

SPEAKING NOTES
FOR THE HONOURABLE MINISTER OF FINANCE
ON THE INSURANCE BILL, 2016

Delivered in the House of Representatives on

Friday February 2nd 2018

Madame Speaker, we are here today to enact new Insurance legislation. I am certain that we all agree that new legislation to regulate and supervise the insurance industry effectively is long overdue. The Bill which is before you today represents many years of analysis, research and consultation with various stakeholders supplemented by long hours of deliberation by the Joint Select Committee of Parliament which was appointed to consider and report on the Insurance Bill 2016 and I will speak to this again later on in my speech.

It is beyond disappointing that even with the CL Financial/ CLICO crisis of 2009 that our insurance sector is still being governed by woefully deficient legislation which dates back to 1980 and which cannot address adequately the current emerging risks in today's insurance sector. By contrast, the banking and securities sectors are governed by more modern legislation as the Financial Institutions Act and the Securities Act were enacted in 2008 and 2012, respectively. However, for effective supervision and surveillance the industry needs

to operate under relevant legislation. The financial sector is only as strong as the weakest link.

Madame Speaker, Trinidad and Tobago is widely regarded as the financial centre of the Caribbean and yet our insurance legislation is outdated and lags behind our Caribbean counterparts. Jamaica, for instance underwent major institutional and legislative reform following its 1990 financial crisis which cost that country approximately 30% of its GDP. It is therefore instructive for Trinidad and Tobago to learn from its own costly crisis and enact the appropriate legislative framework for the insurance industry.

In 2009 the Central Bank was successful in fast tracking specific amendments to the Insurance Act 1980. The amendments were extracted from the proposed insurance legislation at the time and enacted in order to treat urgently with issues in the insurance industry.

The major issues were:-

- a. Enhancement of the provisions governing assets to be placed in the statutory fund by requiring insurance companies carrying on long term insurance business and / or motor vehicle insurance business to have sufficient assets in their statutory fund to meet their policyholder liabilities as established in their quarterly returns.
- b. Strengthening of the provisions to afford the Central Bank access to the premises of an insurance company if the Bank is prevented from physically entering the premises.

- c. Replacement of the intervention process which was time consuming and hindered the effectiveness of the regulatory process. The process was replaced with a more flexible regime which allows the Central Bank to issue compliance directions.
- d. Replacement of the costly and time consuming process of judicial management with the suspension process which facilitates remedial regulatory action.
- e. Permitting the Central Bank to share information with other regulators both within Trinidad and Tobago as well as other jurisdictions where insurance companies registered in Trinidad and Tobago also conduct business.

Madame Speaker, post 2009, efforts continued in the formulation of a completely new Bill rather than piecemeal amendments to the current Insurance Act.

For example:-

- The Insurance Bill, 2011 was laid in Parliament on 25th November 2011 and lapsed on 26th June 2012.
- The Insurance Bill, 2013 was laid in Parliament on 28th May 2013 and lapsed on 10th July 2013
- The Insurance (No. 2) Bill, 2013 was laid in Parliament on 19th November 2013 and lapsed on 30th July 2014
- The Insurance Bill, 2015 was laid in Parliament on 21st April 2015 and lapsed on 17th June 2015

- And finally the Insurance Bill, 2016 was introduced in the House of Representatives on 1st July 2016. It represents the product of the previous Parliament's work, including the work of Joint Select Committees. This Bill is now before the House following a review of the Joint Select Committee.

Madame Speaker, the existence of a sound insurance market will facilitate the financial goals of individuals as well as the business community by protecting the society's assets. The insurance and pensions industries are long-term investors in projects, businesses and the country's infrastructure and thereby facilitate sustainable growth and economic development. The assets of the insurance industry totals TT\$49.4 billion as at September 30th 2017 and accounts for approximately 33% of the GDP of Trinidad and Tobago. Assets under management for the pensions sector total TT\$51.4 billion and accounts for 34% of GDP. The combined assets of the insurance and pensions sector are of the order of TT\$100 billion dollars of which more than one third is invested in securities of the Government of Trinidad and Tobago. Consequently, the importance of the insurance industry is not only related to its size but also to its interconnectedness with other financial institutions and sectors of the economy. I would now like to point out a few major GAPS in the existing legislation, the Insurance Act 1980, that clearly demonstrate why new legislation is urgently needed.

- The current legislation does not require insurance companies to maintain adequate capital buffers for the risks on their balance sheets. In fact, insurance companies carrying on long-term insurance business are required to have share capital of a mere **\$3 million** which does not provide companies with the necessary buffers to withstand shocks or adverse circumstances. General insurance companies are required to have share capital of only **\$1 million**. This has not changed since 1980 and is unacceptable when in today's climate companies are holding millions and sometimes billions of policyholders' funds.
- The existing insurance legislation lacks adequate provisions to ensure the effective governance and risk management of insurance companies. There may exist significant deficiencies among our companies in their practices with respect to corporate governance and risk management systems. It is important that directors and management are required by law to fulfill their fiduciary obligations to protect policyholders' funds. The proposed legislation codifies a number of new responsibilities of the Board which represent minimum standards consistent with a higher duty of care expected of financial institutions.
- There are inadequate provisions in the law for the supervision of financial groups. Consolidated supervision of conglomerates is common place in most developed jurisdictions and facilitates the

sharing of information among supervisors of financial entities in the group to ensure effective oversight of the group as a whole. Consolidated supervision requirements can be found in the legislation of many jurisdictions including the USA, Canada, Australia, the UK and Jamaica and even in the local Financial Institutions Act, 2008 which governs the local banking sector. As you can see, we clearly need to upgrade this legislation as a matter of urgency.

Madame Speaker, well before the 2008 Global Financial Crisis, the IMF/World Bank Financial Sector Assessment Program (FSAP) missions in 2005 forewarned about the risks posed by the rapid structural changes in Trinidad and Tobago's financial system and the shortcomings in our legislative and regulatory framework. Quoting from the 2005 IMF FSAP report:

“..... contractual savings sector has replaced banking as the single largest segment and a few regionally active, mixed activities conglomerates have become dominant.”

“Sharp reversals in equity prices may adversely affect the insurance and pension sectors. Rising levels of connected exposures in some conglomerates have increased the risk of contagion.”

“Given a regionally active, complex financial system, the segmentation of the core legislative, regulatory, and supervisory framework suggests the urgency of reform in these areas. Changes are required to (i)

facilitate consolidated supervision and regulation of financial institutions, including their cross-border activities; and (ii) transform the supervisory structure, including financial reporting, into a more integrated and risk-based framework.”

“Critical gaps remain in the overall legal, regulatory and supervisory structure”

It has been thirteen years since that IMF/FSAP Report and one financial crisis later; these legislative gaps as identified in the IMF/FSAP Report still remain. The Insurance Bill, 2016 will provide the Regulator with the authority required to properly supervise the sector and protect the interests of policyholders. In particular, there are seven critical aspects of this Bill that I wish to share with you. There are provisions in the Bill that are as follows:

1. The first critical component of the Bill intends to stem excessive risk taking and promote good governance and sound risk and capital management practices by management and boards of directors of regulated entities. By way of example,
 - The CEO and CFO must now sign a statement acknowledging the board of directors’ and management’s responsibility for (a) preparing financial statements, (b) maintaining adequate internal controls, (c) establishing and maintaining adequate procedures for the settlement of claims, and (d) complying

with prudential criteria Regulations and Guidelines issued by the Central Bank.

- In the Bill it is also mandatory to have an Audit Committee. The Audit Committee will comprise at least three directors, a majority of whom must be independent, and must include one financial expert.
- The Bill also imposes restrictions on an insurer in respect of the credit exposures that it can, directly or indirectly, incur to any person, including a borrower group, related group, connected party or any connected group. It also requires that the board of directors of an insurer must ensure that there are policies and procedures established for transactions with connected parties and employees.

2. The second critical element of the Bill seeks to ensure robust balance sheets and adequate capital buffers are held to cater for unanticipated losses. Owners or shareholders must have a stake in the outcome and have “skin in the game” so to speak. Currently, there are companies doing billions of dollars in business and they are only required to have:

- in the case of a life insurance company, \$3 million dollars in capital; and

- in the case of a general insurance company, \$1 million dollars.

Now, under the Bill:

- Insurance companies and financial holding companies will be required to hold adequate capital and adequate and appropriate forms of liquidity.
 - Insurance companies which carry on insurance business through overseas branches, will be required to maintain and hold adequate assets to support their liabilities to foreign policyholders.
3. The third critical aspect of the Bill will impose standards of market conduct on insurers and their sales people in dealing with the public and give the Regulator the power to revoke an insurer's registration where claims practices are found to be unfair or there are unreasonable delays in settlement.
 4. The fourth critical element of the Bill is the objective to expand the range of tools for preventative and **prompt corrective action** and triggers for intervention by the Central Bank.
 - The Regulator must take intervention action when an insurer's regulatory capital ratio falls to a certain critical level or below. That critical level is set at 70%. This mandatory intervention

action comprises giving the insurer 60 days to remedy the situation, failing which the Board of the Central Bank can suspend the company or direct the Bank to apply to the Court for a judicial manager or for winding up of the company.

5. Fifthly, the Bill provides an effective deterrent for breaches of the legislation via a regime of improved fines and penalties.
6. Sixthly, the Bill has critical provisions for the restructuring of business groups that engage in financial and non-financial activities and would require the formation of a financial holding company to hold exclusively the regulated financial entities in the group. This will ensure greater transparency within the conglomerate structure and protect the regulated entities from contagion and other group risks.
7. And, the seventh critical aspect of the Bill seeks to allow the Regulator to deal with the re-emergence of systemically important conglomerates in the region by providing:
 - power to approve and deal more clearly with the fitness and propriety of ultimate controllers
 - power to require the establishment of financial holding companies in order to protect licensees from group risk and

contagion and to separate financial from the non-financial entities in the conglomerate structure;

- limits on related-party transactions;
- requiring that mergers and acquisitions be first approved by the Central Bank;
- oversight over overseas subsidiaries (removing the need for undue reliance on the regulators of other jurisdictions who may not have the ability, due to resource constraints or otherwise, to deal with these operations effectively); and
- providing for minimum capital at the level of the holding company in addition to minimum capital at the level of the insurance subsidiary as well as consolidated financial reporting;

Madame Speaker, I want to touch briefly on the Regulations to accompany the Bill. The Regulations to the Insurance Bill, 2016 will help strengthen our ability to ensure the safety and soundness and resilience of the insurance sector. More specifically, they introduce significant improvements to ensure that companies maintain adequate levels of assets, capital and buffers to withstand risks that may befall them. Regulations to the Bill include:

1. Risk-Based Capital: This is, by far, the single most important

regulatory change in the Bill. It will require many insurers to hold, in addition to the new minimum stated capital of \$15 million, additional capital commensurate with their risk profile and will result in hundreds of millions of dollars in additional regulatory capital. Every insurer will be required to maintain a regulatory capital ratio of at least 150 per cent.

This risk-based capital regime, however, is heavily dependent on the integrity of the insurer's actuarial reserves. An understatement of the actuarial reserves will compromise the safety and soundness of the institution. This brings me to my next point.

2. Actuarial Valuation Methodology: The current legislation does not define a common approach or methodology for valuing a company's obligations to its policyholders which has resulted in variation across the sector. To address this, the new legislation introduces the Caribbean Policy Premium Methodology (CPPM) to harmonize the valuation of liabilities for long-term insurers. The Central Bank has conducted a number of awareness and technical training sessions to fully apprise stakeholders of the requirements and has run five quantitative impact assessments of the new capital regime.

3. Financial Condition Reports: An important element of governance and the risk management process of an insurer is the ability to stress test its operations using extreme but plausible scenarios. Done properly, the process should highlight a company's vulnerabilities and the potential impact on its capital position allowing appropriate action to be taken to limit any undue risk exposures.

The financial crisis has shown that non-traditional business activities and embedded financial guarantees can have a detrimental impact on insurance companies. Those activities can be stress-tested. The new legislation will require companies to perform a number of tests that will stress their balance sheets to determine their resilience. The Financial Condition Report (FCR) generated from this exercise will be required as a part of companies' internal risk management.

Armed with the information gleaned from the Financial Condition reports, the Central Bank will have the power to direct an insurer to increase its capital in line with its risk profile. This reduces the possibility of moral hazard due to the failure of the registrant's capital to absorb losses which would then be borne out of the public purse.

SUMMARY OF PROCEEDINGS BEFORE THE JOINT SELECT COMMITTEE OF PARLIAMENT

I will now discuss the work of the Joint Select Committee.

In February 2017, the House of Representatives and the Senate passed resolutions, dated Friday February 3, 2017 and Friday February 7, 2017, respectively, establishing a Joint Select Committee “*to consider and report on a Bill entitled the Insurance Bill, 2016 and... to report on or before March 17th, 2017*”. The Committee comprised members of the Government and Opposition benches from both Houses of Parliament.

The Committee, cognizant of the need for transparency and consultation, decided that stakeholders, including members of the public, would be invited to submit comments on the Bill. It was also decided that key stakeholders such as the Insurance Brokers Association of Trinidad and Tobago (‘IBATT’), the Association of Trinidad and Tobago Insurance Companies (ATTIC) and the Central Bank of Trinidad and Tobago would be engaged directly.

Accordingly, the Committee caused notices to be published in the daily newspapers, Parliament’s website and social media in February 2017 calling on the public to submit comments on the Bill. The Committee received written responses from members of the public. The

Committee also requested and received written submissions from Lloyd's of London, ATTIC, IBATT and the Central Bank. Based on volume of comments, it was necessary to examine the submissions on a clause by clause basis.

At the fourth and fifth meetings of the Committee, ATTIC and IBATT made presentations outlining their comments and concerns regarding the Bill and provided recommendations to address same. Subsequently, at its sixth meeting, the Committee met with representatives of the Central Bank, who provided comments on submissions made by ATTIC, IBATT and Lloyd's of London. A decision was taken thereafter to share the Central Bank's submissions with ATTIC and IBATT to allow these associations an opportunity to comment on Central Bank's submissions.

As Chairman of the Committee, let me take this opportunity to thank the stakeholders and members of the public for their submissions and invaluable engagement on the issues surrounding the Bill. I would also like to take the opportunity to thank the Chief Parliamentary Counsel, as well as the officers of the Office of the Attorney General and Legal Affairs, who were present and lent their expertise during the Committee's consideration of the Bill.

The Committee conducted its clause by clause review of the Bill and the stakeholder submissions at its eighth, ninth and tenth meetings.

Following a comprehensive review of the submissions of stakeholders as well as discussions with the supporting technical team, the Committee identified several aspects of the Bill requiring deeper consideration and possible adjustment. These areas included questions regarding-

- (a) whether the existing definitions in Clause 4 of the Bill should be amended in the interest of clarity and whether new definitions should be introduced ;
- (b) amendments to provisions concerning the fines and penalties as well as whether offences ought to be classified as summary, hybrid or indictable;
- (c) consequential amendments to the Bill arising out of the enactment of the Tax Information (United States of America) Act 2017 (“**TIEAA**”);
- (d) the ability of brokers to negotiate and procure insurance on behalf of their clients directly from a foreign insurance company;
- (e) the appropriate ratio of local and foreign assets in which insurance companies are allowed to invest;
- (f) the procedure for allowing foreign adjusters to conduct business in Trinidad and Tobago; and
- (g) whether clause 254 which deals with offences should be amended to avoid strict liability offences.

Madam Speaker, in addition to the areas I have just highlighted, the Committee also took the opportunity to address typographical and cross-referencing errors which are not uncommon in draft legislation as intricate and complex as this Bill.

I now propose to deal with some of the significant amendments to the Bill recommended by the Committee.

SIGNIFICANT AMENDMENTS RECOMMENDED BY THE COMMITTEE

1. New and Amended Definitions in Clause 4 of the Bill

- The definition of “annuity contract” was amended to avoid ambiguity
- The definition of “control” was amended to provide consistency with Financial Institutions Act (**FIA**)

2. Classification of Offences as Summary, Hybrid or Indictable

- Statutory offences are classified as indictable, summary or hybrid offences. Hybrid offences can be tried either way, that is, either summarily or indictably. Indictable offences normally have higher penalties than summary offences. Generally, offences are

made indictable either because they are of such exceptional gravity or because other reasons, such as the anticipated complexity of the issues, make them unsuitable for summary trial. The trend has been to reserve “indictable only offences” for the most serious circumstances and most new offences are triable either way or summarily. However, the decision as to the type of offences which should be created ultimately falls within Parliament’s power to make policy when enacting law.

- The Bill contains offences that run across the spectrum of severity and complexity. In this regard, a tiered approach was adopted in fixing the manner in which offences will be tried. Offences that are lesser in gravity can readily be tried summarily while more grievous offences will be tried indictably. Offences falling in the middle of the spectrum have been addressed using the hybrid model described above. Furthermore, certain offences which were summary are now triable on indictment or on a hybrid basis.
- In some instances, there were no express provisions in the Bill regarding the manner in which some offences will be tried. This was corrected.

3. Amendments to the Bill Consequent on the Enactment of the TIEAA

As a result of the passage of the TIEAA, certain consequential amendments were made to the Bill. These include provisions allowing the:

- Central Bank to share information with the Board of Inland Revenue (**Clause 16(2)**);
- Inspector to issue compliance directions for a breach of the Guidelines to give effect to the Inter-Governmental Agreement signed between the Government of Trinidad and Tobago and the Government of the United States of America (**Clause 155(1A)**); and
- Central Bank to issue Guidelines to give effect to the TIEAA and to issue directions to persons who fail to comply with such Guidelines (**Clause 278(A)**).

4. The Appropriate Ratio of Local and Foreign Assets in which Insurance Companies Are Allowed to Invest

- The requirement for insurers to match liabilities with a specific percentage of local assets is historically a policy position of the Government to encourage local investment. The maximum

permissible share of foreign assets permitted by the current Insurance Act of 20% has been the status quo for many years.

- There are provisions within the proposed Insurance (Capital Adequacy) Regulations whereby insurers are required to hold additional capital as a buffer against foreign exchange mismatch risks.

- As such, the Committee recommends that:
 - the percentage of foreign assets in which an insurer can invest be increased from 20% to 30% (**Clause 85(1)**); and
 - where liabilities for a policy is payable in a foreign currency, the insurer shall invest in foreign asset in that currency an amount not less than 70 of such foreign currency liability (**Clause 85(4)**).

5. Amendment to avoid strict liability offences

Formerly, Clause 254(2) provided that where a person contravened any provision of the Bill or a direction, requirement or measure of the Central Bank, its Board or the Inspector, he or she commits an offence. This Clause did not make express provision for a requirement of intent or recklessness concerning the commission of the offence. The Committee therefore recommended that Clause 254(2) be amended to provide that this offence occurs where the person acts “knowingly or recklessly”.

Madame Speaker, I wish to place on record my utmost gratitude to the Members of Parliament who served with me on the Joint Select Committee. Their active interest, interrogation, analysis and contribution have resulted in what I believe to be a refined piece of legislation, which I feel confident both Houses will have no difficulty in supporting.

Madame Speaker, in conclusion, I wish to emphasize that this Bill has been influenced by international best practice, lessons learnt in the wake of the financial crisis and is the product of a robust and exhaustive consultative process. It is hoped that the recent international financial crisis as well as the stresses in the local insurance industry have convinced everyone of the need for modern legislation to cope with a modern financial sector.

Madame Speaker, we can no longer afford to work with outdated, archaic legislation. We are seeking to correct the lacunae and deficiencies of the current legislation and invite Parliament to increase policyholder protection with this Bill.
