PRESS STATEMENT
by
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Attorney General and Minister of Justice

On Tuesday 28th November 2001 Mrs. Justice Anita Allen handed down a ruling in the Financial Clearing Corporation case in which Her Ladyship ruled that certain powers specified in the Financial Intelligence Unit Act 2000 were unconstitutional. The powers previously exercised by the Financial Intelligence Unit are the power to require the **production** of banking information, and the power of the FLU to impose a three (3) day **administrative** freeze and a further five (5) day **administrative** freeze upon any bank accounts or funds suspected of being the proceeds of crime, without the need to obtain a court order, in advance.

The basis of the ruling seems to be that the power to order the production of banking information or to freeze suspected funds is a **Judicial** power that ought only to be exercised by a Judge of the Supreme Court.

It must be emphasized that the other powers of the Financial Intelligence Unit are not in any way affected or limited by the ruling of the learned Judge. The power for the FIU to receive Suspicious Transactions Reports, to analyze and to disseminate such information to the police and to other FIUs are unaffected by the Court's ruling. The legal duty placed upon financial institutions in The Bahamas to report suspicious financial transactions, money laundering and other proceeds of crime to the FIU remains unaffected by the ruling. The core principle of the new legal framework for financial services, namely, **the duty to report suspicious transactions,** is unaffected by the ruling.

Notwithstanding the above, the powers to require the production of information for the purposes of investigative analysis and to place an administrative freeze on suspect funds are very important tools in this age of electronic money transfers that can occur at the speed of pushing a button on a computer keyboard.

The government has certain views upon this matter and as a result intends to launch an Appeal against the ruling, which it intends to pursue vigorously.

In the meanwhile expedited legal mechanisms will be put in place in consultation with the Chief Justice to enable the Financial Intelligence Unit to comply with the law as it has been stated until such time as there is a ruling on the matter from a higher court.

The FIU will be enabled, thereby, to continue to obtain ex parte production and freezing orders, during the conduct of the Appeal.

It is important to note that the ability to obtain production and freezing orders in the absence of alerting the owner of suspect accounts was not challenged or referred to in the judgment. What was successfully challenged was the previous ability of the FIU to do these things without a prior court order.

The ability of the FIU to act upon information, to obtain the production of information, or to cause suspect bank accounts to be frozen has not been prevented by the ruling; only the methodology by which these matters may be effected has been changed. A prior court order will now be required. This will slow down the process, but will not prevent the FIU from performing its essential function of being the watchman over the financial services system in The Bahamas, or from providing international cooperation to other Foreign FIUs. The FlU will continue to have the ability to give international cooperation to other FIUs.

We are satisfied that the legal framework governing the provision of financial services and the prevention of money laundering will continue to function. Any financial institution that receives a Notice indicating the interest of the FIU in any account will at the very least behave very cautiously in their dealings with the suspect account holders pending the receipt of a Court Order- having regard to the fact that the laws against “Tipping off’ and alerting any suspect in a money laundering investigation are still very much in force and are entirely unaffected by the ruling.

Financial institutions are still obliged by Law to follow, apply and enforce the anti-money laundering guidelines that are about to be issued by the FIU and to make Suspicious Transactions Reports to the FIU.

Those persons who feel that the ruling will derail the fight against money laundering and the operations of the Financial Intelligence Unit are sorely misguided and wrong.

Those persons who see this ruling as somehow rolling back the legal reforms to the banking system made in December of last year, and implicitly criticizing the new legal requirements, are very wrong in their interpretation both of the ruling, and in their view about its effect upon the operations of the FIU.

It is important to note that the court also found that the “right” to the privacy of banking information is not a fundamental right that is protected by the provisions of the Constitution. Much of the criticism of the legal reforms had to do with the so-called right of privacy of banking information.

In the ruling Her Ladyship merely asserted the fact that judicial powers, as she conceived them, can only be exercised by the judiciary. Nothing in the judgment sought to challenge the essential elements in the new legal framework governing the provision of financial services and the policing of the system. Any assertion by some persons that this was the effect of the ruling, and that, in effect, The Bahamas is open for business to money launderers, is a fruitless exercise in misguided thinking.