as “opaque,” will be standardised.

The Bill proposes to bring structure to a process that is long overdue for transparency on the bidding and procurement process.

The Bill would establish a Public Procurement Board that would review submitted bids and make recommendations to the Minister responsible for the awarding of contracts for supplies, works and services exceeding \$50,000.

The Procurement Bill also makes provision for debarment from certain privileges if recommended and where there is a “preponderance of evidence” that a person or contractor has failed to perform in accordance with the terms of a contract or has a history of failure to perform or there is unsatisfactory performance of a contract, that contractor can be debarred.

## **CONCLUSION**

As efforts to stem corruption and its negative effects proliferate worldwide, and The Bahamas is no exception, public participation in governance and the building of trust between the public, elected officials and the public service, is recognized as one of the cornerstones of a successful Nation.