

## Replies to Questions – HOR – Wednesday Nov 17, 2021

### Question No. 10 to the Minister of Finance

*Will the Minister inform the House whether it is the intention of the Government to extend indemnification to Directors of State Enterprises?*

### Reply

It is a sine qua non that corporate directors and officers may face potential personal liability for claims made against them in their roles for the companies they serve.

In many jurisdictions, companies provide in their articles of incorporation that a director does not have monetary liability to the company except in cases of certain extreme misconduct, such as breaches of the fiduciary duty of loyalty, bad faith conduct, intentional misconduct or violations of law, or transactions where the director derives an improper personal benefit.

It is standard practice, worldwide, for Corporations to indemnify any director or officer if he or she:

- acted in good faith
- acted in a manner believed to be in or not opposed to the best interests of the corporation, and,
- had no reasonable cause to believe that his or her conduct was unlawful, in the case of a criminal action or proceeding.

In fact, most companies' corporate bylaws or articles of incorporation contain indemnification and advancement provisions, especially when individuals are the target of claims after they have left the company, so that they can assert their rights of indemnification notwithstanding the arrival of new management or new ownership.

In the USA, by statute, the State of Delaware has established a minimum "*standard of conduct*" that, if met by a director or officer, permits a state-owned corporation to indemnify such director or officer pursuant to a charter or bylaw provision. To benefit from such indemnification, the director must act (1) in good faith, (2) in a manner believed to be in or not opposed to the best interests of the company, and (3) with respect to any criminal action or proceeding, he or she must have no reasonable cause to believe that his or her conduct is unlawful.

The purpose of this policy is to ensure that any indemnity provided by State Owned Corporations to an officer of a SOC seeks to ensure that Officers who genuinely require an indemnity are protected, which as far as is practicable should replicate the private sector practice of granting a deed of indemnity to directors and officers

to enable them to manage their potential exposure to personal liability; and supports the recruitment and retention of high-quality directors and CEOs of SOCs.

The practice is also well established in the public sector and private sector in the UK and in the Guidance published by Her Majesty's Treasury entitled "**Managing Public Money**" on how to handle public funds, last updated in June 2021, in Annex A5.4.19 of that document, with respect to directors of Government owned companies, it states under the heading "standard indemnity for board members"

***The (UK) government has indicated that an individual board member who has acted honestly and in good faith will not have to meet out of his or her personal resources any personal civil liability, including costs, which is incurred in the execution or the purported execution of his or her board functions, save where the board member has acted recklessly.***

Additionally, in Trinidad and Tobago, several State Enterprises provide indemnity insurance in accordance with their By Laws, as follows:

*Trinidad Petroleum Holdings Limited (TPHL) and Subsidiaries, Education Facilities Company Limited and National Enterprises Limited*

Section 10 of the By-Laws of TPHL and its Subsidiaries states:

Subject to section 101 of the Act, except in respect of an action by or on behalf of the Company to obtain a judgment in its favour, the Company shall indemnify a director or officer of the Company, a former director or officer of the Company or a person who acts or acted at the Company's request as a director or officer of a body corporate of which the Company is or was a shareholder or creditor, and his personal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of such company, if-

- (a) he acted honestly and in good faith with a view to the best interests of the Company; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

Similar provisions are found in the Articles or Bylaws of the Trinidad and Tobago National Petroleum Marketing Company Limited, the National Gas Company of Trinidad and Tobago Limited and the Point Lisas Industrial Port Development Corporation Limited, among many other state enterprises

State Enterprises in Trinidad and Tobago are incorporated under the Companies Act Chapter 81:01 which provides detailed guidelines for Board of Directors on its role and indemnification. Sections 99 – Duty of Care and 101 – Indemnifying Directors of the Companies Act states that:

(1) Every director and officer of a company shall in exercising his powers and discharging his duties -

(a) act honestly and in good faith with a view to the best interests of the company; and

(b) exercise the care, diligence, and skill that a prudent person would exercise in comparable circumstances.

Section 101 (1) states that except in respect of an action by or on behalf of a company or body corporate to obtain a judgment in its favour, a company may indemnify –

(a) a director or officer of the company;

(b) a former director or officer of the company; or

(c) a person who acts or acted at the company's request as a director or officer of a body corporate of which the company is or was a shareholder or creditor.

This Section does not apply unless the director or officer to be so indemnified-

(a) acted honestly and in good faith with a view to the best interests of the company; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

In summary, each request for an indemnity for directors of state corporations is considered on its merits, on a case-by-case basis. There is nothing extraordinary or unusual about this and this has been the practice in Trinidad and Tobago for over 30 years.

**Question No. 11 to the Minister of Finance:**

*Will the Minister inform the House what are or will be the specific measures to be taken by the commercial banking sector to support mitigation requests made by Small, Micro and Medium Enterprises (SMMEs) during the Covid-19 pandemic?*

**Reply:**

A worldwide survey of SME lending indicated that although financing has improved since the 2008 Global Financial Crisis, small businesses have experienced considerable difficulty. Micro industries and start-ups with less credit history or tangible collateral reported greater difficulty accessing mainstream financial services. Further, less sophisticated institutional frameworks and shallow financial markets limit financing sources and hamper financial inclusion. Greater regulatory burdens also often induce banks to favour larger, more well-known firms when allocating funding.

The Member for Mayaro has a habit of asking Ministers to make *speculative* statements on the policies of the Private Sector.

However, this notwithstanding, I can provide an indication of measures taken by both the Central Bank and the Government to support SMEs during the Covid-19 Pandemic.

In addition to relief measures in 2020, such as the reduction of lending interest rates, the Central Bank has extended further COVID-19 relief measures to the banking sector effective October 1, 2021. The first measure allows commercial banks, for a period of one year commencing October 1, 2021, to restructure commercial loans more than twice over the life of the original loan, and mortgages more than twice over a five-year period, without a downgrade in the asset classification to non-performing status.

In the second measure, the Central Bank agreed to suspend the calculation of the mortgage market reference rates for a 2-year period commencing October 1, 2021, to allow banks greater flexibility in lowering their mortgage rates outside the anniversary date and more than once a year. These measures will provide some relief to individuals and SMEs. (*see CBTT letter dated September 22, 2021, attached*).

On September 13, 2021, the Central Bank also issued Simplified Due Diligence (SDD) Guidance for a Basic Banking Account to the banking sector. The guidance is intended to provide easier access to individuals and microenterprises (for example sole traders) whose transactional limit is \$84,000 or less annually to obtain a basic

banking account. One of the key requirements under the SDD guidance is that persons provide only one form of valid photo identification for this account, compared to the two forms of valid photo identification that is normally requested. (see *CBTT letter dated September 13, 2021, attached and the Addendum*)

Further, recommendations provided by the Central Bank that may contribute to a structured approach to resolving barriers to financial access for small businesses include:

- (i) Processes related to small businesses could be simplified while ensuring that institutional risk management criteria are met.
- (ii) The banking sector can also improve financial inclusion for MSEs by improving service innovation policies that include greater digital banking access and making a wider suite of services available to these entrepreneurs.
- (iii) Greater advisory support and training programmes can improve the capacity of MSEs to meet bank reporting requirements. One such example is the Republic Bank Limited (RBL) SME toolkit, which was supported by the International Financial Corporation, the private sector arm of the World Bank. The toolkit covers themes such as accounting, finance, human resources, international business, legal insurance, marketing, sales, operations, and technology. The platform also offers direct support through interactive features which promote the formalisation of business procedures and access to financing.
- (iv) Regulators can also contribute to mitigating the challenges associated with MSE access to banking services by making regulatory amendments that incentivise small enterprise lending (credit supply measure) or simplify compliance measures for banks that report on MSEs (credit demand measure). Domestically, the Basel II/III amendments promulgated in August 2020 include a small business enterprise risk-weight factor of 75 per cent, which reduces the amount of capital that regulators require banks to hold for these exposures.
- (v) Enhanced credit information systems and access to collateral regime reform can reduce the transaction costs which financial institutions incur in extending small enterprise credit. A comprehensive credit infrastructure with appropriate legislative amendments and resources can facilitate a wider range of secured transactions.

In addition to the above it must be noted that Government support to improve access to financing for SMEs is longstanding and has primarily been in the form of financing facilities. The following details support currently being provided by the government to SMEs.

#### Gateway to Trade (G2T) Programme

The Ministry of Trade and Industry in collaboration with the Trinidad and Tobago Coalition of Services Industries (TTCSI) has introduced the Gateway to Trade (G2T) Programme, a nine (9) month market readiness accelerator programme targeted to assist SMEs in four (4) service sectors. This accelerator programme is focussed on business and professional services, information, and communications technology (ICT), energy businesses, and MICE Tourism sectors. The Programme includes capacity building, training and SME coaching, market and sector research, export plan development, export promotion initiatives and sector strategy development.

### Tax Breaks for Small and Medium Sized Enterprises (SMEs)

Section 3 of the Corporation Tax Act was amended to reduce the corporation tax rate for SMEs listed on the Trinidad and Tobago Stock Exchange for the first ten years. The following corporation tax rates applies:

- a) Zero percent for the first five years from listing on the Trinidad and Tobago Stock Exchange; and
- b) Fifteen percent for the next five years immediately following the period referred above.

### Export Booster Initiative

In order to address the issue of enhancing market access for SMEs, the Government has launched an Export Booster Initiative (EBI). The Ministry of Trade and Industry in collaboration with the Trinidad and Tobago Manufacturers' Association and ExporTT aims to increase the value of select manufactured goods from TT\$2.7 billion in 2019 to TT\$5.4 billion by 2024.

### Green Manufacturing

Under this initiative, the GoRTT is promoting the greening of local manufacturing and encouraging exporters to incorporate new greener inputs in their manufacturing process. More support for Green Industries is an opportunity for Trinidad and Tobago to achieve diversification, sustained growth and build economic resilience. Participating firms will benefit from technical and financial assistance to transition to biodegradable and more environmentally friendly packaging practices and production. The initiative will target exporting firms who are transitioning into sustainable 100% recyclable packaging, as well as companies interested in investing in green packaging manufacturing.

## Grant Fund Facility

The Grant Fund Facility provides new opportunities to develop enterprises (SMEs) to engage in the production of high value-added products and services that can compete in export markets; and foster the economy's diversification thrust.

This facility is administered by ExporTT Limited (the national export facilitation agency) and assists businesses in the following eight (8) designated sectors, with the acquisition of new capital requirements/expenditure:

1. Manufacturing
2. Agriculture and Agro-Processing
3. Financial Services
4. Maritime Services
5. Creative Industries
6. Software Designs and Applications
7. Fish and Fish Processing
8. Aviation Services

Through this facility, local businesspersons can access individual grants from the fund up to a maximum of \$250,000 per beneficiary to finance 50% of the cost of the acquisition. (The Grant does not cover working capital, land and building costs, and installation costs).

## Business Continuity and Access to Capital (COVID-related support to SMEs)

In response to the COVID-19 pandemic, NEDCO also administered the Entrepreneurial Relief Grant (ERG) on behalf of the Ministry of Finance in mid-2020. Grant funding of \$20,000 under the ERP was made available to firms earning less than \$1,000,000 in annual revenues to help cover business-related expenses. Unregistered firms were allowed to apply, but funds would only be disbursed to registered companies.

An initial Loan Guarantee Programme with resource backing of \$300 million was previously offered from June to December 31, 2020, to SMEs at the country's four largest commercial banks.

Phase 2 of this Loan Guarantee Programme was designed and approved in 2021 at the request of the SME sector who experienced difficulty in accessing loans under Phase 1, primarily because of their difficulty in meeting their statutory obligations.

The value of the Phase 2 programme is \$196.0 million. In this Phase, loans will be made available to SMEs whose annual gross revenues are between \$500,000 and \$25 million. Further enhancements have also been made, including:

- (i) the Government-guarantee has been extended to 100 percent of the loan amount.
- (ii) the repayment period has been increased from 5 years to 7 years, inclusive of a 24-month moratorium on principal payments from date of disbursement.
- (iii) the purpose of the loan has been extended to purchase fixed assets, except the purchase of residential property and financial assets/products, in the case of the purchase of goods and vehicles is limited to those items which are being used specifically for the Small Business.
- (iv) in recognition of the administrative difficulties faced by SMEs as a result of the pandemic, the Government has agreed to relax the immediate requirement for SMEs to be up to date with their payments to the Board of Inland Revenue and the National Insurance Board. SMEs in the new loan programme will now be required to be up to date only for the year ended December 31, 2018; however, they must undertake to settle all outstanding statutory obligations for 2019 and 2020 within one year of the disbursement of the facility or make appropriate arrangements with the Board of Inland Revenue and other Statutory Authorities to settle their obligations, failing which the loan must be repaid in full within 2 years.

Highlighted in the 2022 Budget Statement, Government will introduce full loan guarantees for SMEs; extend coverage to the purchase of fixed assets (excluding purchase of residential property and financial assets/products); increase the repayment period from 5 to 7 years; and allow a 24-month moratorium on principal payments which should augur well for the uptake of the SLF going forward.