



**THE COMMISSION OF ENQUIRY**

**INTO**

**THE FAILURE OF CL FINANCIAL LIMITED, COLONIAL LIFE INSURANCE COMPANY (TRINIDAD) LIMITED,  
CLICO INVESTMENT BANK LIMITED, BRITISH AMERICAN INSURANCE COMPANY (TRINIDAD) LIMITED,  
CARIBBEAN MONEY MARKET BROKERS LIMITED AND THE HINDU CREDIT UNION CO-OPERATIVE  
SOCIETY LIMITED**

***The Hon. Sir Anthony David Colman: Commissioner***

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**HCU Report**

**Dated 16 July 2014**

**by**

**The Hon Sir Anthony Colman**

## **A: Introduction**

- A1 By an Instrument of Appointment dated 17 November 2010 H.E. Professor George Maxwell Richards, TC, CMT, Ph.D, President of Trinidad and Tobago, appointed The Hon. Sir Anthony Colman as Commissioner under Section 2 of the Commissions of Enquiry Act. Chap. 19:01, to enquire into the failure of CL Financial Ltd, Colonial Life Insurance Company (Trinidad) Limited, Clico Investment Bank Ltd, British American Insurance Company (Trinidad) Ltd, Caribbean Money Market Brokers Ltd (collectively the “CLICO Companies”) and the Hindu Credit Union Co-operative Society Ltd and specifically into (i) the circumstances, factors, causes and reasons leading to the January 2009 intervention by the Government of Trinidad and Tobago for the rehabilitation of the CLICO Companies and (ii) the causes, reasons and circumstances leading to the deterioration of the financial condition of the CLICO Companies and the Hindu Credit Union (“HCU”), which threatened the interest of depositors, investors, policy holders, creditors and shareholders of those companies in accordance with Term of Reference attached to this Report at Appendix A.
- A2 References in this Report to “the Commissioner” and “the Commission” refer to Sir Anthony Colman.
- A3 Due to the very substantial number of documents in evidence and the large number of potential witnesses, the preparation for the First Procedural Hearing held on 11 March 2011, occupied 114 days and the preparation for the First Evidence Hearing on 29 June 2011 occupied a further 110 days to

the effect that the hearings commenced about 8 months after the date of appointment of the Commissioner.

A4 The Commission held all its hearings at Level 2, Winsure Building, 24-28, Richmond Street, Port of Spain. Its administrative centre, the Secretariat, under the management of the Secretary to the Commission was located at the same address.

A5 In order to conduct its work in the most efficient and practical manner, the Commissioner decided at an early stage to separate the work necessary for that part of the Report relating to the CLICO Companies from that part relating to HCU, there being very little overlap between the critical issues raised by each. Consequently, evidence and submissions relating to the CLICO Companies were heard on separate days from those on which HCU evidence was heard with the exception of 2 May 2013 when a witness was called from the Institute of Chartered Accountants of Trinidad and Tobago ("ICATT") who dealt with matters relevant to both HCU and CLICO.

A6 Whereas it had at first been the Commissioner's intention to issue a Report covering both the CLICO Companies and HCU, it was impracticable to work simultaneously on both parts of the Report with the consequence that one part was going to be completed before the other. Since there was no good reason why the completed part should be held back to await completion of the other part, it was decided to issue the completed part as soon as it was finished as a separate Report. The decision as to which Report should be written first was conditioned by the availability of support for the work of the Commission from Counsel to the Enquiry.

- A7 In the event, the production of the Report on HCU in priority to that on the CLICO Companies proved to be the more economical course.
- A8 Out of the total number of days on which the Commission heard evidence and/or submissions, namely 85 days, it heard evidence and/or submissions relating to HCU on 27 days.
- A9 These were 27-28 July 2011; 10-18 May 2012; 8–18 June 2012; 9–13th July 2012 , 22–24th October 2012 and 2nd May 2013:- See Appendix B
- A10 Following completion of the hearings, the Commission sent “Salmon letters” to a number of individuals warning them that they might be the subject of adverse criticism in the Report and inviting responses to the proposed matters of criticism. All such letters had been sent by 8 April 2013 and all responses were received by 23 May 2014. The responses have been fully considered in preparing this Report.
- A11 This Report on HCU does not provide an answer to the questions raised in Paragraph 1(vi) of the Terms of Reference. In order to deal fully and sufficiently with that question the Commission would have had to investigate and review the progress and work of the Liquidator after his appointment. This would have involved a considerable addition to the work involved in producing the Report and would have caused considerable delay in finalising it.
- A12 The Secretary to the Commission was Judith Gonzalez.
- A13 Counsel to the Commission, instructed by the Attorney General, were Peter Carter QC, Edwin Glasgow QC, Gerald Ramdeen, Marion Smith McGregor,

Shankar Bidaisee, Varun Debideen and Celeste Jules who was a member of the team until June 2012. In March 2012 Jade Hillaire was appointed to provide legal assistance to the Enquiry.

A14 The Commission also had the benefit in the capacity of an adviser of the expertise of Ian Marshall an accountancy expert in the field of insurance and reinsurance.

A15 The Central Bank of Trinidad and Tobago (CBTT), Commissioner for Co-operative Development (CCD), Ernst and Young Services Limited (EY), Harry Harnarine, Hindu Credit Union Members Group (CRMG), Karen Nunez-Tesheira, Liquidator Hindu Credit Union Co-operative Society Limited (LHCU), Keith Maharaj, and Ministry of Finance (MOF) were made Parties to the Enquiry and were represented by those Counsel and Attorneys indicated in Appendix C.

A16 The Scotiabank Trinidad and Tobago, Gordon James, Intercommerical Bank, Chanka Seeterram and Gayndlal Ramnath, although not made Parties, were permitted to be represented by the Counsel and Attorneys as indicated in Appendix D.

A17 The Secretariat was initially provided with a staff of thirteen (13) persons but in January 2014 this was reduced to seven (7). A list of those persons who have served as Secretariat staff is at Appendix E.

A18 Apart from the persons already mentioned, the Commissioner wishes to express thanks to The Defence Force of Trinidad and Tobago, Trinidad and Tobago Police Service and The Industrial Court of Trinidad and Tobago.

- A19 In January 2011 the Commission issued an invitation to members of the public to make submissions. It received responses from twenty-eight (28) persons. The names of those persons are in Appendix F.
- A20 Work necessary for production of the Commissioner's Report on the CLICO Companies is currently under way and will be completed as soon as possible.



# TRINIDAD AND TOBAGO GAZETTE

## (EXTRAORDINARY)

VOL. 49

Port-of-Spain, Trinidad, Wednesday 17th November, 2010—Price \$1.00

No. 144

2189

APPOINTMENT OF THE COMMISSION OF ENQUIRY INTO THE FAILURE OF CL FINANCIAL LIMITED, COLONIAL LIFE INSURANCE COMPANY (TRINIDAD) LIMITED, CLICO INVESTMENT BANK LIMITED, BRITISH AMERICAN INSURANCE COMPANY (TRINIDAD) LIMITED, CARIBBEAN MONEY MARKET BROKERS LIMITED AND THE HINDU CREDIT UNION COOPERATIVE SOCIETY LIMITED

*(The Commissions of Enquiry Act, Chap. 19:01)*

IN ACCORDANCE with section 15 of the Commissions of Enquiry Act, Chap. 19:01, of the Laws of the Republic of Trinidad and Tobago, notice is hereby given that on the 17th day of November, 2010, His Excellency, Professor George Maxwell Richards, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago, in the exercise of the powers vested in him under section 2 of the said Act, issued the following Commission:

REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C.,  
C.M.T., Ph.D., President and Commander-in-Chief of the  
Republic of Trinidad and Tobago.

GEORGE MAXWELL RICHARDS  
*President*

Greetings:

To: SIR ANTHONY COLMAN, Q.C.

WHEREAS by section 2 of the Commission of Enquiry Act, Chap. 19:01 (hereinafter called “the Act”) it is provided, *inter alia*, that the President may whenever he shall deem it advisable issue a Commission appointing one or more Commissioners and authorizing such Commissioners or any quorum of them to enquire into any matter in which an enquiry would in the opinion of the President be for the public welfare:

And whereas the President on the advice of Cabinet has deemed it advisable and for the public welfare that a Commissioner be appointed to enquire into the failure of CL Financial Limited, Colonial Life Insurance Company (Trinidad) Limited, CLICO Investment Bank Limited, British American Insurance Company (Trinidad) Limited, Caribbean Money Market Brokers Limited and the Hindu Credit Union Cooperative Society Limited with a view to ascertaining why such events occurred and to make such findings, observations and recommendations arising out of its deliberations as the Commission may deem appropriate, and for this purpose to issue a Commission pursuant to the Act with the following terms of reference:

1. To enquire into:

- (i) the circumstances, factors, causes and reasons leading to the January 2009 intervention by the Government of the Republic of Trinidad and Tobago for the rehabilitation of Colonial Life Insurance Company (Trinidad) Limited, CLICO Investment Bank Limited, British American Insurance Company (Trinidad) Limited and Caribbean Money Market Brokers Limited (CMMB);

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APPOINTMENT OF THE COMMISSION OF ENQUIRY INTO THE FAILURE OF CL FINANCIAL LIMITED, COLONIAL LIFE INSURANCE COMPANY (TRINIDAD) LIMITED, CLICO INVESTMENT BANK LIMITED, BRITISH AMERICAN INSURANCE COMPANY (TRINIDAD) LIMITED, CARIBBEAN MONEY MARKET BROKERS LIMITED AND THE HINDU CREDIT UNION COOPERATIVE SOCIETY LIMITED—CONTINUED

- (ii) the legal and fiscal bases which informed the decision of the Government of the Republic of Trinidad and Tobago in January, 2009 to inject capital or funding into Colonial Life Insurance Company (Trinidad) Limited, CLICO Investment Bank Limited, British American Insurance Company (Trinidad) Limited and Caribbean Money Market Brokers Limited (CMMB); how that injection of capital was structured; and what policies, procedures and processes were used in the distribution of this capital or funding;
- (iii) the causes, reasons and circumstances leading to the deterioration of the financial conditions of CL Financial Limited, Colonial Life Insurance Company (Trinidad) Limited, CLICO Investment Bank Limited, British American Insurance Company (Trinidad) Limited, Caribbean Money Market Brokers Limited (CMMB) and the Hindu Credit Union Cooperative Society Limited (hereinafter referred to as “the said companies”) which threatened the interest of depositors, investors, policyholders, creditors and shareholders of the said companies;
- (iv) the effectiveness or suitability of the accounting and auditing firms, the institutional, regulatory and statutory bodies with oversight responsibilities (including but not limited to the Central Bank of Trinidad and Tobago and the Trinidad and Tobago Securities and Exchange Commission) governing the business and affairs of the said companies; the weaknesses, shortcomings, failures, deficiencies, breaches and omissions (if any) of the accounting and auditing firms, the institutional, regulatory and statutory bodies with oversight responsibilities (including but not limited to the Central Bank of Trinidad and Tobago and the Trinidad and Tobago Securities Exchange Commission) governing the said companies in respect of their obligations to fulfil or comply with the responsibilities and duties imposed upon them by best practices and such other institutional, regulatory and statutory framework; and the extent to which the failure or omission to fulfil or comply with such responsibilities and duties contributed to or facilitated the creation of circumstances which threatened or compromised the interests of depositors, investors, policyholders, creditors and shareholders of the said companies;
- (v) the extent to which the existing accounting and auditing firms, institutional, regulatory and statutory bodies charged with the responsibility for regulating the business or conduct of the said companies fulfilled or complied with the responsibilities and duties imposed upon them—
  - (a) by law; and
  - (b) by good corporate governance and practice;
- (vi) the assets and liabilities of the said companies and the extent to which the existing assets of the said companies are capable of meeting the financial demands of depositors, investors, policyholders, creditors and shareholders of the said companies;
- (vii) the identity of any accounting and auditing firm, person, entity, or institution, whether local, regional or international, corporate or otherwise, who or which directed, conspired towards, participated in, aided or abetted, knew or ought to have known of or could be implicated or otherwise involved in any act or omission, deed or thing leading to the circumstances whereby the interests of depositors, investors, policyholders, creditors and shareholders of the said companies became threatened; and the extent to which these accounting and auditing firms, persons, entities, or institutions acted, omitted to act, knew or ought to have known of or was implicated or otherwise involved in any of the circumstances that led to the insolvency of the said companies;
- (viii) the extent to which it may have been possible to prevent the interests of depositors, investors, policyholders, creditors and shareholders of the said companies becoming compromised or threatened and whether the accounting and auditing firms, the institutional, regulatory and statutory bodies with oversight responsibilities (including but not limited to the Central Bank of Trinidad and Tobago and the Trinidad and Tobago Securities and Exchange Commission) governing the said companies acted in accordance with best practices, their respective mandates, and in the best interest of the depositors, investors, policyholders, creditors and shareholders of the said companies; and
- (ix) whether any third party acted in a manner that misled the depositors, investors, policyholders, creditors and shareholders of the said companies by negligently or fraudulently misrepresenting the true financial status of the said companies.

2. To make such findings, observations and recommendations arising out of its deliberations, as may be deemed appropriate, in relation to:

- (i) whether there are any grounds for criminal and civil proceedings against any person or entity; whether criminal proceedings should therefore be recommended to the Director of Public Prosecutions for his consideration; and whether civil proceedings should be recommended to the Attorney General for his consideration;



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APPOINTMENT OF THE COMMISSION OF ENQUIRY INTO THE FAILURE OF CL FINANCIAL LIMITED, COLONIAL LIFE INSURANCE COMPANY (TRINIDAD) LIMITED, CLICO INVESTMENT BANK LIMITED, BRITISH AMERICAN INSURANCE COMPANY (TRINIDAD) LIMITED, CARIBBEAN MONEY MARKET BROKERS LIMITED AND THE HINDU CREDIT UNION COOPERATIVE SOCIETY LIMITED—CONTINUED

- (ii) the policies, measures, mechanisms and systems that should be implemented to detect, counteract and prevent the recurrence of circumstances where the depositors, investors, policyholders, creditors and shareholders of the said companies and other institutions or companies in the financial, banking and insurance sectors become threatened and compromised;
- (iii) the implementation, modernisation and harmonisation with international best practices of the institutional, regulatory and statutory framework governing and regulating the said companies and other institutions and companies in the accounting, auditing, financial, banking and insurance sectors;
- (iv) the establishment of a standard, coordinated and effective system of responses to be implemented by institutional, regulatory and statutory bodies charged with the responsibility for regulating the said companies and other institutions or companies in the accounting, auditing, financial, banking and insurance sectors consequent upon any circumstances which may arise to threaten the interests of the depositors, investors, policyholders, creditors and shareholders and which may necessitate the rehabilitation of such institutions or companies in the interest of and for the protection of such depositors, investors, policyholders, creditors and shareholders.

NOW THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 2 of the Commissions of Enquiry Act, Chap. 19:01, hereby issue this my Commission appointing you, SIR ANTHONY COLMAN, Commissioner to hold the enquiry into the matters aforesaid;

And I further direct that you, Sir Anthony Colman, forthwith proceed at such places and times as may be convenient with due diligence and dispatch to enquire into the matters aforesaid and to report to me in writing upon the said matters within four (4) months after the conclusion of the enquiry and to give your findings, observations and recommendations thereon and to furnish me separately with a full statement of the proceedings of the Commission and the reasons leading to the conclusions at which you have arrived;

And I further direct that the enquiry shall be held in public but that you the Commissioner shall nevertheless be entitled, in your discretion, to sit in private or to exclude any particular person or persons from your sittings for the preservation of order, for the due conduct of the enquiry or for any other reason;

And I further direct the Commissioner of Police to detail police officers to attend upon the Commissioner to keep him safe and to preserve order during the proceedings of the Commission, to serve summonses on witnesses and to perform such duties as the Commissioner shall direct;

And I charge and command all public officers and all loyal citizens of the Republic of Trinidad and Tobago in their several places and according to their several powers and abilities that they be abiding and assist you the Commissioner without fear in the execution of this your Commission;

And I do hereby appoint JUDITH GONZALEZ to be the Secretary of the said Commission;

And this my Commission shall be continued subject to any alteration or revocation thereof until you have finally reported.

Given under my Hand and the Seal of the President of the  
Republic of Trinidad and Tobago at the Office of the  
President, St. Ann's, this 15th day of November, 2010.

Dated this 17th day of November, 2010.

A. LEUNG WOO-GABRIEL  
*Secretary to Cabinet*

## Appendix B

### FIRST EVIDENCE HEARING

June 27<sup>th</sup> – 8<sup>th</sup> July 2011

#### WITNESS LIST

<b>Monday 27<sup>th</sup> June</b>	<b>Tuesday 28<sup>th</sup> June</b>	<b>Wednesday 29<sup>th</sup> June</b>	<b>Thursday 30<sup>th</sup> June</b>	<b>Friday 1<sup>st</sup> July</b>
Preliminary matters	Dies non	Preliminary matters	Preliminary matters	Preliminary matters

<b>Monday 4<sup>th</sup> July</b>	<b>Tuesday 5<sup>th</sup> July</b>	<b>Wednesday 6<sup>th</sup> July</b>	<b>Thursday 7<sup>th</sup> July</b>	<b>Friday 8<sup>th</sup> July</b>
Shawn Khan Kamanie Cole Jennifer Gobin	Sonny Ragbir Ruth Mahabir Punett Telucksingh Sunita Ragoonanan	Sunita Ragoonanan	Elizabeth Ragoonanan Gangadai Jagdeo Satish Ramkumar Samsundar Harrypersad	Peter Permell

## SIXTH EVIDENCE HEARING

10<sup>th</sup> May – 18<sup>th</sup> May 2012

### WITNESS LIST

<b>Thursday 10<sup>th</sup> May</b>	<b>Friday 11<sup>th</sup> May</b>	<b>Monday 14<sup>th</sup> May</b>	<b>Tuesday 15<sup>th</sup> May</b>	<b>Wednesday 16<sup>th</sup> May</b>
Madan Ramnarine	Madan Ramnarine  Maria Daniel	Maria Daniel  Ramdath Dave  Rampersad	Ramdath  DaveRampersad  Charles Mitchell	Charles Mitchell  Terrance Jules

<b>Thursday 17<sup>th</sup> May</b>	<b>Friday 18<sup>th</sup> May</b>
Karyl Adams	Karyl Adams

## SEVENTH EVIDENCE HEARING

8<sup>th</sup> June – 15<sup>th</sup> June 2012

### WITNESS LIST

<b>Friday 8<sup>th</sup> June</b>	<b>Saturday 9<sup>th</sup> June</b>	<b>Monday 11<sup>th</sup> June</b>	<b>Tuesday 12<sup>th</sup> June</b>	<b>Wednesday 13<sup>th</sup> June</b>
Charles Mitchell  Keith Maharaj	Keith Maharaj  Diaram Maharaj	Gayndlal  Ramnath	Gayndlal  Ramnath	Gordon James

<b>Thursday 14<sup>th</sup> June</b>	<b>Friday 15<sup>th</sup> June</b>
Byron Brown  Ammiel Arra  Satnarayan  Maharaj	Procedural  matters

## EIGHTH EVIDENCE HEARING

9<sup>th</sup> July – 13<sup>th</sup> July 2012

### WITNESS LIST

<b>Monday 9<sup>th</sup> July</b>	<b>Tuesday 10<sup>th</sup> July</b>	<b>Wednesday 11<sup>th</sup> July</b>	<b>Thursday 12<sup>th</sup> July</b>	<b>Friday 13<sup>th</sup> July</b>
Vishnu Dhanpaul  Anthony Pierre	Harry Harnarine	Harry Harnarine	Harry Harnarine	Harry Harnarine

## NINTH EVIDENCE HEARING

22<sup>nd</sup> October – 26<sup>th</sup> October 2012

### WITNESS LIST

<b>Monday 22<sup>nd</sup> October</b>	<b>Tuesday 23<sup>rd</sup> October</b>	<b>Wednesday 24<sup>th</sup> October</b>	<b>Thursday 25<sup>th</sup> October</b>	<b>Friday 26<sup>th</sup> October</b>
Karen Nunez-  Tesheira  Chanka  Seeterram	Chanka  Seeterram  Robert Nandlal  Wendy Ho Sing	Dies non  <i>(Witnesses not in attendance)</i>	<i>CLICO witnesses</i>	<i>CLICO witnesses</i>

## TWELFTH EVIDENCE HEARING

29<sup>th</sup> April – 2<sup>nd</sup> May 2013

### WITNESS LIST

<b>Monday 29<sup>th</sup> April</b>	<b>Tuesday 30<sup>th</sup> April</b>	<b>Wednesday 1<sup>st</sup> May</b>	<b>Thursday 2<sup>nd</sup> May</b>
<i>CLICO witnesses</i>	<i>CLICO witnesses</i>	<i>CLICO witnesses</i>	Chanka Seeterram  <i>CLICO witnesses</i>

## Appendix C

### *Parties to the Enquiry and their Attorneys*

NAME OF PARTY	COUNSEL / ATTORNEYS
Central Bank of Trinidad and Tobago	Bankim Thanki QC Henry King Ian Benjamin Elena Araujo Alyssa Achong Low Ravi Heffes-Doon ( <i>until Aug 2012</i> )
Commissioner for Co-operative Development	Reginald Armour SC Vanessa Gopaul Brian D. Hewitt
Ernst and Young Services Limited	Douglas L. Mendes SC Stuart Young
Harry Harnarine	Farid Scoon Dr. Wesley Debideen ( <i>2013</i> )
HCU Hindu Credit Union Members Group (CRMG)	Unrepresented
Karen Nunez-Tesheira	Frederick A. Gilkes Luana Boyack Kimberly Molligan Israel Khan SC ( <i>until July 2011</i> ) Keith Scotland ( <i>until July 2011</i> ) Daniel Khan ( <i>until July 2011</i> )
Liquidator Hindu Credit Union Co-operative Society Limited	Deborah Peake SC Rishi Dass Dharmendra Punwasee
Keith Maharaj	Sophia Chote SC Michelle Solomon
Ministry of Finance	Vincent Nelson QC Jagdeo Singh Roger Kawalsingh Radha Carrie Maharaj Fyard Hosein SC ( <i>until Oct 2012</i> ) Michael Quamina ( <i>until Oct 2012</i> )

## Appendix D

### *HCU Non-Parties*

<b>NAME OF PARTY</b>	<b>COUNSEL / ATTORNEYS</b>
Scotiabank Trinidad and Tobago Limited	Douglas L. Mendes SC Vishma Jaisingh
Gordon James	Peter Taylor
Intercommercial Bank	Richard Arjoon Jagai
Gayndlal Ramnath	Farid Scoon
Chanka Seeterram	Alvin Fitzpatrick SC Jason Mootoo Adrian Byrne Margaret Clerk ( <i>until April 2013</i> )

## **Appendix E**

### **Secretariat Staff**

Not all members of the Secretariat staff were employed for the full duration of the Enquiry.

Valentina Whiteman

Seranie Heeralal

Beverly Lokai

Jared John

Christopher Neaves

Anika Euin

Kern Alexander

Charmaine Williams

Greer Guerra

Nicholas Spicer

Alicia Cooper

Kwynn Gabriel

Gale Sealey-Ollivierre

Rosemarie Perez

Janice Broomes-Stowe

Patsy Deo

Charles Eckstein

## Appendix F

### Submissions in Response to Public Invitation

Sharon/Cooblal Abass

Mohammed & Merle Ali

Anisha & Nadira Ali-Bocas

Camanee Ghany Ankiah

Ramdai Balroop

Meera G. Bhagwandeem

Deosaran Bisnath (HCU Credit Union Members Group)

Hyacinth C. Charles

Neil Gyan

Kenneth Hammer

Samsundar Harrypersad

Rishi Jamunar (HCU Shareholders & Depositors Group)

Chicker G. & Joycelyn Lalla

Phulmati Mahabir

Ramesh Persad Maharaj

Dairam Moolchan

June Narayan

Ronald Roxroy Perry

Nirvana Rambalack

Parbatee Ramdass

Krisindayee Ramkissoon

Elizabeth R. Ramlal

Boysie Ramnath

Devanand Ramsingh

Dhani Ramroop

Ramish Roopnarine

Sirju Chrisendath, Samdai & Rajdiay Sirju

Wahida Abigail Thelemaque



## **Section B: Contents and Index**

### **Section A: Introduction**

- This section includes at Appendix A the Terms of Reference

### **Section B: Contents and Index**

### **Section C: The Creation and Management Structure**

- Powers of the members through general meetings, Powers and Duties of the Board of Directors ("BOD") and of the President, Treasurer and Secretary.
- Powers of the Credit Committee and Supervisory Committee.
- Powers and Duties of the External Auditor.
- The applicability of the Co-operative Societies Act 1971, ("CS Act 1971"), the Regulations made under it and the Bye-Laws.

### **Section D: The Regulatory Regime Summarised**

- Outline of the functions of the Commissioner for Co-operative Development ("CCD") and his Department.

### **Section E: Relationship of the CCD with the Credit Union Supervisory Unit of the Central Bank of Trinidad and Tobago ("CUSU")**

- The Agreement in June 1996 between Trinidad and Tobago and the Inter-American Development Bank and the establishment of CUSU in February 2000.
- This section traces the efforts and failure of GORTT to establish CUSU as the primary regulatory body for credit unions.
- Inability of CUSU to operate an effective supervisory regime for credit unions due to lack of statutory powers.
- The section describes the unsuccessful attempts in 2003 to

conduct a joint inspection of HCU by CCD and CUSU and the objections of HCU.

Section F: The Development and Management of HCU until  
20 October 2008

- This section traces the development of the credit union from 2000 and the nature of the corporate management applied to it up to the time of its liquidation in October 2008. It highlights the increasing level of investments in subsidiary companies and real estate from 2000 onwards, the shift from the core activities of a credit union - taking deposits and making loans to members - to financial activities more akin to those of an investment company, the failure of nearly all the subsidiary companies to trade profitably and the increasing need to inject funds by way of loans from HCU using money derived from members' deposits and share contributions.
- The decline in the level of loans to members and the sharp and increasing reduction of the credit union's liquidity ratio alongside the increase in its illiquid and unprofitable assets up to the point where in 2006 HCU was continuing to trade while insolvent.
- It also traces the autocratic management regime of HCU, its lack of compliance with the CS Act 1971, the Regulations and the credit union's own Bye Laws and the poor level of co-operation with the CCD and the occasions when it acted without the prior approval of the CCD.
- This section investigates HCU's practice with regard to loans to

officers and members of the BOD and the extent to which it departed from its Loan Policy.

- The accelerating increases in the credit union's Maximum Liability are traced, as well as the causes of such increases.
- This section also examines the efforts of HCU to obtain relief from its acute lack of liquidity by 2006 by means of an agreement with CLICO under which CLICO could purchase such assets as specified real estate investments and controlling interests in some of the subsidiaries and would take over deposit accounts thereby assuming liability to depositors with HCU, followed by the collapse of that agreement in October 2006.
- The section continues with an account of the credit union's efforts in 2007-8 to obtain financial support from the Government ("GORTT"), eventually collapsing upon the inability of HCU to prove to the satisfaction of the Minister of Finance, Karen Tesheira, that its problem was a temporary cash flow problem as distinct from insolvency.
- Finally, the Section examines the circumstances leading to the appointment by the CCD of an Inquiry into HCU under Section 4 of the CS Act 1971, the findings made by Ernst & Young and the consequent decision of the CCD, Mr Keith Michell, to apply to the Court for the appointment of a Provisional Liquidator and ultimately to wind up HCU in October 2008.

Section G: Questionable Transactions

- This section describes eleven unrelated transactions, all of which involve dealings between HCU and Mr Harnarine, other members of senior management and/or related parties.
- They include:
  1. Purchase of real estate in 2001 and resale at a loss in 2007 to Mr Harnarine's wife.
  2. Purchase in 2003 of a Toyota Land Cruiser from Mr Harnarine's wife.
  3. Purchase in July 2004 of real estate at Pembroke Pines, Florida, from Mr Harnarine's brother and ultimate resale of the same property to Mr Harnarine's sister, all without account entries.
  4. Payments totalling \$986,000 in 2002-2003 to Mr Harnarine's sister said to be as reimbursement of expenses incurred by her on behalf of HCU.
  5. Payments totalling \$1,001,631.64 to Mr Harnarine's sister said to relate to expenses incurred on behalf of HCU.
  6. Purchase in 2002 of real estate at Macaya Trace and subsequent resale at a loss to members of the senior management in 2004 and 2005.
  7. Payments to Mr Harnarine in 2002 and 2008 totalling \$7.6 million in respect of expenses, including \$5 million in respect of foreign travel, comprising \$3,402,585 in the year to 30 September 2004 and \$1,617,742.34 in the year to 30

September 2005, most of such expenditure being unsupported by vouchers and not shown to have been related to HCU's business.

8. Monthly payments to Mr Harnarine from June 2006 in respect of his function as Chairman of HCU USA after it had been sold to CLICO.
9. Mr Harnarine's indebtedness as at June 2012 at \$3,737,133, notwithstanding which he continued as President contrary to the HCU Bye-Laws.
10. Advance by way of loan to Mr Harnarine in July 2006 of \$800,000 for investment purposes.
11. Advance of \$100,000 by way of loan to Mr Harnarine in July 2007 for investment purposes.

Section H: The Relationship between HCU and its external Auditors

- This section first traces the relationship between HCU and its external auditor for the years to 30 September 2001, 2002, 2003 and 2004, Mr Madan Ramnarine.
- In respect of this period the Section records the auditor's criticism of corporate management of HCU, particularly in and after July 2004 as well as the increasing tendency of HCU to dissipate deposited funds into illiquid assets and to advance loans to its loss-making subsidiaries.
- The section deals also with the difficulties faced by the auditor in verifying the accounts advanced by management, including the apparent reluctance of HCU to provide information and

documents as required for the audit and the disparities between the figures recorded in the management accounts and those evidenced by such documents as were made available to the auditor.

- The section further points up the warnings given by Mr Ramnarine in February 2005 in respect of the absence of a cash flow statement and a receipts and payments account and the lack of any additional provision for bad and doubtful debts, as well as the negative operating cash flow.
- The Auditor's disclaimer report for the financial year to 30 September 2004 is also explained, followed by the decision of the HCU BOD to terminate Mr Ramnarine's appointment as external Auditor and its criticisms of his conduct in that capacity, the substance of which is considered by the Commission.
- The section further traces the appointment in April 2005 as successor to Mr Ramnarine of Chanka Seeterram, and his insistence that consolidated accounts should be prepared which required the separate audit of each of the subsidiaries of HCU, an exercise which had not been carried out for several financial years in the case of most of the subsidiaries. All such subsidiaries except Bankers Insurance were found to have sustained substantial losses and of which the audited financial statements had to be prepared on a going concern basis on the assumption that their continuing in business would be funded.
- This section considers the impact on the audit report in respect

of the year to 2004 of the entry into in March 2005 of the agreement between HCU and CLICO whereby HCU was to divest certain real estate assets and subsidiary companies to CLICO and the latter was to take over liability for deposits in HCU. The section further sets out the events leading to the collapse of the CLICO agreement in October 2006 and the impact of that event on whether HCU or its subsidiaries could be treated as going concerns.

- The section considers whether the Audit report for the year to September 2004 satisfied ISA requirements, particularly which regard to subsequent events.
- The section considers the accuracy of the 2005 accounts and in particular the valuation of HCU's assets and whether there was over-valuation, whether there should have been shown a deficit rather than a surplus in the Statement of Income and Expenditure and whether the 2005 Accounts should have been qualified, particularly having regard to the collapse of the agreement with CLICO and the true negative asset position as at 30 September 2006 which was \$324.625 million.

Section J: The Relationship between the CCD and HCU

- This section traces the relationship between the CCD and his Department and HCU from 1998, when Mr Harnarine was elected President of HCU. It covers the appointment in 1998 of a Section 4 Inquiry under the CS Act 1971 to enquire into the constitution, operations and financial position of HCU and the

obstruction by HCU of the commencement of that Inquiry and the eventual report of Mr Joel Edwards in May 1999, including the need for improvements in corporate governance.

- The section further traces the rapid increases in Maximum Liability and HCU's applications to the CCD for permission to invest in subsidiaries and the increasing level of investment in new subsidiaries from 2000.
- CCD's involvement in 2001 with HCU's application to CBTT to set up a bureau de change is discussed.
- The financial review conducted by CUSU in 2001 is considered together with its expression of serious concern caused by the trend in the reducing allowance for loan loss and the growth in the loan portfolio, as well as the low proportion of net income to average total assets and the consequent inadequate growth in institutional capital together with the disproportionately large increase in illiquid assets.
- The section traces the report of an inspection of HCU conducted by Diaran Maharaj of CCD in October 2001, indicating a significant number of unsecured loans and of nil per cent loans to members in violation of the Bye-Laws and the failure of HCU to give effect to any of the CCD's recommendations except amendments to the Bye-Laws.
- Whistleblower criticisms of the management practices of HCU which were made to CUSU in 2002 are considered, including that CCD was in conspiracy with Mr Harnarine, together with



another whistleblower's letter to the CCD alleging that HCU was insolvent. Complaints to the CCD copied to the Prime Minister and Attorney General in March 2002 are also covered. They alleged breaches of the Bye-Laws and by-passing by top management of the BOD and made serious allegations about Mr Harnarine's autocratic style of management.

- The section refers to the lack of action in the face of serious allegations, by the CCD, the Prime Minister, the Attorney General and the Minister of Labour and the report dated 23 May 2002 of the CCD to the permanent Secretary of the MOL and its unjustifiably benevolent description of HCU's conduct.
- Included in this section is also a description of the failed attempt to investigate HCU by CCD and CUSU in 2003.
- The section traces the generally tolerant approach of CCD to HCU and to its investment during 2000 to 2005 in many and diverse subsidiaries and includes the support provided by the CCD in July 2003 for the application by HCU to the CBTT to set up a bureau de change.
- The Final Evaluation Report for the Inter-American Development Bank Project on 5 May 2004 is included and the main conclusions set out.
- The section considers the (false) reports in the media on 24 September 2004 that HCU was to be placed in receivership and that Price Waterhouse Coopers ("PWC") were carrying out a forensic audit and the CCD's denial of the truth of such reports.

- It further refers to the countermanding by Mr Keith Maharaj of the decision by the Deputy CCD taken while Mr Maharaj was on leave to set up a Section 4 Inquiry under the CS Act 1971.
- The section considers the response of the CCD to the problems encountered by the external auditor, Mr Ramnarine in finalising the audit of the Accounts for the 2004 year of account and to his disclaimer report and further the replacement of Mr Ramnarine as external Auditor by Chanka Seeterram.
- It sets out events leading up to the decision in April 2005 of Mr Hyder Ali, then Acting CCD, to appoint Pannell Kerr Foster (“PKF”) to conduct an Inquiry into HCU under section 4 of the CS Act 1971 and the subsequent attempts by HCU to have that decision rescinded.
- The Report then traces the events from May to October 2005, including the CCD’s lack of available funding to pay for the Section 4 Inquiry by PKF and the refusal of Mr Montano, the Minister of Labour, to agree to such an Inquiry and it then considers the subsequent refusal of the CCD in 2006 to reinstate such an Inquiry.
- The CCD’s 2006 Action Plan for an inspection of HCU by CCD officials is then considered followed by the main contents of the report of the inspection in April 2007 are set out, notably the need for HCU to return to its core business of making loans, the emphasis on the adverse cash flow position and the recommendation for an Inquiry under section 4 of the CS Act

1971.

- The Report describes the events leading up to the CCD's appointment on 10 June 2008 of Ernst & Young ("EY") to conduct a Section 4 Inquiry and the findings of EY. It traces the decision-making by Mr Mitchell, then the CCD, in reliance on those findings to apply to the High Court for the appointment of a Provisional Liquidator and subsequently his decision in October 2008 that HCU should be wound up and a Liquidator appointed.

Section K: Reasons for the Collapse of HCU

- This section considers the change in the main part of HCU's business under the Presidency of Mr Harnarine, in particular the relative reduction in its core business of making loans to members and its replacement by investment in real estate and in subsidiary companies carrying on a variety of businesses not directly related to a credit union's normal business.
- Also considered is the poor level of corporate governance and its effect on the conduct of HCU's investment business which resulted in the operation of unprofitable businesses by the many subsidiaries and the need for HCU to keep those subsidiaries in business by intercompany loans.
- The Report identifies as a major contributory cause of collapse the failure of senior management, including Mr Harnarine, to have regard to the need to maintain sufficient liquid assets to cater for the credit union's obligations in respect of depositors'

withdrawals.

- This section also identifies as a major contributory cause of collapse the making of loans to unprofitable subsidiary companies which could neither service the loans nor repay them to HCU.
- Also considered is the reliance by Mr Harnarine as the overriding cause of collapse of a “run” on HCU following incorrect reports in the media in 2004 that the credit union was to be put into receivership. This Report concludes that this was not an underlying cause of collapse.
- The section further investigates the extent to which HCU’s assets were dissipated and its liquidity diminished by the lack of careful investment planning which caused HCU to suffer very substantial losses on many of its investments in real estate as well as on certain of its subsidiaries and further by the large number of related party and other questionable transactions together with the failure to operate its Loan Policy.
- The section concludes that as a further substantial contributory cause of HCU’s collapse was the failure of the CCD up to 2006, particularly during the tenure as Commissioner of Keith Maharaj, strictly to enforce the regulatory requirements of the CS Act 1971, the Regulations and HCU’s Bye-Laws and the failure of the CCD regularly and adequately to monitor the investments by HCU in subsidiaries and the reasons for successive major increases in HCU’s Maximum Liability.

- The lack of human resources available to the CCD for effective supervision is also considered.
- The lack of financial independence of the CCD from Central Government and the consequent ability of the Minister of Labour to prevent the CCD from appointing a Section 4 Inquiry, as Mr Montano in October 2005, is also considered as a contributory cause of the collapse.
- The section also considers the causative effect of the lack of legislative powers in the hands of the CCD under the CS Act 1971 and of the failure for 14 years of successive governments to cause to be enacted legislative reforms which would set up an effective regulatory regime for credit unions, including powers of emergency intervention by the regulatory body together with powers to prosecute breaches of the Bye-Laws.

Section L: Attempts to reform Regulation of Credit Unions

- This section traces the history of attempts to reform the regulatory system for credit unions from 1996 to 2014.
- It further considers the adequacy of the latest such attempt in the form of the Credit Union Bill combined with the Co-operative Societies Act (Amendment) Bill and whether the new powers of inspection and enforcement proposed to be provided to the Inspector of Financial Institutions in conjunction with the CBTT alongside the powers of non-financial supervision proposed to be retained by the CCD are likely to be sufficient to prevent or deter corporate mismanagement of the nature demonstrated by

this Report.

Section M: Recommendations to the Director of Public Prosecutions under Paragraph 2(i) of the Terms of Reference

- This section identifies those individuals whose conduct was such that the Director of Public Prosecutions should take steps to test the sustainability of criminal proceedings against them. It further sets out those aspects of the conduct of each person named which could be found on further investigation to give rise to or evidence criminal liability.

Section N: Recommendations to the Attorney General under Paragraph 2(i) of the Terms of Reference

- This section sets out those civil remedies which may still be available to the Attorney General and which are recommended to be pursued.

Section O: Recommendations under Paragraphs 2(iii) and (iv) of the Terms of Reference with regard to Auditors and the Conduct of Audits

- This section will be provided at the conclusion of the Report on CLICO which will also be substantially concerned with the conduct of auditors and their duties.

## **Section C: The Creation and Management Structure of HCU**

- C1 HCU was established and registered in 1985 by the CCD pursuant to the CS Act 1971 and the CS Regulations 1971. It was a Body corporate with limited liability.
- C2 Like all such co-operative societies subject to the CS Act 1971, HCU was required to be constituted and managed in accordance with its Bye-Laws and the CS Regulations 1971. Those Bye-Laws could only be amended by a resolution passed at a general meeting called for that purpose, provided that the amendment was approved by the CCD.
- C3 Having originally been approved in 1985, the Bye-Laws of HCU were subsequently amended in accordance with that prescribed procedure in June 2002 and January 2004.
- C4 The main objects of the society, as formed, remained the same throughout its life:
- (i) Promotion of the members' economic welfare;
  - (ii) Encouragement of the spirit and practice of thrift, self-help and co-operation amongst members and the promotion of the development of co-operative ideals.
- C5 Two significant amendments were made to the Bye-Laws in June 2002.
- (i) Bye-Law 3(a)(viii) was added to permit "investing in wholly owned subsidiaries and companies, to provide goods and services for the needs and welfare of members".
  - (ii) Bye-Law 3(a)(viii) was renumbered (ix) and amended thus:

“Providing other services for the promotion of the economic welfare of members as may be approved in general meetings and approved by the Commissioner.” (underlined words added).

C6 A further significant amendment was made to Bye-Law 2 in 2004 by adding the words:

“However, subsidiaries and businesses of the credit union may by the nature of their operations be required to be internationally based.”

C7 The following Bodies were the essential elements of HCU’s management structure:

- (i) The members as a whole;
- (ii) The Board of Directors (“BOD”) and officers, the latter including the President, Treasurer and Secretary;
- (iii) The Credit Committee;
- (iv) The Supervisory Committee;

As to the members, the CS Act 1971 defined the Term thus:

“(Member) includes a person or society joining in the application for the registration of a society and a person or society admitted to membership after registration in accordance with the bye-laws of that society.”

C8 Section 9(2) of the CS Act 1971 provided:-

“No society may be registered unless there exists among its members none of whom is another society, some common bond of occupation or association or of residence in a defined neighbourhood or district.”

C9 HCU was originally formed to serve the association of Hindus in Trinidad and Tobago. In 2002 the CCD approved an amendment of the Bye-Laws to extend membership to “all persons of good character who are Hindus and any other person approved by the Board.”



C10 In the course of the hearings before the Commission of Enquiry a question arose as to whether a company other than a credit union could be eligible for membership. Two of HCU's subsidiary companies were shown in its records to be members. The external auditors, Mr Ramnarine and, from 2005, Mr Chanka Seeterram, and HCU management treated subsidiary companies as members in their respective audits. It was, however, the opinion of the CCD, Mr Karyl Adams, that subsidiaries were not to be treated as members. This Commission finds that on the proper construction of the CS Act 1971 only separate individuals and other credit unions could be members. To the extent that HCU management and its external auditors treated HCU's subsidiaries as members, they were wrong to do so.

C11 As to the Annual General Meeting ("AGM") of HCU, CS Regulation 15 vested the Credit Union's supreme authority in that Body. Every member had the right to vote at an AGM. The timing of the AGM is important for the findings of this Report: it had to be held no later than one month after the BOD received the external auditor's report on the audit of the management's accounts. The accounting year for HCU ended on 30 September and under its Bye-Laws its audit for that year was required to be completed by 30 November. It follows that it was obliged to hold its AGM by 31 December each year. If the external auditor did not issue the report by 30 November in any year, the AGM would have to be postponed until a later date.

C12 The Bye-Laws laid down the powers and duties at the AGM as follows:-

- a. Consider the accounts and reports presented by the BOD and Committees, and any comments thereon from the auditor and/or the CCD;

- b. Discuss and recommend changes to the budget for the current financial year;
- c. Allocate surplus from the previous year;
- d. Approve and/or amend any rules made by the BOD under Bye-law 32;
- e. Elect the BOD, Credit Committee or Supervisory Committee and substitutes; this was amended in 2002 to provide that such elections would be by secret ballot;
- f. Where necessary to amend bye-laws but no amendments were to be valid or effective until approved by the CCD;
- g. Approve the Maximum Liability of HCU; but no increase was to be valid or effective unless approved by the CCD.
- h. Approve or vary the quantum of honorarium recommended by the Board for any unsalaried officer;
- i. Appoint an auditor for the current term from the approved list; and
- j. Deal with any other business duly brought forward.

In addition to the AGM, it was open to the Secretary of the HCU upon the request of the President, the BOD, the HCU Supervisory Committee, or the CCD, to convene a Special General Meeting (“SGM”) on 14 days’ notice to the members.

C13 There remained a further power in the CCD under the under the CS Regulations, independently of HCU’s management: namely to summon a SGM in such manner and at such time and place as the CCD directed. As will appear from Section D of this Report, this power was a facet of the CCD’s supreme regulatory control over credit unions.

C14 As to the BOD, the members were elected at the AGM. There was, however, only one quantification for an officer; candidates must be at least

18 years old. There was no “fit and proper person” test for membership of the BOD. There were 12 members of the BOD and 13 members from 2002.

C15 Those in paid employment with HCU were disqualified from membership of the BOD. As from 2002 this prohibition was removed and in 2004 it was provided by amendment for the Bye-Law 28(d) that an officer on leave from employment elsewhere could be paid a monthly stipend or re-imburement for loss of earnings for the period of service with HCU.

C16 It was further provided by the Bye-Laws that if a BOD or Committee member were delinquent in the repayment of any loan for a continuous period of more than four months, proper notice for repayment having been given and the opportunity for correcting such having been exhausted, the BOD or Committee member would cease to hold office. Such individuals therefore became automatically disqualified from exercising any of the functions of such membership.

C17 The Bye-Laws identified the following powers and duties of the BOD.

- a. To appoint, suspend or dismiss other paid employees of HCU;
- b. To make decisions on applications for membership;
- c. To contract loans and authorise expenditure and to appoint agents to act for HCU;
- d. To see that accounts were accurately kept, to prepare or cause to be prepared, not later than one month after the financial year's close, statements of accounts and a balance sheet and submit these to audit;

- e. To decide on a plan of operation together with a budget before the end of each financial year, to ensure at each Board meeting that the plans and budgets are followed or revised according to actual operation;
- f. To review annually the Bye-Laws and if necessary propose amendments to the annual general meeting;
- g. To enter into contracts on HCU's behalf;
- h. To determine the rate of interest on loans to members;
- i. To formulate a loans policy;
- j. To have charge of investments other than loans to members; and
- k. To take all such practical and expedient measures for the good management, supervision and administration of the HCU's affairs for which no provisions have been made in the Bye-Laws.

From 2002 the BOD was empowered by the Bye-Laws to appoint an Executive Management Team.

C18 Bye-Law 31 expressly provided that, in the conduct of HCU's affairs, the members of the BOD should "exercise the prudence and diligence of ordinary men of business" and would be responsible for any loss sustained through negligence or acts contrary to the CS Act 1971 and the CS Regulations, Bye-Laws or Rules made under them.

The BOD was authorised to elect from its own members a President and Vice-President and it could appoint a Secretary, Treasurer and any other officer.

C19 The duties of the President included:-

- a. Summoning and presiding at general and board meetings and in the case of an equality of votes having a casting vote;

- b. Together with other officers specified in the Bye-laws, signing all cheques, instruments and other documents on HCU's behalf; and
  - c. Signing the Minute Book and performing such other duties as appertain to his office.
- C20 The Supervising Committee had 5 members; 3 members up to 2002. They must not be BOD members. Its duties included:
- a. Examining HCU's affairs including an audit of its books at least semi-annually and if necessary convening a SGM and submitting its report at each such meeting;
  - b. Making an annual report of its audit and submitting the same to the AGM;
  - c. By the unanimous vote of all its members, if it deemed such action to be necessary, suspending any Board or Committee member and convening a SGM within 30 days to act on such suspension;
  - d. If it deemed such action necessary, calling a SGM to consider any matter; and
  - e. Attesting (at least one member) the monthly financial statements prepared by HCU's Treasurer or Manager.
- C21 Further, the members of that Committee were under a duty to examine at least every four months the share and deposit amounts and loan-balances of members, cash, accounts and all applications for loans during the four month period and further to satisfy themselves that proper application documents were filed for each loan and that the security was adequate. At least one member of the Committee was required to attest the balance sheet which had to be submitted by HCU to the CCD each year.
- C22 The Credit Committee was responsible for approving and supervising all loans to members. It was obliged to meet no less than once a week.

C23 The evidence establishes that both the Supervisory and Credit Committee did meet and did carry out their functions with regard to most but not all of the loans. As appears later in this Report, there were cases where these Committees were by-passed and certain substantial loans were approved without reference to either Committee. The records of HCU do not disclose any semi-annual audits being carried out by the Supervisory Committee.

The making of loans by HCU was subject to significant restrictions as follows:

- (i) Loans could only be made to members of HCU unless the CCD consented to a loan to a non-member. As already indicated, subsidiaries were not members and consequently loans to them were *ultra vires* the powers of the credit union and irrecoverable.
- (ii) Loans had to be solely for a provident or productive purpose.
- (iii) The rate of interest was not to exceed 12 per cent per annum.
- (iv) Loans interest was to be based on criteria specified under HCU's loan policy.
- (v) By Section 43(2) of the CS Act 1971 loans against a mortgage of real property were prohibited unless with the written consent of the CCD.
- (vi) No loan could be made to an officer of HCU of a sum in excess of the value of that officer's shares and deposits and accumulated dividends and interest on such unless that loan was approved by a vote of a 2/3 majority at a meeting of the other members of the BOD, the Credit Committee and the Supervisory Committee meeting together or it was made with the written consent of all other members of the BOD, the Credit Committee and the Supervisory Committee.

C24 The Regulations and Bye-Laws specified the form of applications for a loan, including that there should be a term sheet to be executed by the borrower

and any surety. If the loan was to be secured, an instrument of charge must be completed in the form specified.

- C25 HCU had no general power to invest. It could only invest or deposit funds in a bank approved by the CCD, in securities issued or guaranteed by GORTT, in the shares of any co-operative society unless it had limited liability or “in any other manner permitted by” the CCD. Under the Bye-Law 3(a)(viii) amendment made in 2002 a more general purpose for investments had to be approved by the CCD (see Paragraph C5 above).

The Maximum Liability of a co-operative society is the subject of Regulation 14 of the CS Regulations 1971. Sub-section (1) provides:

“Every society shall, from time to time, fix at a general meeting the Maximum Liability it may incur in respect of loans or deposits whether from members or non-members.”

- C26 Under sub-section (2) the Maximum Liability had to be approved by the CCD. Sub-regulation (3) provides that no society should receive loans or deposits in excess of the Maximum Liability approved or fixed by the CCD. Consequently if and to the extent that liability was incurred in excess of the maximum hitherto approved by the CCD, the Society was acting unlawfully: approval had to be obtained in advance of an increase of the Society’s liability above the approved maximum.

- C27 In the course of the hearings before this Commission an issue arose as to the scope of the meaning of “liability” in Regulation 14. The substance of the issue is whether for the purpose of calculating “Maximum Liability” one includes deposits, members’ shares and savings or whether, as Mr Harnarine maintained, one confines the calculation to liabilities external to

the Society, such as borrowings from a bank or other institution, thereby excluding all members' deposits and shares.

C28 Having given careful consideration to the wording and purpose of Regulation 14, this Commission has no doubt that the calculation of Maximum Liability ought indeed to include members' deposits, shares and savings. As a matter of construction, there is no justification for reading into the words of the section an exclusion in respect of members' funds paid into the Society by way of deposit, shares or savings. On the contrary the purpose of Regulation 14 is clearly to place in the hands of the CCD ultimate control over the total exposure of the society to demands for repayment. Hence, it is open to the CCD to reduce a society's Maximum Liability as well to permit it to be increased. According to the evidence, the CCD's view was that members' deposits were to be taken into account in calculating Maximum Liability. The numerous requests by HCU to the CCD, particularly after 2000, for permission to increase the Maximum Liability were apparently based on its erroneous construction of Regulation 14. Applying what the Commission considers to be the correct construction whereby members' deposits must be taken into account, HCU's actual aggregate liability was from 2000 consistently very far in excess of its permitted Maximum Liability. It thereby misled the CCD and to that extent acted unlawfully.

Each officer of HCU was required by section 5 of the CS Act 1971 to furnish such information respecting the operation and transactions of the Society as the CCD required.



C29 The 1971 Regulations required the BOD annually to cause to be prepared and sent to the CCD:

- a. The audited balance sheet as at the end of the preceding financial year;
- b. A detailed statement of the profit and loss account for the preceding financial year;
- c. A statement of the receipts and payments for the preceding financial year;

and

- d. A statement containing the name and address of every member in default and the amount he owes as at the end of the financial year.

The Auditor also had to consider the annual statement of receipts and expenditure, the profit and loss account and the balance sheet and verify them with the relating accounts and vouchers. If they were found to be correct and in accordance with the 1971 Act and the 1971 Regulations the Auditor had to certify compliance at the foot of the balance sheet. If the Auditor found that they were not correct and in accordance with the 1971 Act he had to report this to the CCD.

The Auditor had to be given free access to HCU's books, accounts and vouchers. The Board and all officers of HCU were to furnish the CCD or other person auditing the accounts "with all such information regarding the transactions and operations of (HCU) as may be required."

C30 Although the Companies Act does not apply to credit unions, it applied to HCU's subsidiaries to the effect that under section 99 every director and officer was obliged when exercising his powers and discharging his duties, to

act honestly and in good faith with a view to the best interests of the company and exercise due care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

## **Section D: The Regulatory Regime Summarised**

- D1 As stated above, the CCD was the Body given exclusive regulatory powers over credit unions. Under the CS Act 1971 HCU was deemed not to be engaged in any business in the nature of banking and was not obliged to obtain a licence either under the Banking Act, the Local Savings Banks Act or the Money Lenders Act.
- D2 Although the Ministry of Finance was responsible for the maintenance of the overall stability of the national economy, the CCD occupied a relatively autonomous position, although it was attached to the Ministry of Labour and Micro-Enterprises (“MOL”). It had an annual budget, but, as will appear from Section F and J of this Report, this funding did not take account of unusual items of expenditure, such as the employment of external investigating accountants to conduct statutory enquiries into credit unions. If that were necessary, the CCD would have to obtain additional funding from the MOL.
- D3 Up to about 2000 the general perception of central government was that credit unions had the important, if not overriding, function of facilitating the development of small businesses (“micro enterprises”), particularly in the field of farming, by encouraging savings and making modest loan capital available to its members. It was certainly not the perception at that time that any credit union might become a major participant in the provision of general financial services nor that it would participate, by means of setting up or acquiring subsidiary companies, in a diverse range of commercial activities in the retail market, most of which might be wholly unrelated to the underlying objects of a credit union and entirely outside the scope of

commercial activities with which the CCD and his staff had previously been familiar.

D4 As appears from the following sections of this Report, in the period from 2002 to 2008 HCU was transformed into a major provider of financial services combined with what became a significant investment banking function. The trading group of companies developed by HCU during that period was very different from anything previously experienced by the CCD. It called for a regime of regulatory control for the purposes of the CS Act 1971 more intrusive than would ordinarily be necessary for a credit union conducting conventional business. It also called for corporate management of substantially greater and more diverse expertise than the normal business of a credit-union. The continuing failure of GORTT to introduce legislation which would strengthen the regulatory regime for credit unions described in Section L of this Report must be attributed in part to repeated attempts to accommodate both the traditional view of the activities of a credit union under the control of its membership and the expansion of HCU and other large credit unions into the field of provision of general financial services and corporate investment.

D5 The relationship between the CCD, the Credit Union Supervisory Unit of the CBTT (CUSU) and HCU is explained in more detail in Sections E and F of this Report.

**Section E: The Functions of the Commissioner for Co-operative Development (“CCD”) and of the Ministry of Finance Credit Union Supervisory Unit (“CUSU”)**

E1 The CCD is head of the Co-operative Development Division of the Ministry of Labour and Small and Micro Enterprise Development (“MOL”). His specific functions are set out in the Co-operative Societies Act and Regulations (“the CS Act 1971” and “the CS Regulations 1971”). They may be summarised as follows:

- (i) Manages the Co-operative Development Division
- (ii) Registers and de-registers Co-operative Societies as necessary
- (iii) Promotes, supervises, regulates and assists with the development of the Co-operative Sector
- (iv) Grants approvals for investments mortgages, maximum liabilities, mergers, amalgamations and liquidations
- (v) Conducts hearings into disputes referred to the CCD and hands down judgments
- (vi) Approves amendments to by-laws
- (vii) Approves auditors, arbitrators and liquidators
- (viii) Interprets the Co-operative Societies Act and its Regulations and By-laws of Societies
- (ix) Delegates authority to Co-operative officers
- (x) Advises the Minister of Labour on matters related to the Co-operative movement in Trinidad and Tobago
- (xi) Prepares reports to the Permanent Secretary
- (xii) Prepares draft estimates for the Division
- (xiii) Manages money allocated to the Division

- (xiv) Seeks permission to incur expenses
- (xv) Signs pay sheets and payment vouchers
- (xvi) Approves travelling and expense claims
- (xvii) Liaises with Co-operative officers, Permanent Secretary, Solicitor General, Judges of the High Court, other Government Agencies, Auditors and attorneys, re above related matters.

E2 Since 1995 the following persons have held the office of CCD:

April 1995 – May 2006: Keith Maharaj;

January 2006 – May 2006: Diaram Maharaj;

May 2006 – August 2007: Bheemal Rashroop;

August 2007 – January 2009: Charles Mitchell

January 2009 – March 2009: Michelle Rouff

March 2009 (on-going): Karyl Adams

E3 It will at once be seen that Keith Maharaj was CCD for eleven out of the last fourteen years, although for fourteen months out of that period he was assigned to act as a Director of Labour Administration at the MOL and Hyder Ali was assigned to act as CCD during that time. Appointment to the office of CCD was and is regulated solely by seniority. Upon retirement of each CCD, the next most senior officer in the department would take over as CCD.

E4 Some three years before Keith Maharaj became CCD it was recognised by GORTT that there were serious problems regarding the credit unions. In 1992 a Cabinet-Commissioned study recommended fundamental reforms to the operating practices of credit unions and changes in the existing regulatory legislation, namely the CS Act 1971.

- E5 In order to tighten up supervision of credit unions, responsibility for overseeing this was transferred to the Ministry of Finance (“MOF”).
- E6 By mid-1995, however, by which time there were 164 active credit unions, the problems previously identified had not been cured. There had been put in place no enhanced regulatory regime and indeed the opportunity to bring credit unions within a wider system of regulation for financial institutions by extending the scope of the Financial Institutions Act 1993 had not been taken.
- E7 It was against that background that GORTT came to consider in May 1996 the execution of an Agreement between Trinidad and Tobago and the Inter-American Development Bank (“IADB”) whereby, with the participation of the Co-operative Credit Union League of Trinidad and Tobago (“CULTT”), that Bank would grant non-reimbursable technical cooperation resources amounting in terms of funding to US\$1,283,460 (\$7,662,256). This project involved the transfer of knowledge of best practices in the management of small financial institutions. A Credit Union Monitoring and Reporting Unit was to be created within CULTT and it was to be equipped for facilitating compliance with prudential norms to be defined and enforced by the MOF. Such subjects as the development of credit policy, credit administration and the creation of new financial products and services were to be covered by the training programme. Further, the MOF was to have primary responsibility for legal reform: it was to review existing legislation and make recommendations for an adequate and enabling legal sub-structure.

E8 The IADB Project also involved the establishment within the MOF of a “Credit Union Supervisory Unit” (CUSU) – “to bring an adequate level of supervision to the 164 active credit unions”. The Cabinet Note in support of the Project stated of CUSU as follows:

“This Unit will have as its overriding goal the assurance of the financial interest of all Credit Unions’ shareholders and depositors. To achieve this goal it will define and enforce prudential norms for the entire Credit Union sector. These standards for financial prudence will be designed along the lines for other financial institutions, but will take into account the special nature of Credit Unions.

Ultimate responsibility and authority for enforcement of prudential standards will reside in a Credit Union Supervisory Unit in the Ministry of Finance. The Ministry of Finance through the Supervisory Unit will directly supervise Credit Unions which are not members of the League.

The Monitoring Unit housed and financed by the League will collect and analyse operational and financial information from its members and relay this information and analysis to the Supervisory Unit of the Ministry of Finance. It will provide advice and support to its members and generally assist them in achieving the defined prudential norms.

The Central Bank of Trinidad and Tobago (The Central Bank) will collaborate with the Ministry of Finance in setting up the supervisory system.

The Project will fund technical expertise to assist in the exercise. It will supply hardware, software and consultancy services for the Supervisory Unit’s information system.”

The Cabinet Note concluded:

“...12. The identified defects in the existing legal framework and supervisory regime, coupled with the inefficient managerial and operating practices at Credit Unions seriously impairs the financial interest of the membership who are largely drawn from the lower income strata.”



- E9 It is to be observed that, as stated in the Cabinet Note, it was to be a pre-condition to disbursement of funds by IADB that existing upper limits on interest chargeable and dividends payable by credit unions imposed under the Co-operative Societies Act, s.50(3)(f) were removed.
- E10 The Agreement with IADB was signed on 17 June 1996. However, it was not until February 2000 that CUSU commenced operations. There is no evidence which explains why it took so long for CUSU to be bought into action.
- E11 The Monitoring and Reporting Unit set up by CCULTT collected financial information from credit unions which it passed on to CUSU. This information was then used by CUSU in formulating proposals for reform of the legislation covering supervision and regulation of credit unions. However, that limited function of CUSU which from 2001 to 2006 had a total staff of three persons could have no direct supervisory or regulatory impact on any of the credit unions in the absence of actual legislative reform whereby the proposals and draft bills put forward were converted into effective amending laws. Having taken GORTT no less than four years to implement the Agreement with IADB to the extent of setting up CUSU, all attempts during the period 1995-2006 to introduce an institution by which the activities of credit unions would not only be monitored on the basis of recommendations by CUSU but would be actively regulated were smothered by on-going political inertia due in no small part to the fragile House of Representatives majorities of both the UNC and the PNM and to fierce resistance by the credit unions to the removal of regulatory responsibility from the CCD.

E12 Thus, there ran into the sand:

- (i) Proposals in a Cabinet Minute of 9 February 2000 that all financial institutions, including credit unions, should be supervised and/or regulated by a Bank Inspection Department of the MOF.
- (ii) An agreement by Cabinet, recorded in a Minute of 19 July 2000, which was motivated by an Inception Mission Report on the credit Union Strengthening Project which had included the following:
  - The Credit Union Sector is in effect unregulated and unsupervised;
  - There is need for consolidation and structural adjustment within the sector;
  - Mandatory prudential norms are required;
  - There is need to constrain Credit Unions engaging in non-core activities;
  - There is need for greater consistency in the audited financial statements of Credit Unions;
  - The arbitration requirements contained in the Co-operative Societies Act place a significant drain on the system; and
  - Significant reform and training will be required to bring about effective and sound financial intermediation in the Credit Union Sector.

That MOL should continue to be responsible for enforcement, accountability and intervention in matters of governance relating to credit unions, that for the duration of the Strengthening Project only MOF should be given the responsibility for enforcement, accountability and intervention in matters relating to the financial operations of credit unions, that CUSU be integrated with the CCD upon completion of the project, and that all-embracing legislation be prepared for the entire co-operative movement, including credit unions.

- (iii) Proposals in January 2004 that CUSU would eventually become the regulatory body under the MOF which were accepted by the Cabinet but which were killed off by the leadership of the credit unions.
- (iv) The Cabinet approval in July 2005 of a bill which provided that supervision of the financial activities of all credit unions should be integrated with that of all other financial institutions licensed under the Financial Institutions Act 1993 and that regulation and supervision of credit unions should be controlled by CBTT which would replace supervision of their financial activities by the CCD. Indeed, the drafting of legislation with the assistance of the Canadian law firm, Gowling La Fleur Henderson, reached an advanced stage but the process of consultation gave rise to a multiplicity of objections and much re-drafting and continuing political inertia. This was in spite of various calls by members' of the GORTT for CUSU to be given wider powers extending to the inspection of credit unions. However, from an early stage following the creation of CUSU the MOL steadfastly opposed any transference of the CCD's regulatory authority to CUSU.

E13 According to the evidence of Mr Anthony Pierre, an accountant of considerable experience and past President of the Institute of Chartered Accountants of Trinidad and Tobago ("ICATT"), in 2002-2003 CUSU sought to pursue a more hands-on activity by conducting visits in the nature of inspections to various credit unions to investigate their financial operations. These visits had to be on the basis of consent by each of the credit unions visited, often in conjunction with CCULTT which was generally supportive of this field work. However, it was not open to CUSU to impose such inspections without the credit unions' consent for there was no legislative authority for any such intrusion. Numerous credit unions, including HCU, withheld their consent. Where visits were conducted, with one exception, this was done independently of the CCD. Such visits were not in substance

supervisory or regulatory: CUSU could not exercise any powers to insist on cessation of particular practices: its normal course was to draw attention to the desirability of compliance with prudential criteria and, should any of the credit unions get into financial difficulties, to obtain information regarding the financial strength of that credit union for the purposes of the MOF, which was attempting to monitor the risk of contagion to the financial services sector generally.

E14 In the course of 2002-2003 serious concerns began to arise as to the rapidity with which HCU was expanding. CUSU referred these concerns to the then Minister of Finance, Conrad Enill. Concerns were increased by information provided to the MOF by a whistle blower, who said that he was a member of the HCU Board, about questionable transactions and by complaints from members of the public regarding various aspects of financial impropriety.

E15 In about March 2002 Mr Enill instructed Mr Pierre on behalf of CUSU to conduct an examination of HCU to find out what was going on. HCU ignored a first request for a visit and, when eventually a visit was arranged in April 2002, CUSU's team were sent away on the grounds that Mr Harnarine was unavailable. A subsequent meeting was then arranged but that did not develop into an investigation of HCU because Mr Harnarine maintained that CUSU had no legal powers of inspection (which was correct). However, Mr Harnarine did offer to permit CUSU to conduct a visit in conjunction with the CCD. In consequence, a MOU was entered into between the MOL and the MOF whereby the CCD agreed to delegate to CUSU powers of inquiry in conjunction with officers from the CCD Department.

- E16 This was the first and last occasion when a joint inspection into a credit union by CUSU and the CCD Department was planned.
- E17 However, in February and March 2003, the efforts of Mr Pierre (CUSU) and Mr Hyder Ali and Mr Keith Maharaj (CCD Department) to agree a scope of work for the joint inspection were completely unproductive. There was a sharp disagreement as to the scope. Mr Pierre took the view that the many concerns expressed from all quarters, including complaints from members of the public and the alleged information provided by the whistle-blower as to questionable transactions, required an effective inspection of HCU which was likely to take 12 to 16 weeks, using the existing resources of CUSU and CCD. It was suggested to the CCD by Mr Pierre that the CCD should retain an independent firm of accountants with sufficient resources to conduct the inspection (as provided for under the Co-operative Societies Act (as had been done in the past for other credit unions). He put forward these suggestions to the CCD in a letter dated 24 March 2003. This was against the background that on 9 January 2003 the CCD had confirmed by memorandum his “earlier proposal” for there to be a joint inspection of HCU commencing on 9 January 2003. This document not having been received by Mr Pierre until 14 January 2003, there had then followed a completely inconclusive series of discussions between CUSO and CCD officers, particularly the CCD and Mr Hyder Ali, in the course which the CCD took the position that it was unnecessary to prepare a written scope of work and that the inspection should take no longer than one week.
- E18 On 1 April 2003 Senator Conrad Enill, Minister of Finance, wrote to the Permanent Society, Investments Division, Mrs Sonia Noel, asking for a

progress report on the proposals put forward in January 2003 by the CCD for inspections of HCU and other credit unions by CUSU and the CPD.

E19 Eventually, following a specific request by Mrs Noel to the CCD for a planning visit to HCU, preliminary to an inspection, to take place on 28 April 2003, there took place on 29 April 2003, a planning meeting between CUSU and CCD staff at which it was agreed that as from 12 May an Inspection of HCU would be undertaken under the auspices of the CCD by a joint team led by Mr Hyder Ali, the Deputy CCD. The team was to visit HCU for an initial period of two weeks, starting on 12 May 2003 to ascertain the scope of work required to complete the Inspection effectively. The team would then report to the CCD making recommendations for a scope of work and a suggested time frame for the main exercise. The scope of work for the planning meeting would be agreed at a subsequent meeting but would be based on the systems and procedures in place at HCU to ensure safety and soundness of its operations, review of its Board's operations, and a review of HCU's financial position. The CCD immediately wrote to HCU advising it of the decision.

E20 When the joint team attended at the HCU premises on 12 May it was informed that a letter had been sent to the Minister asking for the visit to be postponed for a week so that Mr Harnarine could be present. That request had been received by CCD on the same morning.

E21 The team returned to HCU on 20 May 2003. Mr Harnarine was present and proceeded to make the following observations.

- (i) No terms of reference relating to the scope of inspection had been provided;
- (ii) He had great concerns about the confidentiality of the report and the exposure of sensitive information and documents and leaking of “trade secrets” to officers from MOF, as well as the need to ensure that such information could not be used for political purposes;
- (iii) The level of competence of the inspection team was probably inadequate and that an outside professional firm should be engaged to carry out the inspection.
- (iv) That CUSU must not complete any inspections and that since CUSU had no legal power to do so, he was not going to allow its Director (Mr Pierre) to speak at the meeting.

E22 Following a discussion it was agreed that draft terms of reference should be drawn up by a joint team of CUSU and CCD, sent to the CEO of HCU (Mr Ramnanan) and that there should then be a further meeting between representatives of the team and HCU to agree a plan and start-up date.

E23 However, when these events were reported by Mr Pierre by a memorandum to the Permanent Secretary (Mrs Noel), she required to know why HCU was being treated so deferentially and that, before CUSU attended any further meetings or participated in any inspection, HCU should be required to put its position in writing together with whatever requirements it wished to be met for the inspection to take place. Mr Pierre then orally so informed Mr Hyder Ali and passed this requirement on to the CCD in writing asking that it should in turn be conveyed to HCU. Apparently, HCU was not informed by CCD that the meeting on 22 May would have to be cancelled.

E24 The matter of an inspection then stalled because both the Deputy CCD (Mr Hyder Ali) and the CCD accountant were to go on vacation. At no stage

did the CCD pass on to HCU the requirement of the MOF that HCU should state its position in writing. Indeed, only on 11 June 2003 the CCD personally wrote to Mr Gayndral Ramnath, the HCU Secretary, apologising for the failure of the CCD/CUSU team to turn up on the 22 May meeting and stating that because the Deputy CCD and the Accountant had gone on vacation and because the officer in charge of audit was about to do so, the CCD had decided to defer the Review “until such time as the resources capable of conducting this Review are available to me”. This letter continued:-

“I, however, wish to convey my appreciation to you and the Board for the excellent co-operation and assistance you extended to the Team at these preliminary meetings.

This office is committed to facilitating your growth and development as you continue to provide for a better quality of life for your membership and the wider community”.

- E25 Given the events at the meeting on 20 May, these comments exemplify the on-going somewhat cosy relationship between the CCD and HCU.
- E26 Therefore, CUSU did not get involved in any further plans to conduct an inspection of HCU. It concentrated on its educational role and legislative reform, including the preparation of a draft Credit Union Financial Supervision Bill in 2005. This was promoted by CUSU but eventually abandoned in the face of opposition from the credit unions. It involved the transference of responsibility for the supervision of many of the credit unions’ financial activities to CBTT.
- E27 Eventually CUSU was disbanded in 2006 and the MOF thereafter ceased to be concerned with the operation of the credit unions.



## **Section F: The Development and Management of HCU until October 2008**

F1 Mr Harnarine was elected a director of HCU at its AGM in 1997. He remained a director until it was put into liquidation in October 2008. He was President of the BOD from 22 March 1998 until October 2008. He was also a director of companies which were wholly or partly owned by HCU, namely:

- a. HCU Financial Limited (3 May 2007).
- b. Masala Radio Limited (September 2005);
- c. HCU Publications Limited (April 2007);
- d. Global Television Production (17 April 2007);
- e. HCU Real Property Developers Limited (17 August 2005);
- f. HCU Auto Care Services Limited (7 March 2007);
- g. Sajeevan Medical Complex Limited (12 April 2007);
- h. Transworld World Travel (1995) Limited (based on notice of change of directors 12 December 2002);
- i. HCU Food Corporation Limited (10 May 2007);
- j. HCU Impressions and Printing Services Limited (10 May 2007);
- k. HCU Trust and Asset Management Company Limited (4 April 2007);
- l. HCU Institute for Higher Learning Company Limited (22 August 2007); and
- m. World Select Gem (8 February 2008)
- n. HCU Communications (27 February 2003).

F2 Mr Harnarine completed his formal education at St. Stephen's College in 1979. He then obtained an Advanced Diploma in Industrial Relations from Cipriani Labour College and then a Diploma in Works Management from the

University of the West Indies. He was appointed an Industrial Relations Officer in the National Union of Government and Federated Workers Trade Union (“NUGFW”). In 2007, while President of the HCU, he followed an external course at the American Academy of Financial Management which resulted in his becoming a Chartered Portfolio Manager and a Master Financial Planner.

F3 While working at NUGFW Mr Harnarine was offered and accepted a job as Credit Officer at Worker’s Bank of Trinidad and Tobago. He left this position in 1981 and after much political activity under the flag of the National Alliance of Trinidad and Tobago, he accepted the position of Director of Labour and Industrial Relations at the NUGFW in Port of Spain. In 1997, he resigned that position for political reasons and formed a new trade union — the Trinidad and Tobago Public and Private Sector Trade Union (“TTPPSTU”) — with the laudable purpose of championing the rights of daily paid workers.

F4 Having resigned on a matter of political principle from NUGFW and thereby lost his house and his car, it was Mr Harnarine’s evidence, which is accepted, that he was “rescued” by Mr Lawrence Duprey who offered him a job selling insurance at CLICO. He worked there from 1997 to 2003 under the guidance of Neil Jones and Lawrence Duprey. He described himself as their protégée and was clearly an admirer of Mr Duprey as “a visionary par excellence” who, according to Mr Harnarine, drew Mr Harnarine into his inner circle of advisers. By 2003 Mr Harnarine had earned over \$6 million in commission. He had simultaneously been President of HCU’s BOD for five years, an appointment which in his evidence, Mr Harnarine attributed to “the force of my personality and plenitude of my skills set”. The Presidency was

supposed to be a voluntary appointment and was therefore open to Mr Harnarine alongside his job at CLICO.

F5 Although, in the course of his evidence, Mr Harnarine was unwilling to agree that it was unnecessary for members of the BOD of HCU to have more than secondary school qualifications, he accepted that the training of directors covering at least reading balance sheets and business plans had needed to be and had been provided.

F6 In September 2004 PWC Canada had, at HCU's request, prepared a report on corporate governance. Amongst the recommendations was the following:

- The Board should review its composition and membership to determine whether it comprises sufficient skills and expertise to provide proper oversight due to the increasing size, complexity and evolving nature of the HCU Financial Group of Companies (2.3)
- Similarly, the board should review the composition and membership of the boards of the subsidiary companies to determine whether they are sufficient to provide effective oversight on the operations of the respective companies (2.4).

HCU's response to this recommendation is instructive:

- As the Board is primarily an elected one; there is no control over capability of membership. To balance this, Corporate Governance was adopted.

F7 Mr Harnarine's explanation was that it was decided to get into corporate governance "where the Board would be more legislative: and that the corporate management would carry out all the executive functions of (HCU)". Thus the BOD was not responsible for the day to day running of HCU and

subsidiaries would not be run by managers skilled in their diverse activities. This was not what PWC recommended. The autocratic framework by which most of the subsidiaries were managed lacked experience of managing businesses of the kind in question.

F8 This Commission finds that all major management decisions were taken by Mr Harnarine personally, frequently in conjunction with the Secretary, Mr Ramnath, and in certain cases with Mr Jameel Ali, Mr Lalchan and Mr Bachan. Senior management only left to the BOD matters which under Regulations or Bye-Laws required BOD approval.

F9 The Commission further finds that, apart from the insurance company, Bankers Insurance Company of Trinidad and Tobago (“Bankers”), all the subsidiaries were governed by the HCU BOD. There were in the case of a few of the subsidiaries General Managers whom HCU appointed from its own personnel to conduct the administration of particular subsidiaries. There is no evidence before the Commission that such managers had any experience of the relevant businesses. However, the boards of the subsidiary companies played little or no part in the corporate governance of each. The reality was that the sole function of the boards was to satisfy statutory requirements, all capital expenditure was usually approved by Mr Harnarine in conjunction with Mr Ramnath and the CEO of HCU, Mr Bachan, and Mr Harnarine appointed the management responsible for the day to day operations.

F10 In 1998, when Mr Harnarine became President, there were 3,618 members of HCU with a share capital of \$4.5 million. At the end of February 2011

there were approximately 117,000 members with deposits of \$500 or less, 26,000 with deposits of \$501 to \$74,000 and 1,487 with deposits holding at least \$75,000.

F11 From the very outset of his Presidency, Mr Harnarine worked flat out to increase the membership. For example, the membership rose from about 6,216 in 1999/2000 to 15,519 in 2000/2001.

F12 At this time, (1999/2000) HCU also increased its range of products. It introduced share deposit accounts, fixed deposit share accounts and a commercial loan portfolio. Interest rates paid to share depositors were higher than the rest of the market paid.

F13 The process of diversified investment through subsidiaries began soon after Mr Harnarine became President.

Thus HCU incorporated the following subsidiaries in 2000:-

Masala Radio Ltd;  
HCU Security Services Ltd;  
HCU Home Furnishings Ltd;  
HCU Financial Ltd;  
HCU World Travel Ltd;  
HCU Auto Care Services Ltd.

F14 HCU invested \$250,000 in each and in the year to September 2001 it invested further sums totalling \$1,783,971 in subsidiaries. The above six companies were formed without the prior approval of the CCD.

F15 Although in the course of his evidence Mr Harnarine said that the formation of these subsidiaries was consistent with the Bye-Laws which empowered

HCU to provide services for its members, those subsidiaries being the vehicle for the provision of such services, this Commission is not persuaded that that was the main purpose. The more likely explanation is that this was the beginning of a concerted policy of investment in service industries in the hope that they would eventually increase the overall profits of the HCU Group.

F16 Mr Harnarine's evidence was that he was under pressure from rich Indians who had made large deposits to diversify by means of such investments. There is no independent evidence of such pressure. He said that he believe that, once these subsidiaries were operating profitability, they might be sold to some of those rich investors. That would not qualify the duty of the President and members of the BOD and of other officers to act in the best interests of the whole of the existing membership and with due regard to the protection of the members' deposits and shares as distinct from any private investor interest.

F17 There is no evidence that any due diligence was exercised in relation to any one of these subsidiaries or that any member of the HCU management team or the HCU BOD had any prior experience of managing any of the businesses sought to be established.

F18 At a BOD meeting on 3 April 2000 attended by Messrs Harnarine, Ramnath and Lalchan, it was agreed that there should be formed a company to be called HCU Financial, to look at investments and businesses which HCU could not go into. Mr Harnarine spoke of "the ever-changing financial environment and the need for diversification and development of the credit

union and the need for creation of a corporate image to better enhance investment appeal”.

F19 At a SGM meeting on 6 May 2000, attended by Messrs Harnarine and Ramnath, members were informed of an amendment of the Bye-Laws to allow for the establishment of HCU Financial. The minutes record that Mr Harnarine told the meeting that HCU would be like “heading to the planets with feet on the ground” and that HCU Financial would have subsidiaries. Mr Rai, an Officer of the CCD who attended the SGM, recorded HCU’s intention to form a financial institution to handle mortgages and then long term investments and that he informed the meeting that the new entity could not be a co-operative unless it were formed, registered and operated in accordance with the CS Act and Regulations and that, otherwise, HCU would need to obtain the CCDs permission to set up and operate it.

F20 Following the SGM, at an adjourned BOD meeting on 22 May 2000, attended by Messrs Harnarine, Ramnath and Lalchan, the BOD approved the decision to form HCU Security Services Ltd with a board including Mr Ramnathan as Chairman, Mr Ramnath and Mr Bachan as directors. The BOD further agreed to provide \$100,000 for capital and \$50,000 for a car loan facility.

HCU had not obtained the prior permission of the CCD to form HCU Security Services Ltd or to invest any money in it or to loan it money as it was not a member of HCU.

F21 By a letter dated 28 June 2000 the Acting CCD approved an increase in HCU’s Maximum Liability to \$650,000. At the same time he warned HCU of

the need for an application to increase the Maximum Liability being made before the previously fixed Maximum was exceeded, in accordance with Regulation 14(3).

F22 The special BOD meeting held on 15 July 2000 and attended by Messrs Harnarine, Ramnath and Lalchan, exemplifies the remarkable dislocation between what the BOD was told and decided and what HCU actually did. Thus, there can be no doubt that, as at that date, HCU Security Services, HCU Home Furnishings and HCU Financial Ltd had already been incorporated and were wholly owned by HCU. According to the minutes, Mr Harnarine told the Board that HCU would maintain a 51 per cent share value in HCU Security Services Ltd, HCU World Travel Ltd and HCU Home Furnishings Ltd so that it could go forward and bring major profits. Resolutions were passed to the effect that HCU was to have 51 per cent shares in these three companies. In reality, HCU from the outset, owned and continued to own 100 per cent of each of these companies.

F23 The BOD approved the following appointments to the newly formed subsidiaries:

HCU Financial to be launched with the HCU World Class Travel: Mr Bachan to be in charge;

HCU Security – Messes Ramnath, Bachan and Ramnanan to be part of the BOD;

HCU Home Furnishings – Lalchan and Bachan to be part of the BOD;

HCU Foundation – Ramnath to be member of the BOD;

HCU World Travel – Bachan to be part of the BOD.



- F24 On 1 August 2000 the BOD meeting minutes record that Messrs Harnarine, Ramnath and Lalchan attended and that it was reported that the Credit Union was embarking on acquiring real property. It was further recorded that the BOD approved obtaining a \$500,000 overdraft and using the \$1 million CLICO pension fund as collateral to finance installation of ATM machines.
- F25 Following an interview of Mr Harnarine by an official of CCD on 9 September 2000, it was recorded by the officer that a loan of \$60,000 had been granted by HCU to HCU Security Services. It does not appear that HCU had obtained the CCD's prior approval for this loan. Security Services was not a member of the credit union and the loan was impermissible. There is no evidence that the CCD took any disciplinary steps.
- F26 In October 2000 a letter had been sent by "Concerned Members" of HCU to the Governor of the CBTT in which allegations were made against HCU and it was asserted "Co-operative Division incapable of 'handling' Mr Harnarine and 'his boys'". An officer of the CCD thereupon interviewed Mr Ramnath, Mr Bachan and Ms Sadaphal and reported to the Deputy CCD that the above allegation was "totally fake and mischievous".
- F27 At a meeting of the BOD on 28 October 2000 attended by Messrs Harnarine, Ramnath and Lalchan it was decided to make loans totalling \$480,000 in respect of the "operational costs for the financial year" to five subsidiaries. These loans did not receive prior approval from the CCD. They were all impermissible. The practice of the draining away of the liquid assets of the membership in order to keep the subsidiaries in business was well under way.

F28 At a BOD meeting held on 20 November 2000 attended by Messrs Harnarine, Ramnath, Lalchan and Bachan it was agreed to obtain an overdraft of \$2.5 million. Mr Harnarine is recorded as having said that the “Credit Union would be run by ‘President Financial Management’”. The Commission finds that this phrase was synonymous with an autocratic management structure.

F29 The 2000 AGM was held on 2 December 2000. Messrs Harnarine, Ramnath and Lalchan attended. So also did a CCD officer, Mr Anirudh Rai. Mr Harnarine told the meeting that within months members would be able to invest in the subsidiaries which had been set up “financed by depositors’ moneys” and that HCU would retain a 51 per cent holding. Messrs Ramnath and Lalchan were voted on to the BOD and Mr Lalchan on to the Credit Committee. Mr Harnarine asserted that HCU “has been experiencing a quantum leap in all areas, and the sky and even the stars were not the limit”.

F30 In the event, the subsidiaries were at no time made available for investment by members: with the exception of Bankers, they remained wholly owned by HCU throughout.

F31 At or about the time of the BOD meeting on 13 December 2000, Mr Lalchan was appointed Property Manager and Treasurer.

In the course of 2001 HCU formed three more subsidiaries:

HCU Auto Care Services Ltd (January 2001);

Millennium Advertising Ltd (March 2001);

HCU Real Property Developers Ltd (April 2001).

It invested \$250,000 in each of those companies. In no case did it apply for the CCD's prior permission to incorporate the company or to make any such investments. The Commission finds that, having regard to the warnings of the need for prior consent which had already been given by officers of the CCD, the omission to make prior application was the result of a deliberate policy of flouting this aspect of the regulatory system. It is to be inferred that Mr Harnarine, Mr Ramnath and Mr Lalchan and probably others amongst senior managers approved this conduct.

F32 On 19 February 2001 the CCD gave approval to a request by HCU to increase its Maximum Liability to \$3.5 million. Again the letter from the CCD included a reference to Regulation 14(3) prohibiting receipt by a credit union of loans or deposits in excess of the Maximum Liability. The Maximum Liability was thus increased from \$650,000 on 28 June 2000. There is no evidence that anyone in the CCD's Department ever considered why this sudden increase was necessary or evaluated the justification for it or, indeed, enquired into the components of the credit union's existing total liability or of the increase in total liability apparently anticipated by the request by HCU.

F33 In the meantime, at its meeting on 17 January 2001 the HCU BOD decided to set up a Management Team consisting of Mr Harnarine, Mr Ramnath, Mr Bachan, Mr Lalchan, Mr Ramnarine, Ms Sadaphal, Ms Naipaul, Mr Ramnanan and Mr Ramrattan.

F34 At the BOD meeting on 15 October 2001, which was attended by Messrs Harnarine, Ramnath, Lalchan and Bachan it was decided to make loans to six subsidiaries, amounting to a total of \$184 million. It does not appear that

the prior approval of the CCD was obtained. In so far as these loans were made they were impermissible, none of the subsidiaries being members of the credit union.

F35 As appears from Section E, in about September 2001, the Credit Union Supervisory Unit of the Ministry of Finance (“CUSU”) conducted a financial review of HCU – which it referred to as a “Desk Review”, not least because it was based only on published documents, including financial statements, which were 8 months old – in which it endeavoured to test the financial viability of HCU by application of the internationally recognised “PEARLS” criteria. These are Protection, Effective Financial Structure, Asset Quality, Rates of Return and Costs, Liquidity and Signs of Growth. Serious concerns about the liquidity risk were expressed in the following passages which should be quoted at the outset.

“It should be noted that while net loans increased by 240% from \$33mn in 2000 to \$111mn in 2001 the allowance for loan loss increased by 1,573% \$1.1mn in 2001. This suggests some recognition of a significant deterioration in the quality of the loan portfolio. The extent to which this deterioration is attributable to new business would raise questions regarding the management of the growth of the loan portfolio and in particular the adequacy of the institution's Credit Administration Practices.

Although the solvency ratio is 105% and above the pearls standard of 100% this should be viewed with caution as the adequacy of the allowance for loan loss cannot be determined without data on delinquency. If the allowance for loan loss is adequate it would impact negatively on institutional capital and hence solvency of the institution.

The Liquidity condition of the institution is considered weak as the key liquidity ratios as at September 2001 compared unfavourably with the Pearls Standard. Outstanding Loans and Overdraft amounted to \$11.5mn or 6% of Total Assets. This condition is

indicative of either a cash flow problem or a policy by management to use borrowings as a major source of funding. However, this condition has serious implications for cost of funds.

With the exception of Liquid Investments all major indicators experienced growth in 2001. However, there are some concerns regarding the effective management of this growth. Of particular concern would be concentrations in the deposit portfolio, the volatility of such deposits and the extent to which same have been invested in Long Term Securities, disbursed as Long Term Loans and invested in subsidiaries”.

F36 In consequence of a letter of complaint from “concerned members of HCU” to the MOF in September 2001 which the MOF referred to the CCD, Mr Diaram Maharaj, a very experienced Officer in CCD conducted an inspection into HCU’s operations and management and produced a report dated 2 November 2001 based on visits to the Head Office and to nine branches. It was concluded that all branches had well-documented policies and procedures and that checks on all loan files for directors and members of the BOD showed that all were in compliance with the Society’s Lending Policy.

F37 However, the report also included the following:-

“The report is also starved of vital information because the Secretary informed me that only Mr Harnarine could provide me with information with respect to the society’s macro plan, the society’s investments and even an up to date financial statement. I had a confirmed appointment for October 22, 2001 with Mr Harnarine but he did not show up at the appointed period between 2pm and 4pm. Since I did not want to further delay this report I made no further appointment to meet with the Mr Harnarine”.

This comment exemplifies the attitude of Mr Harnarine and Mr Ramnath to the carrying out by the CCD of its regulatory functions; it was an intrusive nuisance. It further raised the following matters:-

- (i) A significant amount of the loans was unsecured;

- (ii) 0% loans were being made, contrary to the Bye-Laws;
- (iii) No disclosure had been obtained of the extent of HCU's investments.

The report also recommended that:

- (i) CCD should grant permission in response to HCU's request to operate a Bureau de Change provided that HCU could meet CBT's criteria;
- (ii) HCU should be assisted with a comprehensive review of its Bye-Laws in order to meet its rapid changes;
- (iii) CCD should request details from HCU of all its investments and whether it had obtained the CCD's approval;
- (iv) CCD should monitor HCU's operations to ensure that it met all its statutory obligations.

F38 The evidence before this Commission is that, apart from reviewing the Bye-Laws, the other recommendations were not effectively carried out.

F39 At a SGM held on 17 November 2001 various decisions were ratified, including one to form HCU Financial and its group of companies and also to increase the Maximum Liability by an additional \$20 million. In rather less than 18 months it was thus proposed to increase Maximum Liability by over 30 times the level in June 2000. This increase was approved by CCD on 28 November 2001. Again there is no evidence that CCD investigated the reasons for the very substantial increase in Maximum Liability or sought to identify the components of the increase requested.

F40 In the course of 2002, HCU incorporated five more subsidiaries, namely:-

- Sajeevan Medical Complex Ltd
- HCU Impressions and Printing Services Ltd
- HCU Communications Ltd
- HCU Food Corporation Ltd
- HCU Publications Ltd

HCU did not have the CCD's prior permission to incorporate the first two. Although it invested \$250,000 in each, it had no prior permission to do so from CCD.

- F41 In 2002 HCU also acquired a 65 per cent shareholding in Bankers.
- F42 In the course of 2002 an anonymous whistle-blower who claimed to be a member of the BOD complained to CUSU about management practices at HCU, including falsified valuation reports in relation to acquired real estate, and asserted that the "CCD was a waste of time and in conspiracy with Harry".
- F43 The MOF also received complaints from members of the public referring to financial impropriety, broken promises and loan interest being improperly calculated. Although these complaints were passed on to the CCD, little or nothing was done to take action about them.
- F44 On 27 February 2002, the CCD's accountant advised the CCD that HCU's proposal that its loan portfolio should be securitised to the extent of \$20 million should be refused on the principal ground that HCU was then operating far beyond its Maximum Liability as authorised by the CCD.
- F45 At a SGM in March 2002 the members were informed that at a previous general meeting the BOD had been "mandated" to set up investment operations abroad". This statement appears to have been untrue: there is no evidence of any such mandate. In the course of his evidence, Mr Harnarine said that, although HCU could not set up branches abroad it could operate through investment companies of HCU Financial Ltd, the purpose of such

investment operations being so that monies received abroad as investments would be brought to Trinidad and invested locally into development and high interest generating investments.

This might well have been the purpose of foreign investments but, as events were to show, HCU lacked the investment skills necessary for such operations.

F46 Because of the steady flow of complaints about HCU and its management, more fully described in Sections E and J, in early 2002 CUSU, at the request of Mr Enill, a minister in MOF, planned to carry out an inspection of HCU, to commence in early April 2002. When CUSU's inspection team arrived at HCU Head Office to commence that inspection it was shut out on the grounds that Mr Harnarine was not available. A short time later, there was a meeting between Mr Pierre, Director of CUSU, and Mr Harnarine in the course of which the latter maintained that CUSU had no legal status justifying an inspection. However, he later agreed to meet CUSU again but only if it were part of a team that included CCD officers.

F47 Mr Harnarine's position on the legal status of CUSU was certainly correct: neither CUSU nor the MOF had any entitlement under any regulatory legislation to conduct an inspection of a credit union. The Cabinet Minute of 27 June 2001 which made CUSU responsible for financial supervision of credit unions did not empower it to insist on the physical inspection of the premises: that remained exclusively within the province of the CCD under the CS Act 1971.



- F48 On 13 May 2002, the Permanent Secretary, MOL, urgently required from the CCD a report on the condition of HCU, including “the financial and other status” of HCU and “any problems identified or reported in relation to that credit union”.
- F49 On 16 May 2002 the Acting CCD, Mr Hyder Ali, reported to the CCD that the CCD had still not approved amendments to the Bye-Laws pertinent to HCU’s investment in the subsidiaries which had already been incorporated, that is that such incorporation was and continued to be unlawful, and that, with regard to assets, total assets at 30 September 2001 were \$202 million, an increase of \$149 million (382%) over 2000. That increase resulted from increases in loans to members and particularly the acquisition of fixed assets and investments.
- F50 In a report dated 6 June 2002 the Deputy CCD reported to Keith Maharaj, the CCD; that at a recent meeting with the BOD of HCU the Directors were advised to obtain prior approval of the CCD in order to undertake investments in accordance with Section 45(d) of the CS Act 1971. Although CCD had written to HCU on two previous occasions to this effect, no response had been received. Mr Harnarine was reported to have given a commitment to have that matter rectified immediately but so far the situation was “not yet resolved”.
- F51 On 13 June 2002 HCU by Mr Ramnath, wrote to the CCD applying for permission to invest start-up capital of \$250,000 in each of 7 companies. Permission was granted on 14 June. It re-emphasised that in accordance with Section 45(d) of the CS Act 1971 permission must be asked for before

any such investments was made. There is no evidence that the CCD took any steps to evaluate the need for or suitability of these investments. However, the CCD in its letters granting approval stated that it was expected that the BOD had deliberated and explored fully all the financial and legal implications in pursuing those investments and had obtained the necessary approvals from the general membership. There is no evidence that HCU carried out any due diligence in relation to any of those companies nor that the CCD took any steps to ascertain whether its expectation was fulfilled.

F52 At a SGM held on 20 July 2002 reference was made to HCU extending its operations from Miami to New York and Canada. It was also advised that Maximum Liability needed to be increased from \$20 million to \$50 million. Permission for that increase was requested by Mr Ramnath on 20 August 2002. Mr Maharaj (CCD) annotated the letter asking for a recommendation from the Deputy CCD, My Hyder Ali. On 5 September 2002, Mr Ramnath wrote to the CCD explaining why HCU had applied to increase its Maximum Liability, namely for the purpose of meeting demands for withdrawals by members, to accommodate possible future demands for withdrawal having regard to a “multi-million dollar” increase in deposits and to accommodate an increase in the demand for loans.

F53 On 10 September 2002 the CCD granted its approval for an increase in the Maximum Liability to \$50 million.

F54 In the course of 2002 HCU acquired for some \$12 million a controlling shareholding in Bankers. The Insurance Act Section 20 provides that a person seeking to exercise control over an insurance company must first

obtain from the Superintendent of Insurance approval as being a “fit and proper person” to exercise such control. Although Mr Harnarine said in evidence that HCU had discussed with CBTT and its attorneys the question whether a credit union could own shares in an insurance company and it was felt that it could do so and that a fit and proper test was done on the directors and on HCU itself, this Commission, having also heard the evidence of Ms Wendy Ho Sing of the CBTT, has concluded that the approval of the Superintendent of Insurance was neither sought nor obtained by HCU and that HCU was therefore in breach of Section 206 of the Insurance Act and should not have acquired that interest in Bankers. The fact that it appears to have slipped through the regulatory controls illustrates the perils, probably unavoidable in relation to ownership of insurance companies, of having more than one regulatory body responsible for the investments of one credit union.

F55 The Auditor’s Report on HCU’s Financial Statements balance sheet for the year ending 30 September 2002 was signed by Messrs Harnarine, Ramnath and Lalchan on 5 December 2002. It indicated that the investment in Bankers had already been made notwithstanding that neither the CCD nor the Superintendent of Insurance had approved it. Other investments, included in Chic products, were shown to have been made but had never been authorised by CCD.

F56 As at 30 September 2002 substantial losses were already being sustained by newly-formed subsidiaries of HCU, namely HCU Financial Ltd, HCU Real Property Developers Ltd and HCU Communications Ltd. No audited accounts were produced for any of these subsidiaries until Mr Chanka Seeterram produced them in August/September 2005. Nevertheless, it must

have been perfectly obvious to anyone amongst the HCU management team with any knowledge of the operations of these companies that they were making such substantial losses that, as Mr Seeterram found and stated, they could be regarded as a going concern only if funds could be provided to them from outside sources. If that funding were to be provided by HCU – and it is hard to see where else it could have come from – whether by loan or further investment, that could only have the effect of reducing HCU’s liquidity.

F57 HCU Food Corporation and Sajeewan Medical Centre had been incorporated without the CCD’s prior approval in August 2001. HCU requested CCD’s approval to invest in them. At a meeting between representatives of CCD and HCU, including Mr Ramnath, on 12/13 September 2002 the CCD team asked HCU to submit information as to the incorporation of those companies, their financial track record, return on investment, the source of funding, the percentage of the company to be purchased, the policy for appointment and control of employees and, significantly, a business plan. When, contrary to Mr Ramnath’s promise, nothing had been received by the CCD by 28 October 2002, it informed HCU that the investments could not go ahead. This was an entirely justifiable response which exemplified an attempt by CCD to provide a proper level of supervision over investments. Eventually some of the requested information was provided in April 2003. In the meantime the investments had already been made.

F58 At the end of 2002 HCU appears to have purchased a company incorporated in Florida which it proceeded to re-name HCU Financial Company (USA) LLC (referred to as “HCU USA”). Due to the fact that under the law of Florida HCU could not own a direct interest in a Florida company, the registered

shareholders were identified as Messrs Harnarine, Ramnath and Lalchan, each for 33.33 per cent. All three gave evidence to the effect that there had been a declaration of trust signed by them as trustees on behalf of HCU as beneficial owners. Notwithstanding requests from HCU's external auditors during the period 2004 to 2007 and subsequently from Ernst & Young in the course of their Inquiry under Section 4 of the CS Act 1971, neither that declaration of trust nor a copy of it were produced. Finally, it has never been produced in evidence before this Commission. Nor has the Liquidator of HCU been able to find a copy of this document. A diagram showing the ownership and organisational structure of HCU USA dated 3 December 2002 states that there were "no indirect owners" of HCU USA. The only owners identified by it are Messrs Harnarine, Ramnath and Lalchan. It is therefore extremely doubtful whether HCU ever obtained any document establishing a beneficial interest in that company. The company was evidently taken over by CLICO in the course of the divestment agreement in 2005.

F59 The purpose of setting up HCU USA was said to be to provide money remittance services as between Trinidad citizens resident in the USA and Trinidad. The evidence before this Commission strongly suggests that no such transactions took place at any time before the company was divested to CLICO. Indeed, there is tangible evidence only of two material transactions entered into by HCU USA. Both involved the purchase of real estate in Florida: (1) a rental property in Miramar purchased for US\$156,010 and (2) a house belonging to Seepersad Harnarine, Mr Harnarine's brother, in Pembroke Pines, Florida at a price of US\$185,000.

- F60 The Miramar property was said by Mr Harnarine to have been purchased on legal advice so that HCU USA would qualify for three agency licences. It produced some rental income in the years to 2004 and 2005.
- F61 The Pembroke Pines property was paid for by HCU to the extent of US\$50,000 – \$55,000 by way of down payment. It was mortgaged and HCU was to take over the mortgage. In the end HCU was unable to complete the purchase and the house was eventually sold to Mr Harnarine's sister, Homawatie Harnarine. She is said to have paid US\$40,000 to HCU by deduction from her HCU account. The balance of US\$15,000 was paid to Larry Curran, HCU's US lawyer, in respect of legal fees relating to that property.
- F62 The total amount paid by HCU to HCU USA between the time of its acquisition and the time of divestment to CLICO in 2005 was US\$1,051,917.84 (see Section (H) for details of the divestment agreement). The audited accounts of HCU USA indicate that it suffered a loss of US\$71,429 for the year ending 31 December 2003, a loss of US\$326,007 for the year ending 31 December 2004 and a loss of US\$39,087 for the year ending 2005. As of December 2003 US\$452,935 of HCU members' money had been provided to HCU USA as working capital and a further US\$747,666 as of December 2004. Mr Harnarine's evidence was that these payments were to cover expenses that had to be met so the company could commence trading, which was some time in 2004. Most of this expenditure was on salaries and allowances, including US\$4,000 per month for several months to Mr Harnarine, and payments to a total of six employees, one of which was Mr

Harnarine's brother-in-law and one his nephew, each of whom was paid US\$4,000 per month.

F63 On 17 February 2005 it was stated at a senior staff meeting of HCU USA that HCU USA's operations were to be discontinued with effect from 1 March 2005.

There is evidence that, shortly before that meeting, members withdrew US\$100,000 from HCU USA. No explanation was provided to the company for this withdrawal.

F64 As from about March 2005 both Mr Ramnath and Mr Lalchan resigned as directors of HCU USA apparently to make way for representation from CLICO to sit on the BOD pursuant to the divestment agreement. Although under that agreement in its original form 100 per cent of HCU USA was to be sold to CLICO, there was a later agreement that only  $66\frac{2}{3}$  per cent would be sold and CLICO paid US\$250,000 for that interest. Of the proceeds, US\$150,000 was paid to Exim Bank for Harris Corporation International and US\$100,000 to Intercommercial Bank. However, Mr Harnarine continued to own  $33\frac{1}{3}$  percent of the shares and, according to his evidence, at Mr Duprey's request, remained Chairman. Nevertheless, in July 2006, over a year after CLICO had acquired two thirds of the company, the HCU BOD approved an allowance to Mr Harnarine of \$60,000 per month.

F65 HCU's external auditor, Mr Chanka Seeterram, attempted to inspect HCU USA's offices in July 2006, at the very time when the HCU BOD was voting that monthly allowance to Mr Harnarine. When he arrived he was informed that the offices were closed. Upon requesting accounts from

Mr Ramsahai, who had been the manager, Mr Seeterram was informed that none were available for the years 2004 or 2005. He was provided with payment vouchers for those two years, but most of the supporting documents were missing. Inspection disclosed that directors' fees had been paid during those years to Messrs Harnarine, Ramnath and Lalchan. In addition substantial payments had been made to Homawatie Harnarine (Mr Harnarine's sister) for expenses said to have been incurred on behalf of HCU USA, including hotel bills, telephone bills, travel and entertainment, such amounts including payments totalling US\$85,9268, none of which appeared to be related to the business of the company. Further, there was no documentation supporting a payment of US\$100,000 to Harris Corporation in 2005.

F66 In the course of 2003 four further subsidiaries were incorporated. HCU invested \$250,000 in each. They were:

HCU Electronics and Surveillance Company Ltd

HCU Auto Rentals Ltd

HCU Real Estate Ltd and

Global Television Company Ltd

HCU did not apply to the CCD for prior approval of the incorporation of these companies or of investment in them. There is no evidence that HCU carried out any significant due diligence in relation to the establishment of these new businesses or that they had prepared a business plan or that any member of the BOD possessed any particular expertise with regard to these businesses.



F67 In April 2003 HCU submitted to the CCD documents relating to its plan to create subsidiaries which it had already incorporated during 2002. When asked in the course of his evidence to explain the business plans for these companies, the CCD, Mr Keith Maharaj, said this:

“...the resources available to the Commissioner has been stretched so thin, that it was practically impossible for the Commissioner's Office to take a document like this, which is heavily outside of the - the expertise within the Commissioner's Department, to analyse and to ... bring a meaningful recommendation”.

It is thus to be inferred that, even if HCU had presented to the CCD a business plan whenever it applied for permission to incorporate or invest in a subsidiary, the CCD would not have had adequately qualified staff to evaluate the viability of what was proposed. In reality it was not equipped to sufficiently to perform its supervisory functions when it came to a corporate group as expansive and diverse as HCU.

F68 From April 2003 there commenced an unproductive debate between Mr Pierre of CUSU and Mr Maharaj, the CCD, as to the means by which CUSU and the CCD should carry out a joint inspection of HCU. This is more fully described in Section (E). For present purposes it is sufficient to say that on the one hand CUSU and CCD disagreed as to the nature of the inspection, CCD maintaining that one week would be enough, whereas CUSU considered at least 12 to 16 weeks would be needed, while on the other hand Mr Harnarine maintained that an outside professional firm should be contracted and that CUSU had no legal status. An attempt was made by CUSU and CCD to start a scoping inspection for two weeks on 12 May 2003

to ascertain and determine how much work would be needed to complete the inspection.

F69 A meeting between the joint inspection team led by Mr Pierre and Mr Hyder Ali and Mr Harnarine on 20 May 2003 ended inconclusively, save that a possible solution to the impasse was discussed, namely that terms of reference of the inspection term would be worked out between CUSU and CCD and then further discussed on 26 May. Although accounts of what passed at the 20 May meeting are confused, it appears that a tentative common position was reached to the effect that CUSU would conduct an inspection under the authority of HCU. Discussions between CUSU and the CCD as to how further to approach HCU and specifically whether to put forward draft terms of reference to HCU and invite a written response proved to be inconclusive and concluded on 11 June 2003 when the CCD, Mr Keith Maharaj, informed Mr Pierre of CUSU that the inspection of HCU would have to be postponed due to the absence on leave of the CCD Accountant and of Mr Hydar Ali. Mr Maharaj then wrote to HCU (Mr Ramnath) stating his decision to defer the Review of HCU “until such time as the resources capable of conducting the Review are available to me”. His letter concluded:

“I, however, wish to convey my appreciation to you and the Board for the excellent co-operation and assistance you extended to the Team at these preliminary meetings.

This office is committed to facilitating your growth and development as you continue to provide for a better quality of life for your membership and the wider community”.

F70 On 23 June 2003 HCU applied to CCD for a licence to operate a bureau de change. On 15 July 2003 Mr Keith Maharaj wrote to the CBTT enclosing

HCU's application and recommending and supporting the application. Amongst the reasons justifying this support were the following remarkable comments:

- “1. The Credit Union has consistently conducted its Statutory Annual Audits and held Annual General Meetings in conformity with the requirements of the Act and its Bye-Laws.
2. The Board of Directors and other Statutory Committees (and ad hoc Committees) perform their functions in accordance with the Bye-Laws of the Credit Union, consistent with sound business management practices and in the Interest of the membership.
3. The Credit Union adheres to the Philosophy and Principles of the Co-operative Movement.
4. The unaudited Balance Sheet as at March 31; 2003 indicates an increase in Total Assets from \$550 million to \$722 million over the six (6) month period from September 30, 2002 and Net Surplus of \$5.8 million over the six (6) month period as compared to \$3.26 million for the financial year ended September 30, 2002”.

This letter is more fully quoted in Section (J) of this Report. With regard to point 2, it was entirely misleading and it thereby raises questions as to the objectivity of the CCD in dealing with HCU.

F71 At the BOD meeting on 4 July 2003 Mr Harnarine is reported to have stated that figures for the current financial year would be done at the end of August. He also informed the meeting that all companies were “presently generating profits”. This statement was entirely untrue. With the exception of Bankers, most of the subsidiaries were by then loss-making.

- F72 At a BOD meeting held on 30 October 2003, attended by Messrs Harnarine, Ramnath, Lalchan and Bachan, Mr Harnarine reported that “all the various subsidiaries by the end of the month of April 2004 would realise a profit and be independent”. The meeting approved expenditure by way of loans totalling \$50 million to 10 subsidiaries.
- F73 This meeting had been immediately preceded by strong indications that the financial management was unable to cope with this rapid proliferation of HCU’s activities or that some of the subsidiaries were without funds required in the ordinary consent business. As appears from a memorandum from Mr Ramnath dated 20 October 2003, HCU Communications Ltd had defaulted on its payment to the NIS and had thereby incurred a penalty of \$50,000. Further, it had been discovered by the auditors that HCU Security Ltd had been failing to pay VAT for a year and some \$1 million of payments were outstanding. Mr Ramnath observed “great concern is felt towards the accounting competency of the HCU Financial Department.”
- F74 The financial management of HCU and its subsidiaries was clearly beginning to slip out of control.

It was Mr Ramnath’s evidence, which I accept, that, as a member of the BOD and secretary of HCU, he did not trouble too much about whether he understood the precise details of the financial transactions entered into at that time and indeed that the BOD and HCU “grew so dramatically ... that the BOD was utterly dependent upon consultants and professional advice because it had outgrown its own ability as a credit union”. By 2003-2004 there was, as he put it, “not sufficient understanding or knowledge, with the

exception of Mr Harnarine, by the members of the BOD to be controlling that kind of money". That said, it is to be inferred that Mr Ramnath, as secretary, could well have appreciated that the constant process of disposing of liquid assets for the purposes of acquiring and supporting subsidiaries which failed to trade profitably and acquiring real estate and other tangible property which could not be readily disposed of could eventually so reduce liquidity as to endanger HCU's ability to operate as a going concern.

F75 Mr Ramnarine, the external auditor in 2002-2004, was appointed to audit HCU World Travel and HCU Security but, having started audit work, it had to be abandoned due to lack of documentation. When in 2005 Mr Chanka Seeterram eventually took over the audit to 30 September 2003, the accounts then drawn up show that the following subsidiaries had incurred losses and that their financial statements were prepared on a going concern basis:

HCU Financial Ltd

HCU Real Property Developers Ltd

HCU Communications Ltd and

HCU Auto Rentals Ltd

Two other subsidiaries showed losses, but their accounts for that period did not have to be qualified because the shareholders' equity was greater than the losses. Thus, for the period of 14 months to 30 September 2003 Masala Radio Ltd recorded a pre-tax loss of \$849,847, but its share capital was reported to be \$3,978,390 and for the year to 30 September 2003 HCU

Impressions and Printing Services Ltd recorded a pre-tax loss of \$73,513 but its share capital was \$250,000.

F76 The BOD's report prepared for the AGM held on 6-7 December 2003 stated that HCU continued "to focus on international opportunities to expand and build on image as a financial group".

F77 At that meeting Mr Hyder Ali, Deputy CCD, according to the evidence of Mr Harnarine, commended HCU on its performance and the fact that the surplus for the year was twice that for the previous year.

F78 In or about June 2004, HCU began to employ Mr Jameel Ali with the role of "overseeing the operations of the Financial Group of companies". He was at this time variously described as "Consultant to the President", "Adviser to the President" and "Consultant to the Board". The evidence is that he was a qualified accountant and very bright.

F79 In the course of 2004 HCU incorporated and invested in three further subsidiaries:

HCU Financial Insurance and Investment Agency Ltd

HCU Trust and Asset Management Co. Ltd

HCU Institute for Higher Learning Co. Ltd

F80 At a special meeting of the BOD on 11 February 2004 it was decided to appoint to some of the subsidiaries various directors of HCU to hold the position of Chairman or Director in charge. However, most of the subsidiaries continued to be operated by HCU management and not by their individual boards.

F81 At a BOD meeting on 25 March 2004 Mr Harnarine stated that

“all the various subsidiaries by the end of April 2004 should be realising profit and start becoming independent of the credit union”.

There is no evidence as to the basis for this statement.

F82 On 31 March 2004 the external auditor, Mr Ramnarine, reported on the financial statements for the years to 2001 and 2002 for the subsidiaries, HCU Security Services Ltd, HCU Auto Care Services Ltd and HCU Home Furnishings LTD. The report for each company showed unrelieved losses and that the financial statements had been prepared on a going concern basis, that is to say on the assumption that funds from outside sources would be provided to finance the losses to date and any subsequent losses.

F83 On 17 April 2004 HCU held an SGM attended by Messrs Harnarine, Ramnath, a representative from the CCD and 2,345 registered members. Mr Harnarine stated that HCU had continued its diversification into “a more feasible and profitable organisation”. He referred to various investments for which it was necessary to raise funding “in order for these projects to realise a competitive margin over its competition”. It was explained that in order to fund those subsidiaries by borrowing and other credit facilities and to accommodate this need and the growth of depositors and shareholders it was necessary to increase Maximum Liability to \$100 million. The subsidiaries for which funding was said to be needed were the Television Station, the Printing Press and HCU Food Corporation, as well as the Florida operations. A resolution was passed to increase Maximum Liability to \$100 million.

- F84 On 27 April 2004 Mr Ramnath entered into an agreement to purchase the leasehold of two plots of land at Carlsen Field at a price of \$2 million. He was to hold the land on trust for HCU. This acquisition had not been approved by the BOD or by the CCD.
- F85 At a BOD meeting on 29 April 2004 attended by Messrs Ramnath and Lachlan, but not by Mr Harnarine, it was decided to establish two further subsidiaries, HCU Investment and Pension Consultant Company Ltd and HCU Trust and Asset Management Co Ltd. It was also decided to appoint PWC to carry out an internal audit.
- F86 In May-June 2004, Mr Ramnarine started work on the audit of HCU for the year ending 30 September 2004. He encountered serious problems in obtaining from HCU information which he requested as necessary for the audit. With regard to the first three months of the year to 30 September 2004 there appeared on review of the general ledger balances numerous problems and mistakes. Mr Ramnarine ascribed these to the inadequacy and poor quality of HCU's accounting staff. The process of obtaining information was disrupted by the tendency of staff to refer such requests to the President or Mr Ramnarine or Mr Lalchan. This exemplified the credit union's practice of releasing to outsiders only such information and documents as Mr Harnarine permitted.
- F87 It was Mr Ramnarine's evidence, which I accept, that all HCU's policy and management decisions were taken to Mr Harnarine, Mr Ramnath and advisors.



F88 On 25 June 2004 the CCD approved HCU's request for its Maximum Liability to be raised to \$100 million. There is no evidence as to whether and if so, in what depth, the CCD evaluated HCU's need for that increase. To put this increase into context, the Maximum Liability had thus risen from \$3.5 million in February 2001, \$20 million in November 2001 and \$50 million in September 2002 to \$100 million in June 2004. It had thus grown by 29 times in three years and two months.

F89 At the BOD meeting on 25 June 2004, Mr Harnarine presented the financial statement which was approved. Debt delinquency was said by Mr Jameel Ali to be approximately 21 per cent but he explained that there were a lot of errors in the system and the true figure might be half as much. It is difficult to see why, given that margin of error, the true figure might not equally have been half as much again.

F90 On 1 July 2004 Mr Ramnarine wrote to the HCU Directors as follows:

1. **Fixed Assets**

During our audit we observed that the fixed assets that are owned by the Credit Union are not properly accounted for. A breakdown of properties owned and a cost allocated to each one is still outstanding.

This schedule was promised by the Chairman and Financial Comptroller before the A.G.M in December 2003, however, to date this is still outstanding.

Please be reminded that it is the responsibility of management for securing and maintaining the fixed assets of the society.

**Recommendation**

A detailed fixed asset register should be immediately generated in order to safeguard the society's assets. In addition, a fixed asset addition file should also be kept of all invoices for fixed assets acquired.

2. **Investment Income**

It was noted that during the period under review, substantial amounts of investment income was not accounted for i.e. booked in the general ledger.

Please note that all income generated on securities must be properly accounted for as this would have a direct impact on the profitability of the organisation.

### **Recommendation**

In future, management should ensure that all investment income is booked in the general ledger.

and

## **11. Capital Structure and Risk**

As discussed in the past, the society's management needs to look carefully at its capital structure since a substantial portion of its Fixed Assets, Investment properties, and loans to and Investments in Subsidiary companies have been funded by members' deposits. This is not recommended but in the short term this may be okay as corrective action can be taken. However in the long term this can be disastrous for it would lead to liquidity problems and a reduction in income generated.

Based on the above, the society may need to re-visit and re-think its entire strategy for maintaining; safe and substantial liquidity position. This is relevant since out of Total Assets of \$909m as at 31st December, 2003, liquid assets represents under six (6%) per cent. Our view is that confidence in the society is based on your ability to manage the society's liquidity risk.

In addition to the above, and other risks associated with Credit, Operations, interest rate and now Exchange rate, management needs to look at the society's subsidiary companies with respect to its management, control, profitability and accountability.

F91 Following these warnings, on 27 July 2004 Mr Ramnarine met the Directors of HCU, including Messers Ramnath, Lalchan and, for part of the meeting, Mr Bachan, but not Mr Harnarine. The purpose of the meeting was identified by Mr Ramnarine as being to discuss and give his general overview of "the performance, profitability, liquidity position and viability of HCU and its subsidiaries." What followed provided the six members of the BOD present with a series of the most urgent calls for remedial action by management.

F92 Thus Mr Ramnarine said that the Organisation was “not properly managed”, specifically, as recorded in the minutes:

- (i) Quality of management lacking based on the growth and size of the organisation
- (ii) Not happy with the trend of the Credit Union and its Investment policies
- (iii) Business decisions made by persons with little or no business acumen
- (iv) Confidence and credibility of the Credit Union has started to decline.

Then, with regard to Profitability and Liquidity, specifically, as recorded:

- (i) The organisation is no longer profitable:
  - Audited three months accounts to December 2003 – loss of 3.5m
  - Unaudited three months accounts to March 2004 – loss of 3.3m, however after and adjustments it may be 6m.
  - Total six month loss estimated at 10m.
- (ii) Liquidity position is worsening:
  - The liquid assets to total asset ratio based on the Pearl system, should be around 10%, however the Credit Union is at 6%.
  - Overdraft increased from 5m as at September 2003 to 11m at December 2003 and then to 22.4m at March 2004.

However, the most disturbing comments by Mr Ramnarine related to the utilisation of Members’ deposits, thus:

- (i) Year to September 2003:
  - There was an increase in deposits of 255m, however, it was utilised in the following ways:
    - 7m to Investments
    - 116m to Loans to members
    - 37m to Subsidiaries
    - 130m to investment Properties/Fixed Assets

- (ii) Three months to December 2003;
  - An increase in funds of 41m utilised as follows;
    - 7m to Subsidiaries
    - 34m to Investment Property/Fixed Assets
- (iii) Three months to March 2004;
  - An increase in funds of 44m utilised as follows ;
    - Majority to Subsidiaries.

F93 At a meeting two days later with the BOD, including Mr Harnarine, Messers Jameel Ali, Ramnath, Lalchan and Bachan, in the course of which Mr Ramnarine produced minutes of the 27 July meeting, there developed a debate between Mr Harnarine and Mr Ramnarine about the views expressed at the earlier meeting. Mr Harnarine adopted the position that there was no need for concern as to the management and operations of HCU. Mr Ramnarine was informed that his concerns would be met by the sale of properties by HCU to its subsidiaries. He informed the meeting that he intended to resign as auditor at the 2004 AGM.

F94 Mr Ramnarine took the position – quite justifiably so in the view of this Commission – that, although he had no problem in principle with the sale of the properties to the subsidiaries provided that conditions were satisfied, there must be a stamped transfer document, a deposit on the property and a market valuation in respect of each such sale.

F95 Whereas there may have been no problem in principle with the sale of properties to subsidiaries in order to enhance the liquid assets of HCU, that would only be an effective solution to the credit union's current deficiency in

liquidity if the subsidiary purchasers were in a position to fund the purchase price and thereby enhance the liquidity of HCU.

F96 If the consequence of a sale were simply to create the subsidiary's indebtedness for the purchase price because the subsidiary had no immediately available funds, HCU could have exchanged a relatively illiquid asset for an unrealisable paper asset. As only three of the subsidiaries were not substantially loss-making and able to go on trading without funding from an external source, the sale of property suggestion could have little or nothing to be said for it.

F97 In the middle of 2004 and in 2005 HCU conveyed land to three members of the BOD and related parties – Mr and Mrs Lalchan, Mr and Mrs Ramnath and Mr Bachan – which it had purchased with the use of its members' moneys in February 2002 for \$700,000. There were nine lots of residential land at Macaya Trace. Although it was the evidence of Mr Ramnath that the Board had agreed to purchase the land for directors, there is some inconclusive evidence that on or about 26 February 2003 there was some discussion by the BOD about the purchase of land. However, the Supervisory Committee visited the land in September and produced a memorandum recommending that the land be sold to Messrs Ramnath, Lalchan and Bachan. Mr Ramnath admitted in the course of cross-examination that he had started to build a house on "his" plot before he had bought it or paid for it. He claimed to have been authorised to do so by "joint management and Board", but there is no evidence of any BOD resolution or even management authorisation to allow the construction of a house.

F98 The purchase price paid to HCU by the directors for these three areas of land involved HCU sustaining a loss of about \$12,000 on each area. There was no proper professional valuation of this land. It was sold 2 to 3 years after purchase, after the market had risen. There was no BOD resolution authorising the price of any such sale. There was, however, a Memorandum from HCU's Supervisory Committee dated 15 September 2004, following a visit to the land by that Committee, in which it recommended that the land should be sold "on the semi-open market" at a level of "Directors and Corporate Management as to maintain its sanctity" to Messrs Ramnath, Lalchan and Bachan, who had "applied". Indeed, both the purchase and sale at an undervalue were carried out by decision of the management group and not of the BOD. All three directors borrowed the purchase price from HCU. Mr Ramnath had, by the time he gave evidence in June 2012, continued to live in the house that he had built and while he was delinquent in repayment of the loan. Although on 28 February 2005 Mr Ramnarine requested documentation to establish the cost of the property sold to Mr Ramnath and to Mr Lalchan, no original documents had been produced. Mr Chanka Seeterram in considering the year ending September 2005 had also raised in his management letter of 3 October 2006 the failure of HCU to produce any independent valuations of this land.

F99 Thus the land was sold to directors and the secretary at a loss on the purchase price and a further under-value by reference to the market value.

F100 At a BOD meeting held on 26 August 2004, at which Mr Harnarine was not present but which was attended by Messrs Ramnath, Lalchan, Bachan and Jameel Ali, Mr Ramnath presented a report relating to properties that were to

be sold to subsidiaries – a process that had commenced on 15 August 2004 and which involved HCU selling such properties to the subsidiaries of HCU Financial. They would then be listed as assets of the subsidiary. Mr Ramnath claimed that formal valuations and pricing were being carried out. This was in the context of advice from PWC in respect of the strengthening of corporate governance and the role of directors in anticipation of new legislation to take effect in 2005 whereby credit unions would be regulated by CBTT.

F101 Amongst the BOD's decisions recorded as having been taken on 26 August 2004 was for there to be a review of the subsidiaries and their performance and contribution/drain on HCU's finances. It was just beginning to dawn on some in HCU BOD that the subsidiaries might present a real problem for the viability of HCU as a whole. Given that HCU Financial subsidiaries were trading at a loss, sale of HCU's properties to any such subsidiaries would only be likely to increase the indebtedness of the subsidiaries and to render them liable for loan interest, whereby HCU would have exchanged one group of illiquid assets (the Properties) for another (the Subsidiaries' indebtedness in respect of the purchase price).

F102 Mr Ramnarine prepared Unaudited Draft Consolidated Income and Expenditure Statements for June and July 2004 based on such information as had been supplied by HCU and its subsidiaries which covered both HCU and all its subsidiaries, except Bankers Insurance. On 6 September 2004 he wrote to Mr Harnarine noting that, although, after having addressed the HCU Finance Committee six weeks previously, HCU introduced a cost cutting

exercise, nothing had been done except the planning of salary cuts of about \$250,000 per month which had not been fully executed. The letter continued:

“Based on my experience, not only as an Accountant/Auditor but also as a businessman, I believe that the financial position of the group has worsened and this view has been strengthened since request for information relating to the performance of the Credit Union have not been forthcoming on a timely basis.

In order to confirm the above, we have prepared Unaudited Draft Consolidated Income and Expenditure statements (excluding Bankers Insurance) for the month of June 2004 and July 2004, based on information provided to us by the Credit Union and its subsidiary companies. This, as you are aware, is for us to assist the Finance Committee, and anyone else involved, in the cost cutting exercises that should be undertaken”.

F103 On the basis of the available figures, the figures that had been observed were as follows:

“June 2004

1. The total group loss for the month was 5.6m with the Credit Union contributing 3.5m.
2. The second highest loss was made by HCU Security Services Limited of about 7m
3. The Communication Group, including HCU Publications Limited, made a loss of 7m
4. The HCU Foundation made a loss of 80K, with zero income, which means the Foundation is still giving donations from advances from the Credit Union.
5. HCU Financial is running at a high cost of about 2m and this is only operating as an accounts department.
6. The only company that seems to be profitable is the HCU Food Corporation Limited, which made a profit of 46K.



July 2004

1. The loss made by the group for this month (excluding The Hindu Credit Union) was 2.2m.
2. Again HCU Security contributed the highest loss of just under 1.0m.
3. The Communication Group made a loss of 7m.”

The letter continued:

“Kindly note that the above brings to light a very worrying situation that needs your immediate intervention and attention. The estimated adjustment to expenses should be at least 6.0m per month and this should take effect immediately as I believe the situation has reached crisis proportion.”

F104 It is important to record at this point that, in spite of this very clear warning from the Auditor, HCU went on trading for a further three and a half years before it was driven to approach GORTT for a bail-out said to be made necessary by “temporary liquidity problems”.

F105 On 11 September 2004 a meeting of HCU’s BOD was held at short notice and was attended by Messrs Harnarine, Ramnath, Lalchan, Bachan and Jameel Ali. Mr Harnarine told those present that HCU was on “the path of continued growth and development but there was a need to do some restructuring to streamline operations to ensure that the organisation ran efficiently”. Mr Lalchan expressed concern that the budget for the next financial year was not presented and he raised concerns about the inconsistencies in the figures for loan delinquency as they appeared in the financial statements with those put forward by management.

F106 It was further decided that HCU should sell particular properties to the subsidiaries and to finance those sales by way of mortgage loan facilities “and have moratorium periods on both principal and interest based on cash flows of the subsidiaries”. This clearly reflected a perception by management that loan servicing and therefore the engendering of liquidity for HCU might well present at least temporarily insuperable problems for the subsidiaries to which HCU had sold its tangible property.

F107 In a letter dated 14 September 2004 Mr Ramnarine sought to draw to the attention of the Directors of HCU, weaknesses in the system of internal control or its implementation which had come to the Auditor’s attention in the course of completion of a review of the financial statements for the period 1 January 2004 to 31 March 2004. Some 12 concerns were then listed which included the following under the heading “Capital Structure and Risk”:-

“As discussed in the past, the society's management need to look carefully at its capital structure since a substantial portion of its Fixed Assets, Investment properties, and loans to and Investments in Subsidiary companies have been funded by members’ deposits. This is not recommended but in the short term this may be okay as corrective action can be taken. However in the long term this can be disastrous for it would lead to liquidity problems and a reduction in income generated.

Based on the above, the society may need to re-visit and re-think its entire strategy for maintaining a safe and substantial liquidity position. This is relevant since out of Total Assets of \$943m as at 31st March, 2004, liquid assets represents under six (6%) per cent. Our view is that confidence in the society is based on your ability to manage the society's liquidity risk.

In addition to the above, and other risks associated with Credit, Operations, interest rate and now Exchange rate, management needs to look at the society's subsidiary companies with respect to its management, control, profitability and accountability”.

F108 It was Mr Harnarine’s evidence that he explained to the Auditor that there was nothing to fear because the large depositors had agreed to make their large deposits specifically to HCU Financial Group subject to the agreement that those companies would be eventually divested to them. There is no documentary or any other evidence that any such agreements were entered into. Nor is there any evidence that large deposits were made by reference to the incorporation of any one of those subsidiaries so as to demonstrate the interest of any particular depositor in the ultimate acquisition of a particular business. This Commission does not accept that any such agreements were entered into. The highest it might be put is that HCU might informally have suggested by way of inducement that depositors might in the future be given the opportunity of purchase.

F109 In spite of Mr Ramnarine’s requests for documents and his warnings to tighten up internal controls, his efforts to carry out the audit for the second and third quarters of 2004 were obstructed by lack of timely response by management.

F110 In September 2004 there were reports on television and in the press to the effect that HCU was subject to receivership proceedings and to a forensic audit by PWC. HCU thereupon asked the CCD to refute these reports. Mr Maharaj replied to Mr Ramnath stating that the CCD did not have power to put a credit union into receivership and that he had not directed a forensic audit. He concluded with the words:-

“...I am of the view that the Hindu Credit Union Co-operative Society Limited is a viable co-operative financial institution.”

F111 In the course of his evidence Mr Harnarine described the “run” on HCU which he claimed had been caused by the false media reports. He said that HCU had been obliged to pay out \$104 million within a period of three to four months and that delinquency rates on members’ loans increased to about 43 per cent, up from about 10 per cent. He said that HCU was able to obtain repayment of loans which enabled it to repay deposits.

F112 The financial condition of most of the subsidiaries at the end of September 2004 was, according to the accounts eventually produced by Chanka Seeterram & Co in August/September 2005, extremely perilous. Fifteen of them had incurred substantial losses such that their financial statements had to be prepared on a going concern basis on the assumption that funds would be provided to finance losses to date and any subsequent losses. The source of such funding does not appear to have been explored. Although the stand-alone audit results for these subsidiaries were not known until Chanka Seeterram & Co had finished their work in September 2005, there is little doubt that those who managed these subsidiaries and, indeed those members of the HCU BOD who had been given responsibility for oversight of specific subsidiaries must have had a fairly clear idea that they were loss-making and were largely unable to engender sufficient funds for operational functions as well as for servicing indebtedness to HCU.

F113 At a meeting of the BOD on 28 October 2004 attended by Messrs Harnarine, Ramnath, Lalchan and Bachan, Mr Harnarine stated that, in spite of the run on HCU, the majority of depositors were not withdrawing their funds. He

further informed the BOD that HCU was currently engaged in a cost-cutting exercise. Mr Lalchan said that “since the negative and misleading reports appeared in the newspaper there was a need to put emergency measures in place to facilitate overdraft and other case transactions”. It was decided to delegate to management authority to manage and make appropriate changes to facilitate overdraft facilities and other banking arrangements. Decisions were also taken to advance by way of loan facility to specific subsidiaries a total of \$26.3 million. In this connection, as confirmed by Mr Ramnath in his evidence before this Commission, management assumed that HCU could operate like a financial services holding company and could as such finance those companies which it had already bought in the best interests of keeping them trading.

F114 By November 2004 HCU was living from hand to mouth in the sense that it was relying on receipt of funds by way of new deposits to repay money due to other members who sought to withdraw deposits. Thus on 16 November 2004 Mr Ramnath wrote to the CCD in response to complaints by depositors that HCU cheques had been returned for want of funds. HCU stated that there were two reasons for this: irregular signatures on HCU cheques paying money into an account at Intercommercial Bank upon which HCU had sought to draw uncleared effects, that is to say:-

“(b) At the time when these cheques were presented for payment, deposits were made into that specific account. These deposits consisted primarily of cheques received from various members. Although the sums deposited were sufficient to meet all payments they were not 'cleared' funds at that point in time”.

The total value of returned cheques was \$750,000. The letter went on:

We have no difficulty honouring requests for disbursements with respect to matured fixed deposits. However, as a result of the adverse publicity in the T&T Mirror newspaper and TTT news we have had some abnormal requests for closure of accounts. We have made individual arrangements with these members to satisfy their requests over a short period of time.”

F115 The level of delinquency on loans to members was a matter of concern to Mr Ramnarine. The management accounts made provision in September 2004 for 10 per cent delinquency. However, as at 30 September 2004 members loans totalled \$434,470,634 of which \$82,997,898 were delinquent – about 19 per cent. Mr Ramnarine was unable to obtain clarification in spite of having twice written to Mr Jameel Ali requesting information on this. He was therefore falling behind in preparation of the audit for the year to 30 September 2004 which was due to be completed by 30 November 2004.

F116 On 15 December 2004 Mr Bachan wrote to the CCD asking for consent to grant mortgages on seven properties sold to various subsidiaries. The mortgage loans amounted in total to \$75 million and had already been entered into before the request. This was in breach of Section 43(2) of the CS Act 1971.

F117 Mr Ramnarine’s unsuccessful attempts to obtain from HCU management the information and documents which he considered necessary to complete the 2004 audit led to the AGM which had been fixed for 18 and 19 December 2004 being aborted. It could not proceed without a completed audit signed by the Auditors. In the course of the AGM, which was attended by Mr Keith Maharaj, the CCD, the latter telephoned Mr Ramnarine and asked him to go to the meeting and sign the audit report. Since Mr Ramnarine had at no time issued an audit report which remained to be signed he told Mr Maharaj that

there was no completed report to sign and he was not going to sign a document which, according to his evidence, he believed may have been concocted by HCU. The AGM could not therefore proceed. Notwithstanding his numerous requests for information and documents in the latter part of December 2004 and into January and February 2005 Mr Ramnarine was still unable to obtain what he considered necessary for completion of the audit.

F118 Indeed, it was not until 23 February 2005 that Mr Jameel Ali re-presented HCU's draft accounts to Mr Ramnarine. The latter immediately responded in a letter to Mr Ramnath raising various specific concerns about the figures and, particularly significantly, he requested:-

“...management's plan for dealing with the Loss position and the negative operating cash flows which may give rise to significant doubt on the Credit Union's ability to continue in operation. We also need your plans for dealing with matured and maturing deposits, the Credit Union's financial support for the subsidiary companies, the significant withdrawal of deposits together with the inability to attract new ones and the increasing level of delinquency.”

It is worth emphasising that Mr Ramnarine thereby highlighted in two sentences most of the disorders affecting HCU which three years later were to destroy it.

F119 Meanwhile, at a BOD meeting on 27 January 2005 Mr Harnarine told the Directors that it was becoming “more and more difficult to make ends meet, with regards loans, withdrawals and payments to debtors.” Depositors were said to be awaiting payment upon withdrawal and the decision was taken to “suspend loans to members and only to facilitate emergency loans and needy cases”.

- F120 It is right to record that in spite of the precarious financial health of HCU which was clearly apparent to Mr Harnarine and others in management, early in 2005 it invested \$511,000 in HCU Jovi's Island Park Company Ltd, \$650,000 in Jesse Court Ltd and \$20,000,000 in World Select Gem Ltd. There is no evidence that any due diligence was exercised with regard to any of these investments or that any serious regard was had by Mr Harnarine or anyone else in management to the impact of these transactions on HCU's already seriously eroded financial position.
- F121 On 3 March 2005 Mr Harnarine attended a meeting with Mr Lawrence Duprey and Mr Dacon of CLICO. The object of the meeting was to find a way of financing the continuation of HCU. On the table for discussion were CLICO's purchase of several identified properties from HCU, of HCU's mortgage portfolio and of 66 per cent of HCU Money Express. CLICO was also to invest \$100 million in HCU Financial Group. The details were to be negotiated by Mr Harnarine and Mr Dacon. This commenced what is referred to in this Report as the CLICO Agreement, a transaction which was never brought to fruition and which had substantially collapsed by October 2005, only to be replaced by a series of transactions involving HCU transferring certain properties to CLICO in exchange for CLICO assuming responsibility for various deposit accounts.
- F122 On 4 March 2005, at a time when Mr Keith Maharaj was on holiday and Mr Hyder Ali was Acting CCD, Mr Ramnarine steadfastly continued to decline to sign an audit report because the Directors had not signed the underlying Financial Statements. He produced an unsigned audit report on HCU's



Financial Statements for the year ending 30 September 2004 to HCU and to the Acting CCD. Mr Ramnarine produced a disclaimer opinion.

F123 Among the schedules which were sent alongside that unsigned audit report were one showing 0 per cent loans totalling \$8,261,472 and another identifying delinquent loans amounting in total to \$1,193,580.

F124 The audit report identified certain matters of concern which in the event foreshadowed the ultimate collapse of HCU.

These were as follows:-

(i) Members' overdue accounts totalled \$55,967,721. This figure exceeded the aggregate of members' shares, members' deposits and other securities by \$32,755,779. The latter sum was therefore unsecured and was far in excess of the provision for bad and doubtful debts – \$11,422,012.

(ii) The financial statements derived from management showed that HCU's subsidiaries were indebted to HCU to the extent of \$225,478,990. However, these amounts could not be reported to represent fair values. The financial position of each subsidiary had to be examined to ascertain whether it was necessary to determine whether any provision ought to be made for bad and doubtful debts.

Thus, some \$14,677,466 had been included in the financial statements for interest and rental income receivable for subsidiary companies. This was contrary to ISA reporting standards since no payments had ever been made by such subsidiaries in respect of principal or interest. Most of those subsidiaries were kept going by financial support from HCU on a monthly basis.

(iii) HCU's financial statements showed \$993,718 under Cash in Hand which was greater than the actual amount of cash held at the Balance

Sheet date and an amount of \$3,226,650 included in Accounts Receivable could not be verified and required further investigation.

- (iv) Although HCU had sold 13 properties to its subsidiaries and other related parties for a total of \$105,775,000, apparently yielding \$46,211,290 profit, none of the relevant documents had been provided to the Auditor and it could not therefore be said if any of those transactions had been carried out on commercial terms.
- (v) With regard to subsequent events, as between 1 October 2004 and 11 February 2005, Members had withdrawn \$108,160,613 from deposits and savings accounts and HCU had withdrawn or encashed \$33,049,335, leaving HCU with very limited liquid resources to meet further demands from members.
- (vi) The financial statements had been prepared on a going concern basis and accordingly did not take into account any adjustments which would be necessary if HCU were unable to continue as a going concern.

F125 Mr Ramnarine had offered to resign his position as Auditor during the period December 2004 to January 2005. His evidence was that he believed that there was a real possibility that the BOD would wish to procure the production by him of an improperly researched audit. He felt under constant pressure from management to issue a clean audit report and he was scared for his own physical safety. Further, there were implied offers of inducements, which he ignored and, after he had issued his report, his wife had received a phone call threatening her and his family. Upon reporting this to the police, he was advised to take himself and his family out of the country.

F126 The CCD's Accountant III received and reported on the Auditor's qualified opinion. He raised the point that in the year to September 2004 HCU's loans to its subsidiaries had increased by 478 per cent. Further that, although HCU

then had 22 subsidiaries, it had continued to fail to comply with the CCD's requests for consolidated financial statements.

F127 The Acting CCD, Mr Hyder Ali then reported to the Permanent Secretary MOL, Mr E. George, in a highly insightful memorandum dated 9 March 2005. This is more fully cited at Section (J) of this Report. His memorandum included the following:

“The Commissioner continues to be confronted with complaints from members seeking to cash in their matured deposits or willing to cash in their deposits and accept a break-rate interest, however, even if he seeks to conciliate between parties, the reality is that the Credit Union is unable to meet its financial responsibilities.”

And concluded thus:-

“In the context of an auditing environment, inherent in the Auditor's expressed concerns are the following threats and dangers –

- (i) possibility of fraudulent activity;
- (ii) possibility of loss to members' savings as a result of negligence on the part of the Directors and Management;
- (ii) the negative Impact on the Credit Union Sector which may tarnish the philosophy, principles and practices of Credit Unionism as enshrined in its ideology;
- (iii) the issue of confidence among people in the nation, especially in the Credit Union Movement.

Given the above, I recommend that –

- (i) an auditing firm be appointed to conduct an inquiry into the financial operations of the Credit Union and its Subsidiaries with a focus on determining whether any fraud was perpetuated on the membership;
- (ii) that the Directors be held responsible for all illegal loans granted and that all such loans should be called in on demand;
- (iii) that zero rated loans should be reviewed and where possible, new arrangements be drawn up;
- (iv) that these accounts be sent to the Director of Public Prosecution (if possible) for possible interdiction.

F128 On 25 March 2005 Mr Ramnath wrote to the CCD a letter counter-signed by Jameel Ali, Gaustam Ramnanan and Krishna Harry Persaud which questioned and challenged Mr Ramnarine's concerns set out in his report. The letter stated that "subsequent to the year-end, an agreement was reached with Colonial Life Insurance Co. Ltd for the divestment of 52% shares in the subsidiary companies for the sum of \$200 million. The effect of this is that all the balances due by Subsidiaries will be fully recovered by HCU".

F129 In reality the financial statements supplied by HCU management to Mr Ramnarine showed that the subsidiaries were indebted to HCU to the extent of \$225,468,990 and Mr Ramnarine calculated the indebtedness of 21 subsidiaries as \$225,968.990.

F130 On 29 March 2005, Mr Hyder Ali, Acting CCD, wrote again to the Permanent Secretary, MOL, referring to a meeting that he had attended on 23 March 2005 with Mr Harnarine and other directors to discuss his report on the year to September 2004. The letter continued:

"Given the trend of developments in respect of -

- (i) The audit situation where the Board has refused to sign off on the final Audited Statements simply because they are not in agreement with the Auditor's Report even though they accept ownership of the accounts and have admitted to me that there are no material mis-statements or errors in the Financial Statements and the action taken by the Board of the Credit Union to replace the Auditor when the audit exercise has been completed.

- (ii) The current state of the financial position of the Society which from all indicators appear to be insolvent.
- (iii) The number of complaints/disputes lodged with the Commissioner by members who are unable to retrieve their funds upon maturity of deposits.
- (iv) The apparent breaches of the Co-operative Societies Act, Co-operative Societies Regulations, and the Bye-Laws of the Society.
- (v) The reckless action of the Board in committing the funds of the Society into business ventures without obtaining the necessary legal approvals.
- (vi) The damage that can result to the entire Credit Union Sector in terms of image having regard to high level of publicity that this organization has been given in the national media.

It is my intention to exercise the powers given to me under Section 4(a) of the Co-operative Societies Act to hold an enquiry into the constitution, operations and financial position of Hindu Credit Union Co-operative Society Limited and in the course of such inquiry shall inspect the books, accounts and other records of the Society.

The exercise would entail the hiring of a recognized Auditing/Accounting Firm that would require funding. I propose to invite quotes from three recognized Auditing/Accounting Firms, namely, Ernest and Young, Pannell Kerr Foster (PKF) and KPMG to conduct this inquiry.”

F131 Mr Hyder Ali recommended that the hire of an external accountant to conduct an enquiry should be paid for out of the Liquidation Fund.

F132 On 5 April 2005 Mr Ramnarine informed HCU that he did not wish to be re-appointed auditor.

F133 On 7 April 2005 at a SGM of HCU attended by Messrs Harnarine and Ramnath a resolution was passed replacing Ramnarine as auditor with Chanka Seeterram & Co. This resolution was explained by Mr Harnarine

who stated that Mr Ramnarine had been acting irrationally and had failed to conduct the audit to completion: he had acted “improperly” and had departed from ISA standards; he had employed insufficient staff and had attended insufficient meetings with management and ignored all inputs from management.

F134 These allegations were not supported by the evidence before this Commission. On the contrary the evidence accepted by this Commission clearly establishes that HCU management repeatedly failed to provide Mr Ramnarine with information and documents which were essential for his completion of the audit. His insistence on issuing a disclaimer opinion was thus entirely justified.

F135 The second resolution put to and passed by the SGM was to approve divestment of shares in HCU’s subsidiaries to CL Financial Group. This was explained by Mr Harnarine as having been made necessary by a run on HCU caused by false media reporting which had led to the withdrawal of \$185 million in deposits and that in turn had prevented HCU making investments with subsidiaries. HCU had made substantial loans and capital investment in those subsidiaries but they needed further investment to enable them to achieve their “turn around” of 3 to 5 years. HCU was now unable to provide that further capital and therefore it was forced to seek external funding. Where the divestment was of a majority of the subsidiary’s shares, all its assets would be transferred to CLICO.

F136 On 22 April 2005 the Acting CCD appointed Parnell Kerr Foster (“PKF”) to carry out an inquiry under Section 4 of the CS Act 1971. They were asked to report by no later than 10 June 2005.

F137 On 25 April 2005 a meeting took place between the CCD, Keith Maharaj; now returned from holiday, Mr Hyder Ali (Deputy CCD) and Mr Harnarine, Mr Maharaj, Mr Ramnath and Mr Mahabir of HCU. The HCU team strongly objected to the appointment of an inquiry under Section 4. The CCD advised them to put their objections in writing but, apart from undertaking that the PKF would not commence work until 9 May, made it clear that he could not hold out any expectation that the decision to hold an inquiry would be set aside. HCU by Mr Ramnath duly sent a letter to the CCD expressing the “strongest and sternest objections” to the CCD’s decision. That letter is more fully cited at Section (J) of this Report. In substance HCU complained that they were being victimised by the media and then by the CCD.

The CCD was not persuaded by that letter.

F138 A meeting was then convened with the Minister of Labour, Mr Anthony Roberts. Mr Harnarine and Mr Keith Maharaj were present. HCU complained that, given that Chanka Seeterram had by then commenced work on the year to September 2004 audit, an intervention by PKF to conduct an inquiry would bring confusion to the auditing process. Mr Roberts, very properly declined to reverse the CCD’s decision but indicated that the inquiry should proceed without any public announcement. The CCD was to meet with PKF, Chanka Seeterram and PWC to discuss how the inquiry could be best handled without disrupting the operations of HCU. There is no evidence

that that meeting was ever convened. The CCD thereafter took no action to cause the Section 4 Inquiry to commence until about October 2005.

F139 In the meantime, on 3 May 2005 the CLICO Agreement was entered into between CLICO, HCU Financial Ltd, HCU Real Property Developers Ltd and HCU. Its details do not matter for the purposes of this Report, but may be summarised as follows:-

- (i) HCU was to assign to CLICO “payables” i.e. deposit payment obligations not exceeding \$200 million as and when required.
- (ii) CLICO was given an option to purchase for up to \$225 million 70 per cent of all issued shares of HCU Financial and 100 per cent of all issued shares of HCU Real Property.
- (iii) HCU was to execute a first mortgage for \$100 million over the real properties schedules to the Agreement. There were 23 properties listed.
- (iv) CLICO was granted an irrevocable option to purchase the properties in (iii) for 75 per cent of the market price to be determined by the valuation by PWC or by an independent third party.

F140 Apart from a reference in the Agreement to HCU and CLICO having agreed to enter into “a strategic alliance” with regard to the marketing of deposit accounts, the Agreement did not refer to this.

F141 It is unnecessary for present purposes to trace in any detail the complicated process by which by 3 October 2005 this Agreement had unravelled. This can be followed in more detail in Section (H) of this Report. However, in summary what happened was that when CLICO’s valuers, Messrs Raymond and Pierre, came to carry out due diligence on the subsidiaries and their assets, it was found that their only value lay in their real estate and tangible



assets. For that reason, CLICO did not exercise its option to purchase majority shareholdings in the subsidiaries. Instead, it opted to purchase certain physical assets, mainly realty. By October 2005 CLICO had paid to HCU in cash, about \$45 million and had taken over HCU's deposit payment obligations in the amount of about \$120 million. There was thereafter an asset-liability swap. This covered the sale of some 20 realty properties to CLICO together with printing press equipment and medical equipment. Overall, the eventual value of the exchange of assets for liabilities was \$174 million to \$178 million and the transaction was in substance neutral as between CLICO and HCU.

F142 Apart from the fact that the collapse of this CLICO Agreement was substantially the result of CLICO's perception of the over-valuation of the HCU subsidiaries and their real property assets, HCU's participation in the CLICO Agreement is not a matter of criticism. Nor is CLICO's unwillingness fully to exercise its options. There can be no doubt that HCU's liquidity was to some extent increased by the cash derived from its disposal of the subsidiaries' assets and by divestment of the deposit account obligations.

F143 In the event, no strategic alliance to set up a joint brokerage to market deposits was ever embarked upon.

F144 With regard to the Miami companies, it was agreed with CLICO on 16 June 2005 that 100 per cent HCU Money Express was to be sold to CLF. This was later reduced to 66 per cent and the price was agreed at US\$250,000 of which \$150,000 was paid through Exim Bank to Harris Corporation International and \$100,000 to Intercommercial Bank.

- F145 In the course of August and September 2005 Chanka Seeterram produced audit reports on the financial statements of the HCU Subsidiaries. In several cases no audited accounts had existed for several years previously. In every case, except for Masala Radio Ltd, Chanka Seeterram had to prepare the accounts subject to their being on a going concern basis on the express assumption that funds could be provided to finance the subsidiary's losses to date and any subsequent losses. In making that assumption, Chanka Seeterram relied upon the injection of cash which he assumed was to be imminent pursuant to the CLICO Agreement and further upon the injection into the management of its Subsidiaries of CLICO's management skills.
- F146 Chanka Seeterram produced an audit report on HCU's 2004 Consolidated Financial Statements. It was dated 30 August 2005 and was unqualified. The Statements were signed by Messrs Harnarine and Ramnath.
- F147 In the meantime, the pending inquiry by PKF had been left in limbo since May 2005. HCU had pressed CCD to put instructions to PKF on hold until there had been a meeting with the new Minister of Labour, Senator Danny Montano, who had recently replaced Anthony Roberts. Mr Keith Maharaj applied to Mr Montano for directions and requested a meeting with him and his officials to consider the PKF inquiry. There is no evidence that the Minister responded before October 2005. The CCD does not appear to have pursued its requests to him for directions. On 26 September 2005 Mr Harnarine called on the CCD to cancel the PKF inquiry because it would duplicate the internal audit work.

F148 The Consolidated Financial Statements were sent to the CCD on 26 September 2005. By that time the former Deputy CCD, Mr Hyder Ali, had retired. The CCD sent the Financial Statements to the in-house accountant in his Department and asked for an urgent analysis.

F149 Mr Persaud, the Acting Accountant III in the Department, then prepared a memorandum dated 3 October 2005 which drew attention to the fact that the presentation of a consolidated financial statement for HCU made it much more difficult to analyse the financial condition of HCU, particularly by way of comparison with its performance in the year to 2003. However, these problems notwithstanding, the memorandum stated as follows:

“As indicated by the negative cash and cash equivalent figure of \$7,638,055, the H.C.U. and its subsidiaries seem to be facing a severe cash problem. Notwithstanding the previous concerns, the importance of this to the Credit Union and its members is whether the H.C.U. would have the ability to meet its short-term debts. The question is raised therefore, of whether fears and rumours circulating among the public are justified.

The debt ratio measures the ratio of a company's total debt to its total assets. Although the calculations are for the H.C.U. in 2003 and the H.C.U. and subsidiaries in 2004, in both instances, the organisations' total debts account for over 80% of total assets. If interest rates were to increase on loans and bank overdrafts or the company borrow more, the company's liquidity situation would again be adversely affected”.

F150 On 3 October 2005 there took place an emergency meeting attended by Mr Harnarine and, representing CLICO, Mr Anthony Mahoney, Mr Claudius Dacon and Mr Afra Raymond of the Chartered Valuers, Raymond & Pierre. Mr Dacon told Mr Harnarine that CLICO was not prepared to provide any additional monies to HCU. CLICO did not require to exercise its purchase option in respect of some of the properties in Schedule 2 of the CLICO

Agreement and did not intend to take over the subsidiaries in the Schedule but would return them to HCU while retaining plant, equipment and materials.

F151 The withdrawal by CLICO from major components of the CLICO Agreement meant that HCU could derive from it only a significantly reduced benefit in relation to its liquidity. Further, the refusal by CLICO to exercise its option to acquire the scheduled subsidiaries and to take over their management, while stripping out the property of some of them, meant that CLICO's superior expertise in management would not be available to the subsidiaries, which in turn meant that the possibility of further investment in those companies by the majority shareholders and the anticipated consequent enhancement of those companies' capital to the benefit of HCU as minority shareholder would not be realised. Accordingly, CLICO's withdrawal from the main terms of the CLICO Agreement left HCU with its loss-making and under-capitalised subsidiaries, most of them with little prospect of survival.

F152 On 10 October 2005 the CCD directed HCU to submit audited financial statements to it which complied with the requirements of the CS Act 1971 and the Regulations. This specifically involved listing of over-due debts, detailed listing of receipts and expenditure, a profit and loss account and balance sheet of HCU on a stand-alone basis as distinct from consolidated group accounts. This was required by 25 November 2005. Mr Harnarine so informed Mr Chanka Seeterram.

F153 Mr Chanka Seeterram then hastened to comply with the CCD's request by creating stand-alone accounts by arithmetical extraction from the consolidated accounts previously presented. Notwithstanding that work on

the consolidated accounts audit had been completed by about the end of August 2005, he did not go back and consider with HCU whether anything material affecting the financial viability of HCU or its subsidiaries had happened since then. In particular, he did not require any fresh management representation letters. He therefore knew nothing of the collapse of the CLICO Agreement on 3 October 2005. The existence of that Agreement and the immediate benefit which it appeared to offer to HCU's liquidity was a factor very material to the assessment which it was the Auditor's duty to make of events occurring after the end of the accounting year in question (30 September 2004) and up to the presentation of the audited stand-alone accounts of the Credit Union which were material to its continuation as a going concern. The collapse of that Agreement left HCU in a significantly weaker position from the point of view of liquidity than it would have been in had CLICO provided the funding which was originally anticipated. Mr Chanka Seeterram's evidence was that if information as to this event had been given to him he would have considered HCU unable to meet its liabilities as they fell due and would have issued a statement with regard to HCU's continuing as a going concern.

F154 This Commission is of the view that it was Mr Chanka Seeterram's professional duty to alert HCU management before he signed off the stand-alone HCU Financial Statements for 2004, to the importance of disclosure to him of all material facts occurring since September 2004 and going to the Credit Union's financial viability. The delay in production of the stand-alone 2004 Financial Statements to October 2005 did not relieve the Auditor of this

duty. Nor did it relieve HCU of the duty voluntarily to up-date its Auditor with regard to the fate of the CLICO Agreement.

F155 On 16 October 2005, before completing the stand-alone Financial Statement, Chanka Seeterram produced a management letter which was based on the work done in preparation of the Consolidated Financial Statement. The letter contained the following warnings:-

- a. HCU did not maintain a Fixed Assets Register and management should immediately undertake an exercise to produce one;
- b. Most of the company's subsidiaries:  
*"made substantial losses during the year and also during previous years ... some of these companies may be trading in spite of being insolvent. We wish to point out that under the 1995 Companies Act the directors are personally liable for all liabilities of the company in this situation."*
- c. All payments for foreign travel should be supported with the relevant documentation and no payments should be made to anyone's personal VISA account;
- d. The matter of HCU USA's beneficial ownership should be determined and the appropriate legal documents be drawn up;
- e. HCU made 0% loans in contravention of HCU's Bye-Laws and should consider its legal exposure. During their audit Chanka Seeterram & Co's team had been told that HCU discontinued granting 0% loans. But in the 2005 year several new 0% loans were granted;
- f. In breach of Regulations 38 and 40 of the 1971 Regulations HCU had failed to execute instruments of charge for all "qualifying" loans and should consider its exposure;
- g. In breach of Regulation 34 of the 1971 Regulations HCU had granted loans where there was no evidence of approval by HCU's Credit Committee;

- h. In breach of Section 43 (2) of the 1971 Act loans had been given to mortgage real property without being submitted to the CCD for approval.
- F156 No written reply was sent to Chanka Seeterram, although he did have an oral discussion with Mr Harnarine, Mr Ramnath, Mr Jameel Ali and Mr Bachan about its criticisms. However, it was Mr Seeterram's evidence, which this Commission accepts, that although assurances were given orally that corrective action would be taken, nothing was ever done save that a fixed asset register was produced.
- F157 The Section 4 Inquiry by PKF had remained in abeyance since May 2005. The CCD appears to have been unwilling to expedite it until Chanka Seeterram had finished the 2004 audit. Indeed, it appears to have been shortly after receiving Mr Persaud's 3 October 2005 Memorandum that Mr Keith Maharaj, having ascertained from PKF what the cost of a Section 4 Inquiry was likely to be, went to the then Minister of Labour to explain that an Inquiry had been commenced but that CCD did not have the funds to pay PKF for the work. The Minister concerned, was Senator Danny Montano who had recently succeeded Mr Roberts. Mr Montano told Mr Maharaj that he did not agree that the PKF inquiry should proceed. He said that he regarded such action as both "dangerous and a last resort" because it might give rise to a run on HCU. He instructed Mr Maharaj to implement such measures as would enhance the supervision of HCU.
- F158 As explained in Section (J) of this Report, the intervention by the Minister gives rise to concern. It was an improper invasion of the independent decision-taking function of the CCD.

- F159 There being no provision of funding for the conduct of a Section 4 Inquiry, the CCD did not proceed to finalise the arrangements with PKF.
- F160 After a BOD Meeting on 27 October 2005, it was decided to make loans to 10 subsidiaries totalling \$43 million.
- F161 At a further BOD meeting on 27 November 2005 it was decided to make further loans to 12 subsidiaries totalling \$443 million.
- F162 These two decisions gave rise to a serious drain on HCU's liquid assets.
- F163 By 15 December 2005 there were 240 pending claims for non-payment of loans by members and 23 pending claims by members against HCU for non-payment of fixed deposits and interest and non-payment of shares.
- F164 It was required by Section 51 of the CS Act 1971 that HCU should prepare audited finance statements for the year to September 2005 by 30 November 2005 and that the 2005 AGM should be held by 31 December 2005. It was not.
- F165 At the BOD meeting held on 30 December 2005 it was recorded that proceedings were authorised against CLICO arising from the CLICO Agreement collapse. In this connection it was also recorded that the HCU Convention Centre 1 and 2, HCU Communications Building, Mulchan Seuchan Road and Sanjeevan Medical Building had all been sold to CLICO. HCU in turn was indebted to CLICO to the extent of \$37 million.
- F166 On 26 January 2006 the BOD, including Messrs Harnarine, Ramnath, Lalchan, Jameel Ali and Bachan, decided that Mr Harnarine should be paid an average of \$50,000 monthly having regard to his added responsibilities for



management “at this stage in the organisation where it is very fragile” and for carrying out “high-powered negotiations”.

F167 Since October 2005 the BOD had not been provided with any financial statement or budget. No financial statements were presented to the BOD until those for March 2006 were presented on 27 April 2006. Those members of the BOD who were not within HCU’s senior management were therefore deprived of their entitlement to inspect monthly financial statements.

F168 At the BOD meeting on 23 February 2006, the Directors were informed that claims against CLICO arising out of the collapse of the CLICO Agreement had been settled. The HCU Convention Centre had been released back by CLICO to HCU and had then been mortgaged to CLICO for 5 years together with other properties as security for all moneys due from HCU, but up to a limit of \$35 million.

F169 On 6 April 2006, in response to repeated requests by the CCD, Mr Diaram Maharaj then having succeeded Mr Keith Maharaj as Commissioner, Mr Ramnath wrote to summarise the outcome of negotiations with CLICO. He stated that there had been no divestment to CLICO of any HCU subsidiaries nor the establishment of a strategic alliance, that CLICO had paid \$56,240,331 in cash and had taken deposit liability of \$111,344,866, totalling \$167,585,197 and that HCU had sold 20 properties to CLICO together with printing equipment and medical equipment for \$167,585,197. The sale of the 20 properties was said to have crystallised a capital appreciation of \$35 million.

F170 By May 2006 Mr Montano had ceased to be Minister of Labour. On 12 May 2006 there took place a meeting between Mr Diaram Maharaj and the Permanent Secretary MOL, Mr Emmanuel George who, notwithstanding the previous instruction given by his minister, wished to know why there had been no statutory inquiry into HCU.

F171 Mr Diaram Maharaj explained in evidence, which is accepted, that since his appointment earlier that year he had been too heavily and urgently occupied with the affairs of other large credit unions to deal with HCU. However, he took the view that no inquiry into HCU should be proceeded with and he set out his reasons in a very explicit memorandum to the Permanent Secretary dated 12 May 2006. In summary, HCU was one of three of the largest credit unions, all of which qualified for inquiries. “Any such move to hold Inquiries at this juncture will only cause a loss of confidence in these organisations and may result in a run on their operation.” The CCD department had not re-assessed the state of HCU for nearly a year and things might have changed. There had been a shortage of co-operative officers over the last 10 years and supervision of HCU had been compromised. A more detailed account of the contents of the CCD’s Memorandum is set out at Section (J) of this Report. His recommendations were for an inspection of HCU’s entire operations by a team of senior co-operative officers and the senior CCD Accountant followed by technical help and advice to HCU, then monitoring of HCU’s operations by CCD officials, on the basis of which a decision whether to hold an inquiry under Section 4 should be taken. This Commission considers that, at least on the grounds of delay since the last assessment, this was a tenable decision.

- F172 Mr Diaram Maharaj retired in September 2006 and his place was taken by Mr Bheemal Ramroop as Acting CCD on 2 June 2006. He submitted to the Permanent Secretary an Action Plan for an inspection pursuant to Section 5 of the CS Act 1971 under the leadership of Mr Eden Charles, Co-operative Officer III. A report was to be submitted by 30 June 2006. However, the CCD agreed to postpone the commencement of work on this inquiry for 3 weeks to enable completion by Chanka Seeterram of the statutory audit. Eventually the inspection got under way on 4 July 2006.
- F173 On 1 May 2006 HCU had failed to pay a deposit balance due to Upward Trend Entertainment Ltd of \$4.5 million under an agreement by which HCU was given the option to purchase 75 per cent of Upward Trend for \$5 million of which 10 per cent deposit was paid in May 2005 with \$4.5 million due in May 2006. The main purpose of the agreement was that Upward Trend owned the radio licence for Radio Shakti which are operated by HCU Communications. In the event HCU did not complete the agreement and therefore never acquired the radio licence and lost its \$500,000 deposit.
- F174 In June 2006 Chanka Seeterram produced audit reports on the financial statements of HCU Home Furnishings Ltd which showed that in the year to 30 September 2005 that company had incurred net losses of \$1,875,730 – the financial statements being prepared on a going concern basis which assumed that funds would be provided to finance such losses and any subsequent losses. The audited financial statements for HCU Trust and Asset Management Company Ltd showed net losses of \$10,339, similarly prepared on a going concern basis.

- F175 Also in June 2006 the BOD approved an allowance of \$60,000 per month to Mr Harnarine to cover his personal expenses for performing duties as Chairman of HCU Financial Group of Companies and HCU USA. Mr Harnarine was not required to produce evidence of his expenditure or otherwise explain to what use the money had been put. There is no evidence that he had any significant duties or had incurred any relevant expenditure.
- F176 The CCD inspection team spent almost four months at HCU investigating strategic planning, compliance with legal requirements, and bye-laws, financial management, administration, loans, delinquency, and controls. Progress was slowed down by the generally poor level of co-operation by HCU's management coupled with its apparent inability to locate documents such as the fixed asset register and the monthly financial report. Management blamed the lack of documentation on the fact that Chanka Seeterram was simultaneously using the same documents for its audit work.
- F177 Chanka Seeterram produced audit reports for the HCU subsidiaries for the year to 30 September 2005. All but two of them – HCU Electronics and Surveillance Services Ltd and HCU Trust and Asset Management Ltd – were qualified on the basis that the company had sustained substantial losses and the financial statements were prepared on a going concern basis on the assumption of external funding.
- F178 The consolidated and stand-alone accounts for HCU, issued by Chanka Seeterram in September 2006 for the year to 30 September 2005 were qualified as having been progressed on a going concern basis. The

consolidated accounts showed losses of \$84,395,131. The stand-alone accounts were not qualified but included mention of the financial statements as containing separate provisions for gains and losses without quantifying them.

F179 The audited 2005 stand-alone financial statements for the year to September 2005 record a net surplus of \$6,019,878, in the Statement of Income and Expenses an “Appreciation in value of investment and Investment Properties” of \$25,583,749, that figure being derived from an appreciation of about \$53 million and a capital depreciation in value of about \$27 million and, in the Statement of Changes in Members “Equity and Reserves”, an amount of about \$31 million described as a “a Prior Year – Deficit on Revaluation of Fixed Assets”. This last figure and its description were first explained by Mr Chanka Seeterram in a written response to questions put by the Commission by saying that there had been a professional valuation in 2004 of properties sold in 2005 but that prices obtained were less than the valuation. HCU management therefore reflected the drop in value in the statement of changes in Members Equity and Reserves as a prior year adjustment. The consequence of transferring to a prior year adjustment the realised loss in the 2005 year was to create a profit of \$6,019,878 in the 2005 year, whereas, if there had been no such transfer, there would have been a deficit for 2005 of about \$25 million.

F180 In the course of his oral evidence Mr Chanka Seeterram conceded that he knew of no accounting principle or standard that permitted such a course, that this treatment involved a “very delicate” matter for him to decide upon and represented a “compromise” which would “would probably buy some

time for [HCU] to get their act together to be able to do what they thought was necessary to turn around the company. Because I felt if this was shown – they felt if this was shown in the profit and loss account, to show this massive loss inside there, they couldn't face the outcome". He conceded that this treatment was wrong but was needed to buy time for HCU in order to check their options and it was agreed, possibly on his advice or as a result of discussions with him, that they ought to approach the Government for financial advice or assistance — "Because I felt it was the only source of help they can get; and they needed the help".

F181 When Mr Chanka Seeterram gave oral evidence, at his own request, on a second occasion, he provided a completely different explanation for the "Prior Year Deficit" statement. He said that an exhaustive search of his firm's working papers had disclosed that a senior person in his firm who ought, consistently with IAS 8, to have confirmed an adjustment of that nature to the prior accounting year in which the valuation was accorded rather than deploy a "revaluation" in the year in which the discrepancy was discovered, had wrongly introduced the concept of subsequent year "revaluation" and use of the word had been overlooked before the audited statements were released.

F182 This Commission rejects Mr Seeterram's subsequent attempt to explain this distortion in the financial statements for the year to 30 September 2005. His initial explanation was expressed as clearly recollected detailed and explicit. His subsequent explanation was entirely unconvincing. Whether this proceeded from reconstruction due to faulty recollection or from deliberate invention need not be decided. By the time these audited statements were passed by him in September 2006 it must have been apparent to him that

HCU had no future unless it could be bailed out by GORTT or some other source. Were there to appear in the stand-alone accounts a deficit of \$25 million, the Credit Union would be unlikely to survive — “they couldn’t face the outcome”. The manner of treatment of the losses on these properties was in the view of this Commission more probably than not a cosmetic device designed to shield HCU from the appearance of insolvency.

F183 The 2005 AGM of HCU was held on 30 September 2006. Messrs Harnarine, Ramnath, Bachan, Lalchan and Chanka Seeterram were amongst those present. The CCD was not present. The AGM booklet did not contain the HCU Consolidated Accounts showing, as they did, losses of \$84,395,131, but it did include the stand-alone accounts with a net surplus of \$6,019,878. Mr Harnarine described to the meeting the run on HCU sustained by reason of bad publicity in the media — referring to receivership and liquidation. He referred to the CLICO Agreement and said that properties to the value of \$267 million had been sold to CLICO/CLF but that Raymond and Pierre had attempted to undermine the agreement by undervaluing HCU properties to below 80 per cent of their current value. Mr Chanka Seeterram presented his report on the financial statements. Accordingly, only the unqualified stand-alone HCU accounts were before the meeting.

F184 On 3 October 2006 Mr Chanka Seeterram issued his firm’s management letter for the year to 30 September 2005.

F185 That letter referred to numerous matters of concern, in particular:-

- “a. Over-valuations of investment properties;
- b. No record of fixed assets totalling \$208m;

- c. 0% loans totalling \$4.6m;
- d. Non depreciation of ATM machine amounting to \$1.5m;
- e. Non depreciation of TV equipment amounting to \$22.7m;
- f. All subsidiaries having made substantial losses and the subsidiaries' directors were warned that they may be personally liable for losses incurred by HCU's subsidiaries if trading while insolvent the fact that some might be trading whilst insolvent;
- g. HCU was losing about \$2m per month excluding interest charged to the subsidiary companies. The consolidated losses at the end of September 2006 would be in excess of \$150m; and
- h. That, as a result of these matters (but excluding the overvaluation of fixed assets), the net assets shown in the audited accounts amounted to \$142m but that the adjustments that were required as at 30 September 2005 would extinguish those assets and produce a deficit of \$3.552m”.

F186 Further, by the date of that letter HCU's loans to its subsidiaries had increased to \$131,612,000 and its adjusted assets had fallen to minus \$56.335m.

The letter observed that HCU was “having grave problems to repay its depositors as their deposits became due”.

F187 It was observed that payments for foreign travel for 2004-5 totalled \$1,617,742.34, about 80 per cent of which was on Mr Harnarine's Visa account. In most instances there were no documents in support. There appeared to be no significant business of HCU in Miami which would make it necessary for him to travel there so often and utilise so much of company funds. Nor was there any evidence of approval of such travel by the BOD.



This Commission has received no cogent evidence as to the purpose of these visits.

The letter also raised the issue of why HCU was paying bills on behalf of HCU USA, as well as sending funds to it. Chanka Seeterram had repeatedly asked for and been promised sight of the trust deed holding that company in trust for HCU but nothing had been produced.

Chanka Seeterram also drew attention to breaches by HCU of its bye-laws, namely:

- a. At the end of the financial year there was a 0% loan balance of \$4,602,319.59;
- b. In the sample selected no instruments of charge were executed for several loans granted. Mr Seeterram recommended that management must be reminded of Section 40 of the 1971 Act and the requirement to execute instruments of charge for all "qualifying" loans;
- c. For several of the loans granted there was no evidence of approval by the Credit Committee or the BOD. Mr Seeterram recommended that management must be reminded of Regulation 34 of the 1971 Regulations; and
- d. In the selected sample several mortgage loans were granted without the consent of the CCD contrary to Section 43 (2) of the 1971 Act.

F188 In the course of discussions between Mr Seeterram and Mr Harnarine, following issue of this letter, Mr Seeterram told Mr Harnarine that HCU was definitely "going down" and that, if the losses continued at their present level, his firm could not give an opinion on the next year's (2006) accounts because they might have to qualify everything. He told Mr Harnarine that HCU would

not be able to survive unless it received outside assistance and he suggested that an approach should then be made to GORTT. He also offered to try to find investors to take over the management of HCU, but Mr Harnarine said he “did not want too many outsiders knowing the business of HCU”.

F189 In spite of Mr Chanka Seeterram’s clear warning and advice in October 2006, Mr Harnarine took no steps to seek outside financial support until he approached GORTT — in April 2008. This Commission has no doubt that for the whole of that period at the latest HCU was insolvent in the sense that it could not meet its liabilities as and when they fell due and had no identifiable realistic means of doing so. Mr Harnarine had for several years seen HCU and its subsidiaries as his personal regime and now that its financial self-support had given way, he continued in a state of denial for eighteen months, by which time, as this Report demonstrates, HCU had become irremediably crippled.

F190 On 26 October 2006 at a BOD meeting attended by Messrs Harnarine, Ramnath and Lalchan. Mr Harnarine raised the need to raise capital and liquidity to “develop” HCU and pay loans for Christmas. He said that on the loan portfolio there was currently a \$4 million deficit and there would be applications for approximately \$20 million in loans for Christmas. Mr Harnarine proposed and the BOD decided upon the sale of the Savitur development and the securitisation of Sajeevan Medical Complex, but under the name of Jameel Ali and Company Ltd, chartered accountants, acting for HCU as it would not be in the best interest of HCU to raise funds under its own name. The financial statements were not presented to that meeting: this was said by Mr Harnarine to be due to the fact that the Auditors and

Accounts department were “completing their reconciliation and account balancing”. He said that the financial statements would be presented at the next meeting and the BOD passed a resolution that this should be done.

F191 Remarkably, the management letter dated 3 October 2006 from Chanka Seeterram was not circulated to the BOD or discussed in any way at that meeting. This exemplified an increasing tendency on the part of Mr Harnarine and senior management generally to fail to disclose to the BOD the general financial condition of HCU.

F192 On 24 November 2006 Bankers’ annual return to 31 March 2006 to the CBTT was lodged. It should have been lodged on 30 September 2006. The return showed that as at 31 March 2006 the company’s solvency margin was negative at \$7.6 million, that the motor insurance statutory fund was negative to the extent of \$11.2 million and that the statutory insurance deposit was short by \$1.3 million. This serious deficiency was due in part to the fact that the company’s auditors had discovered that a property included in the accounts with a value of \$12.85 million was not in fact owned by the company and had therefore required its removal from the accounts. The Motor Fund deficit was caused, according to HCU, by the subsequent recognition of claims arising before HCU’s acquisition of control of Bankers but not disclosed to it prior to that acquisition.

F193 It is not clear how it came about that the company had no title to the property in question. Nor is it clear whether, upon the purchase of its controlling interest in Bankers in 2002, HCU had the benefit of any contractual

warranties as to the level of pre-existing motor policy claims or, if it did, whether it took any and, if so, what steps to enforce them.

F194 It was not until 27 February 2007 that the Inspector of Financial Institutions at CBTT, having reviewed the company's deficit as at 31 December 2006, called in the Managing Director of Bankers, Mr Ramquar, to propose a method of funding the deficits. However, when the meeting took place Mr Ramquar had been replaced by a team from HCU headed by Mr Harnarine. The latter proposed a plan for funding the deficits over a period of five months. This was rejected by the Inspector, Mr Karl Hiralal, who quite properly required immediate action. Eventually, having agreed to transfer to Bankers a building valued at \$11 million, Mr Harnarine wrote to the Inspector on 19 March 2007 stating that he could confirm that HCU would be pledging \$13 million to meeting the statutory deficits. However, although Bankers continued to trade through until October 2007, there was by then still over \$4 million deficit on the Statutory Fund and Statutory Deposit and consequently the CBTT issued notice of intervention under Section 66 of the Insurance Act. It did so on the grounds that such intervention was essential to protect policy holders or potential policy holders against the risk of Bankers' inability to meet its liabilities and that it had failed to satisfy its statutory duties to fund the Statutory Deposits and its Statutory Fund. The company was required to fund those deficits by 22 October 2007, a date later extended to 16 November 2007 as a result of a telephone call by Mr Harnarine to the Governor of the CBTT. However, there had been no significant redirection in the deficits by mid-2008 and on 12 June the CBTT again gave notice of intervention under Section 66 by which it directed

Bankers to refrain from making any payments other than policy holders' claims, related legal fees, salaries and utilities and reinsurance premiums except as approved by the CBTT. Eventually, by June 2009, the deficit on the Statutory Fund had been reduced to \$504,000.

F195 At the meeting of the BOD of HCU on 30 November 2006 from which Messrs Harnarine and Lalchan were absent, once again no financial statements were presented on identical grounds to those put forward at the 26 October meeting and in spite of the resolution unanimously passed at that meeting that they should be. Nor was any reference made to the management letter of 3 October 2006 from Chanka Seeterram. This Commission infers that Mr Harnarine regarded the contents of both to be too sensitive to be exposed to members of the BOD in his absence. The BOD approved the granting of a loan of \$425,000 to HCU Financial. It is inferred that this was to cover running costs. Further, it was reported to the meeting that during the period from 24 October 2006 to 28 November 2006 new memberships amounted to 376, loans for approval were \$3,017 million, share withdrawals were \$667,347.45, share transfers were \$2.8 million and new fixed deposits totalled \$6.308 million.

F196 The HCU was, at one and the same time as it was insolvent, continuing to accept a very substantial amount in deposits. Its ability to make payments in respect of loans, share withdrawals and transfers was being financed on the basis of what it received by way of deposits.

It was the evidence of Punett Telucksingh, a retired police officer, which is accepted, that having on 16 December 2006 invested his life savings and his

deceased wife's estate of \$1.7 million in a one year fixed term deposit with HCU on terms which included forfeiture of interest if he sought withdrawal within the first six months and, having heard shortly after making that deposit that HCU was in financial difficulties, he sought to withdraw his funds but met with complete and continuing failure to pay.

Neither at the BOD meeting on 20 January 2007 nor at that on 22 February 2007 were financial settlements placed before the BOD. Nor was the management letter of 3 October 2006.

F197 By this time HCU was in breach of its statutory obligation to prepare audited financial statements for the year to 30 September 2006 (by November 2006) and to hold an AGM for that year by 31 December 2006. Possibly because the CCD staff were still engaged on preparation of their inspection report, the Division does not appear to have taken action to enforce HCU's duty with regard either to preparation and presentation of its 2006 financial statements or to the holding of the 2006 AGM.

F198 At the BOD meeting on 12 March 2007 Mr Harnarine is recorded as having told the BOD inter alia:-

- (i) At present inflows could not meet outflows.
- (ii) It was "the responsibility of directors to assist in bringing in deposits and not put pressure on the corporate management by putting pressure for payments and other outflows".
- (iii) HCU had faced a run and at present the outstanding depositors' withdrawals stood at approximately \$15 million.
- (iv) "Cash flow problems, yet not an insolvent company with assets more than liability".

- (v) There would be an AGM in May/June and a consolidated balance sheet would be presented.
- (vi) Monthly financial statements were not being presented to the BOD due to the fact that there was to be “consolidation, restructuring and auditing that is ongoing”.
- (vii) The Recoveries Department had recovered approximately \$20 million in bad loans.
- (viii) The cash flow was to be improved by the sale of Savitur land which would raise approximately \$16 million.

F199 It is to be observed that although the cash flow problem was seen to exist and eventually to be ameliorated by the sale of Savitur land plots, the only immediate method of survival was seen to be by maximising deposits and minimising withdrawals. The rate of withdrawal currently far exceeded the rate of inflow of deposits.

F200 On 2 April 2007 the CCD inspection team under Mr Eden Charles presented its report to the CCD. The main findings were as follows:

- (a) There was no proper fixed asset register.
- (b) In the case of lands and buildings owned by HCU:
  - (i) There were no valuation reports for some properties when acquired by HCU or sold by HCU.
  - (ii) In some instances where there were valuations, the properties were purchased by HCU at a cost in excess of the amount stated in the valuation
  - (iii) There were also no title searches conducted with respect to some of the properties purchased by HCU, with the result that monies were spent on properties for which HCU could either not show good title or the properties ended up being involved in litigation.
  - (iv) Deeds of Conveyances could not be located for some of the properties which HCU claimed to own, and in some cases the Deeds of Conveyance were not registered.

- (c) In the case of lands and buildings sold by HCU:
- (i) There were no valuation reports for some of the properties sold by HCU.
  - (ii) Some properties were sold for less than the purchase price.
  - (iii) Some of the properties were purchased from and sold to the same person.
  - (iv) There were no records of the cost of improvements, if any, to the properties sold.
  - (v) Some of the properties were however, sold at a profit.

(d) "Loans

The Society has a written detailed and comprehensive Loans Manual. The loan policy is well documented and detailed and contained relevant information pertaining to the administration of loans. Loans to Officers and staff, mortgage and commercial loans are approved at the head office. In addition branch managers approve ordinary loans within specified limits of authority.

Generally members' loan files at the head office were not updated with relevant documents in a timely manner. We found that there were violations to the loans policy. In some instances:

- Generally it was found that persons became members by purchasing \$25.00 in shares and received huge loans in excess of \$100,000 on the same day. There was little or no Securities found for these loans.
- The Facts Findings Sheets in member's files revealed that although member did not qualify for a loan, telephone conversation from the President and other Officers and Senior Management inform the loans officers to grant the loan. These subsequently became delinquent.
- Incomplete loan applications were found and the payments were disbursed.
- There were no valuations for security offered.
- There was a large number of unsecured loans.
- Instruments of Charge/Mortgage Bill of Sale were not duly executed.
- Members did not qualify for loans, as debt service ratios (DSR) were very high (beyond 40%).
- Loan agreements were not adhered to.
- Loans were restructured without necessary approvals.
- The Loans Manual was silent with respect to zero % loans.



- Loans were granted to non-members without the approval of the Commissioner for Co-operative Development”.

(e) “*Officers Loans*

We examined loans to officers on the Board of Directors, Credit Committee and Supervisory Committee. We observed the following in some instances:-

- Officers with delinquent loans continue to serve on the Board of Directors in contravention of Bye-Law 29(f).
- Loans were not granted in accordance with Section 43(3) of the Co-Operative Societies Act and Bye-Law 40(f).
- There were cases where Officers had more than one (1) mortgage loan, which violated Bye-Law 40(e).
- Huge loans were granted (over \$500,000.00) in excess of their shareholding (some officer holding shares of only \$30.00)
- Delinquent loans were refinanced which contravened the Loans Policy.
- Loan payments were not made in accordance with the loan agreement.
- There were incomplete loan application forms but funds were disbursed.
- No documents were seen for the disbursement of loan.
- Officers were granted 0% loans, in contravention of the loans policy.
- There were irregular transactions regarding the repayment and disbursement of loans. e.g loan application forms were not properly approved, IOC,s and/or securities were not duly executed yet senior management approved vouchers for disbursement”.

F201 Amongst the specific findings as to loans to officers were that:-

- (a) Mr Harnarine’s total loan balance was \$1,663,264.92 with outstanding interest of \$49,245.08 for the purpose of purchase of real property, the stated interest rate being 1 per cent whereas the actual rate debited was 0.5 per cent.
- (b) Mr Ramnath’s ultimate total consolidated mortgage loan was \$393,000 at a rate of 1 per cent, the initial purpose being for the purchase of real property. He first built a house on land owned by HCU without purchasing

the land. After building the house he raised a further loan to purchase the land.

He also had ordinary loans totalling 233,293.48 at a stated rate of 2 per cent, yet no interest was debited. For some three and a half year, between December 2001 and May 2005, no repayments were made.

In June 2005 this loan was reduced by a cash payment of \$30,000 and on 14 March 2006 by a journal credit of \$176,189.46. The latter credit was transferred from the account of Chandradeo Harnarine who held shares to the value of \$150,651.00 with outstanding interest of \$58,754, which on 18 August 2005 had been waived

- (c) Mr Lalchan with shares in the sum of \$1,079.68 had an outstanding mortgage loan of \$720,884.21 at an annual rate of 8 per cent.

In March 2005 a credit to a multiplier account of \$550,000 was shown to be derived from the sale of a property to a building contractor currently employed by HCU. The sale agreement stated sale price was \$400,000 and the source of the balance of \$150,000 is not established.

F202 With regard to loans to senior management and staff the report found:

- There were instances where approvals were not granted for loans to senior managers but funds were disbursed.
- Senior managers were granted loans at varying interest rates (0%, 0.5%, 1%, 1.5% and 2%) at the same time. We also found that loans were granted when the officers were delinquent on previous loans.
- Senior Managers with existing loans and insufficient security were granted loans with no security offered in excess of \$500,000.00 and were guarantors of loans to other members.

- Loans were granted to staff in violation of the Loan Policy (capacity to repay, collateral offered, repayment period etc).
- Loans were also granted to staff with high DSRs.

F203 Members of Senior Management specifically referred to were:

- (a) Mr Ravindra Bachan, CEO of HCU with shares of \$2110.53 was in 2003 granted loans totalling \$321,000, zero rated with instalments quantified at \$6867.00 per month. This loan was delinquent in as much as \$2000 per month was paid.

On 10 December 2002 he was granted a further loan of \$329,905.03.

He sold a vehicle to HCU whereby the loan was reduced by \$245,000, although there was no valuation of the vehicle. The net loan balance was reduced to \$417,165.03 with monthly instalments of \$5,800. However, Mr Bachan paid \$2,795 per month.

On 6 May 2005 he was granted a further loan of \$150,000.

- (b) Mr Jameel Ali, a consultant, owned \$100 in shares. From April 2002 he received a series of loans. He was delinquent from time to time yet still received additional loans. His Savings Account was overdrawn to the extent of \$187,178.20 in May 2005 but on 26 May a Journal Credit Savings of \$200,000 appeared on his statement of account thereby discharging the loan.

F204 The report considered the work of the Recoveries Department. Its findings exemplify the deficient management of the retail side of HCU going back to 2000. That Department, although recently restructured was experiencing great difficulty in recovering loans due to inadequate information on the loan application forms coupled with

poor management decisions in granting the loans. Thus, the report states:-

“During the period 2000 to 2003, huge loans, were granted to persons on the same day that they became members. These member's shareholding ranged from \$25,00 to \$100.00, therefore they were no little or no security for these loans. Investigation revealed that the majority of these members paid one or two instalment only, while the others never made any payments.”

F205 With regard to the subsidiaries, the report recorded that there were 22 of which all except Bankers were wholly owned. Of these, the files of 14 were examined, the remaining 8 were said by management to be unavailable.

F206 The report found that loans were granted to subsidiaries “inappropriately”, using inadequately completed and unsigned membership application forms without loan agreements. In most cases loans were granted monthly to meet operational expenses, such as wages, PAYE, National Insurance and Health surcharge. The amounts ranged from \$1000 to \$10 million. The interest rates were 1.5 or 2 per cent. The accrued interest was capitalised but there was no evidence that any of these loans had been repaid or serviced. Nor were there any approvals for such loans by the CCD in compliance with Section 43(1) of the CS Act 1971.

The subsidiaries other than Bankers had no fixed assets and were housed in premises owned by HCU. There was no record of the payment of any rental for such occupation although HCU financial statements recorded rental income from subsidiaries of \$3,733,714.

- F207 Although the CCD team asked for audited financial statements for the subsidiaries, none were provided.
- F208 Loans to the subsidiaries were \$33,999,556, but there was no record of any repayments. Investment in the subsidiaries was shown in HCU statements to be \$16,975,000. No record of any income from these subsidiaries was found.
- F209 As to Fixed Deposits, the report found that these totalled \$621,922,662. Further, members were unable to cash in their fixed deposits upon maturity, as shown by the huge number of disputes about withdrawal referred to the CCD. In cases where the HCU issued cheques to members for a small percentage of the actual deposit, these cheques were not honoured.
- F210 Having made detailed recommendation's which are quoted in Section (J) of this Report, the CCD team concluded:-

“In our opinion the Hindu Credit Union Co-operative Society Limited has not adhered to the Co-operative Societies Act, Co-operative Societies Regulations, and its Bye-Laws. Further, HCU have violated most of its written policies (loans, investments, etc). The core business of the Society (Granting of Loans) was replaced by the acquisition of properties. This placed the Society in an adverse cash flow position. Management must adhere to the recommendations contained in this report and to return to its core business to ensure its immediate survival and long term stability.

Based on the findings of the Report, an Inquiry under Section 4 of the Co-operative Societies Act, Chapter 81:03 should be held into the constitution, operations, and financial position of the Society.”

- F211 The Commission has given careful consideration to the explanations given by Mr Harnarine for many of the criticisms made by the CCD, in both his witness statement and in his oral evidence, as it also has to the evidence of

Mr Ramnath, Mr Lalchan and Mr Bachan. Nevertheless, it is satisfied that the findings of the CCD inspections as recorded in its report are in overall substance well-founded. The Inspection team's recommendation that a Section 4 Inquiry should be commenced was, in the view of this Commission, well justified.

F212 It was not until 7 May 2007 that the long-promised financial statements for HCU for 2006 were presented by Mr Harnarine to the BOD with the help of the CEO, Mr Bachan, and the Accountant. It was resolved that they should be referred to the finance subcommittee for review and recommendation. There appears to have been no discussion of what the financial statements disclosed and there is no evidence that Chanka Seeterram's management letter for the year to September 2005 was ever disclosed to the BOD.

F213 In the course of May-August 2007 Chanka Seeterram was working on the audit of the 2006 financial statements. He repeatedly and unsuccessfully requested documents and information relating to such matters as HCU Financial Company (USA), in particular the trust deed showing that the property was held on behalf of HCU, invoices for payment to Janitorial Services Co. Ltd, foreign travel supporting invoices, including a payment of \$20,000 and \$32,000 to Jameel Ali's credit card account and a payment of \$75,000 to the account of Mr Bachan, all three such payments having been recorded in the General Ledger as being made to Exim Bank.

F214 In July 2007 HCU made a loan of \$100,000 to Mr Harnarine for personal expenses for 20 years. This was an exceptionally long period. The normal maximum for similar loans was 5 years. This loan was approved neither by

the Credit Committee nor the Supervisory Committee. Nor was it approved by the BOD.

F215 By 4 September 2007 Chanka Seeterram & Co had received six cheques drawn by HCU in respect of the firm's fees as external auditors. Each one had been returned by HCU's bank marked "stop payment" or "uncleared effects".

F216 This Commission finds that by September 2007 HCU, in an effort to protect its dwindling available cash, was resorting to delaying tactics which those in management knew to involve express or implied misrepresentations. Thus on 4 September 2007 – by which date it was issuing unsupported cheques – it issued to Mr Mohammed Ali and Mrs Merle Ali a letter of comfort signed by Mr Harnarine in respect of their Fixed Deposit for \$300,000 for three years from 26 October 2005 in the following terms:-

"We further confirm that the Hindu Credit Union Co-operative Society Limited is a properly constituted legal entity and has complied with all the relevant laws with respect to the conduct of its financial affairs.

In these circumstances, the Hindu Credit Union hereby guarantees and assures you of the terms and conditions of the contract between the Hindu Credit Union Co-operative Society Limited and yourself.

We further advise that upon maturity of your deposit, these funds would be readily available upon request.

The Hindu Credit Union will honour all its obligations and guarantee all amounts as shown on your deposits in accordance with the Laws of the Republic of Trinidad and Tobago".

F217 Not only are the facts found by this Commission wholly inconsistent with the statement that HCU had "complied with all the relevant laws with respect to the conduct of its financial affairs" but it was known to Mr Harnarine and all

senior management personnel that HCU was currently quite unable to make the amount of that deposit “readily available upon request” at maturity. HCU had by this time been repeatedly failing to honour cheques issue in response to requests for withdrawal of deposits. This Commission accepts the evidence of Mr Karyl Adams, a member of the CCD inspection team and now CCD Commissioner, that 60 per cent of the total fixed deposits were not paid on maturity and that the holders of 25 per cent of those deposits received from HCU cheques which it was fully aware could not be met.

F218 Whereas it was the evidence of Mr Harnarine that in drafting such comfort letters HCU relied on attorneys for advice and drafting, this Commission finds that if such evidence was true it is to be inferred any such advice was provided by attorneys in ignorance of the full facts.

F219 By September 2007 Chanka Seeterram had not been able to complete the audit for the year to 30 September 2006. Although by then the work was far advanced, the audit team was still in course of gathering information and it was without accounts from the management. More seriously, Mr Seeterram said in evidence:

“We were not able to complete an audit for September 2006, as we were unable to receive satisfactory explanations as to the continuance of HCU and its subsidiaries”. (emphasis added)

F220 As Mr Seeterram had made plain to Mr Harnarine a year earlier, the failure of HCU to arrest the erosion of its financial foundations had led inexorably to the point where the accounts would have to be qualified as to whether HCU remained a going concern.



- F221 Given that all cheques drawn by HCU for the purpose of paying Chanka Seeterram's fees were returned by the Bank, even if re-presented at HCU's request, that firm withdrew from all further audit work. There never were audited accounts for the year to 30 September 2006.
- F222 HCU produced unconsolidated management accounts for the year to 30 September 2007. They showed a net loss of \$6.9 million. The total amount invested in the subsidiaries together with advances including accrued interest had risen to \$205.2 million. These accounts did not include provision for writing off loans to subsidiaries, accrued interest due from subsidiaries or related party balances. When the general ledger and database accounts system were examined by Ernst & Young in 2008 it was found that they had not been properly maintained. There were both discrepancies and substantial deficiencies.
- F223 At the BOD meeting on 27 September 2007, attended by Mr Harnarine for the latter part and by Messrs Ramnath and Lalchan, the financial statement was again not presented. Mr Harnarine told the meeting that the Auditor was working to finish the Audit and the financial statement would be presented at a later date. Mr Baldath Maharaj, a BOD member said that the whole point of monthly meetings was to review the financial status of the organisation and make recommendations about it. Once again, therefore, the directors were prevented from monitoring the financial condition of HCU. This was caused by the failure of management so to organise the accounting staff that the BOD was provided with this key information.

F224 The following day, 28 September 2007, in an internal HCU memorandum the CEO, Mr Bachan, wrote to Mr Ramnath, the Secretary:-

“We wish to inform the Board of Directors that Corporate Management is very concerned about the performance of the subsidiary companies placed under its purview.

In this regard, therefore, we request permission to engage Independent Management Consultant – Rasheed Ackbarali to perform a due diligence review of each operating company; assess the viability of these commercial ventures and to make recommendations as to their continuation”.

F225 Mr Bachan’s perception of the need to engage an expert to carry out due diligence on each of the operating subsidiaries is indicative of these significant material matters:

- (i) The exercise of due diligence required was outside the capability of anyone in HCU or its subsidiaries;
- (ii) The reference to “recommendations as to their continuation” demonstrates that closing down at least some of the subsidiaries was now seen, at least by Mr Bachan, as a possible necessity.

F226 Given that HCU had been insolvent for at least a year before this Memorandum and that the continued existence of the subsidiaries as going concerns depended on HCU, as their only source of funding, it is remarkable that no one in senior management had until then raised a serious question as to their continued existence.

In the event, at about the beginning of 2008 HCU engaged Mr Ackbarali to prepare business plans and management reports on the basis of the previous three years actual financial performance of each subsidiary.

F227 At the BOD meeting convened on 29 November 2007, Mr Harnarine, who arrived late, postponed the meeting to the following week. He also reported that the AGM would be held in January 2008 and referred to the proposed closure of five branches and some subsidiaries. He gave an “over view” of HCU’s performance, namely assets of approximately \$800 million, outstanding withdrawals \$27 million and loans at \$175 million. He stated that moneys from the sale of the Twin Towers or Savitur lands would be used to pay out depositors and improve liquidity. There is no evidence of the presentation to the BOD of any financial statements and it is to be inferred that there was none. The meeting approved a loan by HCU to HCU Financial of \$348,000. There is no evidence that the purpose for which this funding was required was disclosed in the BOD and it is to be inferred that no such disclosure was made. One BOD member, Mr Baldath Maharaj, is recorded as having said:

" ...in light of the presentation by the President he was of the view that proper documentation needed to be presented to the Board on, Branch Performance, the new legislation regarding Credit Unions, and the fact that decisions were being made based on emotions rather than documented fact."

F228 This Commission finds that from at the latest December 2007 there was a serious and increasing incidence of HCU failing to pay deposit holders interest or capital withdrawals and of issuing cheques in favour of deposit holders which were returned unpaid by HCU’s bank. This Commission further finds that Mr Harnarine personally strenuously endeavoured to dissuade deposit holders from withdrawing their deposits. In response to complaints and questions as to the viability of HCU he would blame its failure

to pay as due to a cash flow shortage caused by adverse statements made by Maha Sabha and a consequent run. He also tried, at least in the case of one depositor (Jennifer Gobin), to dissuade against the closure of the account by openly referring to the cash flow shortage being about to be cured by the receipt of proceeds of sale of the Twin Towers. However from December 2007 onwards, promises to make regular payments of interest were not honoured or not fully honoured. Eventually in June 2008 Mr Harnarine admitted to that deposit holder that the Twin Towers deal had collapsed.

Her capital deposit was eventually lost.

F229 The impression of HCU's management conveyed at this time to one well educated depositor with management experience (Jennifer Gobin) was that something was going "drastically wrong" with the management: "simple things were not in place" and "managers did not know what other managers were doing"; some of those employed by HCU needed proper training.

F230 In accordance with the developing policy of closing down loss-making subsidiaries, HCU Food Corporation Ltd was closed in December 2007. It had accumulated losses of \$29,245,948 and was indebted to HCU in the amount of \$38.5 million, a financial collapse which had developed over only 5 years of trading. The gross margin of the company was relatively low (8.4 per cent) when it commenced trading but had declined to negative 10 per cent in 2005. According to an investigation subsequently conducted by EY, when general and operating expenses were taken into account, the business model appeared unsustainable at the current cost structure. It could only

have survived had it been able to achieve particularly high sales volumes. This Commission has carefully considered Mr Harnarine's evidence that this company was initially a successful operation with great potential but failed because, following the divestment under the CLICO Agreement, those in control terminated this company's contracts with many of its suppliers, following which control of the company was transferred back to HCU when the CLICO Agreement collapsed, leaving the company fatally weakened. Whereas CLICO's conduct during the period of divestment may well have caused substantial deterioration, this Commission finds that, even had the supply contract structure remained unimpaired, the financial condition of this company would have been such that it remained substantially loss-making to the extent that it would have had to be closed down by 2008. Not only, did its original formation represent a relatively high risk investment, involving as it did a total capital outlay by HCU of \$10.3 million in 2002-2004, but its continuation in business on life support from HCU after divestment had terminated was an unjustifiable drain on HCU's financial resources, the more so through 2007 as HCU became increasingly unable to satisfy its liabilities to depositors.

F231 In the meantime, many months had passed since the CCD inspection team had produced its report on HCU and its recommendation that a Section 4 Inquiry should be instituted. The reason for this unfortunate delay is not entirely clear. It seems to this Commission likely that the main reason was that the Commissioners, Mr Ramroop and from 28 August 2007, Mr Mitchell, were heavily occupied by other work arising in relation to both HCU and other large credit unions, not the least of which was the conduct of hearings by the

Commissioner personally of claims against HCU by depositors whose withdrawals had not been paid.

F232 In the event, on 4 December 2007, some eight months after the inspection team had presented its report and 17 months after the inspection had commenced, Mr Mitchell sent a memorandum to the Permanent Secretary at the MOL recommending the setting up of a Section 4 Inquiry. The loss of time in the setting up of a Section 4 Inquiry was very far beyond that which should have occurred had there been a properly resourced and properly managed regulatory system for credit unions. The longer the delay continued, the greater the financial deterioration of HCU and greater the level of its default in repayment of deposits and therefore of inconvenience and distress to the members and deposit holders and the greater the workload on the Commissioner personally.

F233 According to the evidence of Mr Charles Mitchell, which this Commission accepts, the main reasons in addition to the inspection report, which caused Mr Mitchell to recommend a Section 4 Inquiry were:

- (i) The prevalence of HCU's failure to pay upon withdrawal requests from depositors;
- (ii) The refusal of HCU members to repay loans if they could not withdraw money from their accounts;
- (iii) Failure of HCU to pay amounts due to contractors who had carried out work for it.

F234 There being no audited financial statements beyond the year to 30 September 2005 – more than 2 years previously – Mr Mitchell was obliged to rely on out-dated financial information when he recommended a Section 4

Inquiry, notably that \$16,975,000 had been invested in the subsidiaries without producing any income and that loans to the subsidiaries were \$33,999,556, none of them ever having been repaid. Given that total liabilities stood at \$823,764,592 against a decline in the net surplus to \$6,017,818, Mr Mitchell concluded that “the members are in serious jeopardy of losing their shares invested in this Society”.

F235 The MOL having decided to accept the Commissioner’s recommendation, it was then necessary to select an outside firm of accountants capable of conducting the work. That work was inevitably going to be substantial, not least because of the 21 subsidiaries whose financial situations would have to be reviewed. In the event it was necessary to put the appointment out to competitive tender. Eventually, the process was completed by the appointment of EY but only on 10 June 2008.

F236 Contrary to its Bye-Laws, the CS Act 1971 and the 1971 Regulations, HCU failed by 30 November 2007 to prepare audited financial statements for the year to 30 September 2007 and failed to hold an AGM for 2007 by 31 December 2007. It currently lacked any external auditor, Chanka Seeterram having withdrawn their services on account of non-payment of fees.

F237 Although by January-March 2008 there were continuing defaults by HCU in failing to make withdrawal payments to depositors, and cash withdrawals for HCU staff were being rationed, Mr Harnarine received his salary (reduced from \$60,000 per month to \$50,000) in cash and was further paid \$50,000 per month by HCU Financial Ltd for his responsibilities for HCU USA (which

had ceased to be under HCU's control) and other subsidiaries, some of which had also ceased to trade.

F238 That Mr Bachan and Mr Ramnath were by January 2008 aware of the general financial decline of HCU is shown by a Board Note prepared by Mr Bachan to Mr Ramnath on 8 January 2008. It reported on critical restructuring operations that had commenced in December 2007. It was explained that these were urgent due to the financial challenges forced by HCU, in order to align operating cost with revenue and streamlining operations to comply with proposed legislation.

F239 On 19 February 2008 HCU advanced \$900,000 to Mr Harnarine by way of loan. He executed a charge over shares in HCU, a Toyota Land Cruiser and a BMW. The background to this loan is unsatisfactory and this loan was unlawful. Its purpose was said to be for property purchase, but contemporary documents neither identified the property nor established any charge or other security interest over it. Further Mr Harnarine was currently in arrears on other loans and no consent for this loan had been sought or obtained from the CCD. The loan was made on the basis of an application form bearing the same person's signature as loan officer and as manager.

F240 Mr Harnarine's requirement for that loan appears to have been as follows.

F241 In 2007 Sunita Ragoonan, who had worked as his secretary from 2004 sold to Mr Harnarine a plot of land under an agreement by which he promised to transfer to her a house in The Pine development for \$500,000 together with a payment of \$500,000 in cash. On the land transfer provided to her by HCU for signature the house price was stated as \$300,000. Her query was



answered by the explanation that this was to save stamp duty. She was not legally represented. When by March 2007 she had received neither the house nor any cash, she raised the matter with Mr Harnarine and was told that she would be paid \$100,000. She then signed a receipt for a payment of that amount from Mr Harnarine and another. She has not, however, yet been paid. The money was said to have been deposited in an account that she had at HCU. However, she tried but failed to withdraw it. Mr Harnarine then informed her that \$900,000 was deposited first in to her savings account at HCU and then on the advice of Mr Harnarine into a deposit account at HCU in her name in order to benefit from the higher rate of interest. Her evidence, which is accepted, is that she has not been able to withdraw any of the \$900,000. She has therefore lost her plot of land and received neither a house or any cash.

F242 It was Mr Harnarine's evidence that in January or February 2008 he met certain officials of GORTT, including Prime Minister Patrick Manning, whom he informed that a bail out of HCU was out of the question and that discussions were under way with prominent HCU shareholders with regard to a plan to divest HCU of certain of its assets and return to its core business as a credit union. Mr Harnarine claimed to have had discussions at a meeting on 20 February 2008 with the Minister of Finance, Karen Tesheira, to whom he explained the current crisis with HCU. There is an issue as to whether any such meeting took place. It was denied by Mrs Tesheira. It is unnecessary for this issue to be resolved for present purposes.

- F243 On 13 February 2008 Intercommercial Bank reduced HCU's overdraft facility and a stop was placed on cheque clearings for 4 days. A total of 75 cheques to the value of \$819,725 were stopped.
- F244 By this time HCU was effectively beyond the end of its ability to continue in business.
- F245 The outstanding indebtedness to Telecommunications Services ("TSTT") was \$804,475.29. On 21 February 2008 TSTT informed HCU that, unless it paid \$402,237.64 by 12 noon on the following day, there would be total removal of all services.
- F246 At a BOD meeting of HCU on 28 February 2008 attended by Messrs Harnarine, Ramnath and Lalchan, Mr Harnarine informed the meeting that the cash situation was not improving and that he expected income would also fall, thereby causing liquidity to become even more tight. It was decided to write to the CCD asking for a meeting to put forward HCU's position and the somewhat uncaring manner in which he was forcing decisions on it. Mr Harnarine informed the meeting that:
- "The balance sheet is strong and will be able to cover members' funds and all liabilities".
- F247 This commission finds that this was a misrepresentation known by Mr Harnarine, Mr Ramnath and Mr Lalchan to be untrue.
- F248 The unaudited financial statements for HCU for the 5 months ending 29 February 2008 demonstrate the precarious financial condition of HCU. Thus in the Balance Sheet there were included under Assets:

(i)	Cash in hand at Bank	\$891,537
(ii)	Investments	\$31,211,191
(iii)	Loans to members	\$164,833,273
(iv)	Loans to HCU Subsidiary Companies	\$133,656,427
(v)	Investment properties	\$181,120,253
(vi)	Investments in HCU Subsidiaries	\$17,261,000
(vii)	Property, plant and equipment	\$197,131,191

Total Assets were shown to be \$817,371,386.

F249 It will be observed that cash in hand represented but 0.11 per cent of the total. Investigation of the components of “Investments” reveals that of the total of \$31,211,191 some 30.5 million was accounted for by the estimated disposal value of three Subsidiaries – Upward Trend, World Select Gem Ltd and Jesse’s Court Ltd. Only the balance of \$61,191 represented immediately disposable financial instruments. Accordingly, the true total of immediately disposable assets was no more than \$952,728. With regard to items (iv) and (vi), loans to Subsidiaries and investments in Subsidiaries, these could not properly be treated as assets by 29 February 2008 because by then it was clear that the loans to Subsidiaries would be irrecoverable and the Subsidiaries would be undisposable for any amount in excess of the value of their tangible assets which was nowhere near the amount invested in them by HCU. Further, since according to the evidence, many of those members who had obtained loans from HCU were in default, not infrequently because HCU was unable or unwilling to honour requests for withdrawal from the deposits of those same members, the true recoverability of such loans and

therefore the apparent available liquidity of the \$164,833,273 is open to serious doubt.

Against these figures, under the heading Liabilities there appears:

(i) Members' deposits	\$524,202,108
(ii) Members' savings	\$154,651,859
(iii) Accounts payable and accounts	\$10,887,787

The total of these items is thus \$689,741,754. The immediately realisable assets of \$952,728 therefore represented no more than 0.138 per cent of those key liabilities. If account is also taken of the figure for members' shares, \$83,163,091, that percentage of liquid assets falls still further.

In truth the Balance Sheet positive margin of assets in excess of liabilities of some \$88,913,386 was illusory. In reality liabilities had by this time far exceeded assets. Further, the credit union's liquid assets were no longer sufficient to service the immediate withdrawal requirements of its members together with its day to day running costs.

F250 On 8 March 2008 HCU advanced a further \$50,000 by way of a loan to Mr Harnarine in order that an existing loan of \$150,000 to a related party could be reduced.

F251 On 5 March 2008, in response to expressions of concern as to whether she should continue, voiced by Mrs Gangadai Jagdeo, a substantial depositor, Mr Bachan, as CEO of HCU, issued a letter of comfort in the same terms as that referred to below. It is to be inferred that the issue of letters bearing this standard form wording was pursued as a matter of corporate policy

notwithstanding that those in management must have appreciated that the financial condition of HCU was in substance, if not in detail, that disclosed by the 29 February 2008 Balance Sheet.

In the course of March/April 2008 the incidence of withdrawal claims by members before the CCD increased, including claims for failure to comply with awards by the CCD.

F252 By 3 April 2008 Mr Harnarine had come to appreciate that the financial position of HCU needed very urgent attention. He again had a meeting with the Prime Minister, Mr Manning. The latter recommended that he meet the Minister of Finance, Ms Karen Tesheira. According to the evidence of Mr Harnarine, the meeting took place on 7 April 2008 and was attended by Messrs Harnarine, Bachan and Jameel Ali on behalf of HCU and by Ms Tesheira and Mr Dhanpaul, Permanent Secretary to the MOF. Neither Mrs Tesheira nor Mr Dhanpaul could remember any such meeting. If it did take place, it is remarkable that no minutes or other record was kept by the MOF. However, Ms Tesheira did recall that she spoke by telephone to Mr Manning who told her that Mr Harnarine was claiming that HCU was experiencing “temporary liquidity problems” and asked her to meet Mr Harnarine and to determine what assistance might be given by GORTT.

F253 Mr Dhanpaul also had a meeting with the Permanent Secretary of the MOL on 8 April 2008. Apparently they considered security that might be provided by HCU in exchange for a bail out. Ms Tesheira joined that meeting late and there was discussion of HCU’s general lack of cooperation with CCD in relation to its inspection. On 9 April 2008 HCU wrote to the MOL proposing

that GORTT provide finance to HCU in the sum of \$71 million secured by one property in Freeport said to be valued at \$50 million and one in Chaguanas – the Twin Towers said to be valued at \$40 million. There is no evidence as to how these values were arrived.

F254 At some stage during the period 10-15 April 2008, while Ms Tesheira was abroad on official duties, there was a meeting convened by the MOF between Senator Mariano Browne, a Minister at the MOF, and Mr Harmarine during which the latter repeated his request for a government loan of \$71 million secured on real property of HCU.

F255 Upon Ms Tesheira's return to Trinidad a further meeting took place on 17 April 2008. By that time HCU had sent to the MOF its financial statements for 2005, 2006 and 2007 and the five months to 29 February 2008. The extremely serious cashflow position of HCU was therefore made very apparent. However, without being able to go behind the stated computation of assets, as explained above, it would not be apparent to the uninstructed reader that the credit union was demonstrably insolvent. In the course of that meeting, which was also attended by Mr Bachan, Mr Dhanpaul and Senator Browne, Mr Harmarine reiterated that it had a liquidity problem and that this had been caused by a move brought about by groups who wanted to see HCU closed down. He again put forward the need for \$71 million and HCU's willingness to put up security by selling or pledging real property.

However, influenced no doubt by what she had learned from the MOL about HCU's past record of limited co-operation with the CCD, Ms Tesheira indicated that GORTT would be prepared to consider financial assistance

subject to conditions which had to be satisfied and provided that HCU co-operated. The conditions were:

- (i) HCU's financial condition must be verified by an independent audit;
- (ii) HCU must provide a list of all its unencumbered real properties;
- (iii) HCU must inform MOL that it would allow and facilitate an independent audit.

There would have to be searches as to the title of all real assets. Unless HCU complied with and satisfied those conditions, it would receive no assistance from GORTT. These conditions were entirely understandable in all the circumstances.

F256 The Commission records its strong disapproval of the failure of MOF, when confronted with a matter as serious as HCU's survival, to take any minute or prepare any other written record of that meeting.

F257 On 18 April 2008 HCU sent to MOF documents of title and valuation reports and leases relating to certain of its real estate. MOF appointed Mair & Co to conduct title searches. It soon emerged that in spite of the offer to provide as security Twin Towers and the Freeport property, HCU was only a joint owner of Twin Towers and the Freeport property was mortgaged to secure an amount of \$1.5 million.

F258 On 23 April 2008 Mr Harnarine wrote to Mr Rennie Dumas, Minister of Labour informing him of the damage done to HCU by a financial run since September 2004 and explaining that, due to the resulting lack of liquidity, HCU had been "unable to replenish its income-generating loan portfolio to satisfy obligations to its members and to pay depositors' returns on

investments in shares and fixed deposits. The letter recognised that a due diligence review by an independent firm of auditors would be “an imperative” to justify “consideration of a loan”. HCU had indicated to MOF that its funding requirement was \$71 million. The letter confirmed that the BOD unanimously agreed to give authority to the MOL to appoint the firm of auditors. The letter was copied to Ms Tesheira. She immediately wrote to HCU stating in relation to Mr Harnarine’s reference to the funding requirements:-

“For the purpose of clarification and for the record, I wish to state that there was no agreement by the Minister of Finance to provide funding in the sum of \$71 million or otherwise. Further, there was no agreement that there should be any funding arrangements by way of a loan, whether securitized by real estate assets or otherwise”.

F259 That the desperate financial condition of HCU had become apparent at least to Mr Bachan, the CEO, by 5 May 2008 is shown by the Memorandum he wrote to Mr Ramnath as Secretary to the BOD. Having referred to the principle amount of the Subsidiaries’ indebtedness having reached \$134,534,686 with accrued interest of \$62,108,406 as of 31 March 2008 and to the fact that all the subsidiaries had accumulated losses and were insolvent, he requested approval of the BOD to do the following:

1. Discontinue operations of all subsidiaries with negative contributions to profitability.
2. Cease immediately all loan/funding to subsidiary operations referred to above.
3. Identify all assets and determine salvage value of any assets available.
4. Quantify all outstanding legal liabilities.



5. Start process of negotiating with creditors.
6. To write off the investments made in the companies to be discontinued.
7. To reverse all interest charged to these subsidiaries on the loan capital amounting to approx. \$62,108,406 from the accounting records of the Credit Union and the subsidiaries.

F260 The obvious state of HCU's malaise was further identified by Mr Ackbarali in a report dated 7 May 2008. He advised HCU to stop introducing into its accounts accruing interest on loans to Subsidiaries since such was "artificial and uncollectible", all the loans being non-performing and to write off the value of the investments. Further, most, if not all, of the Subsidiaries should be dissolved "to stop the haemorrhaging", there being "no strategic fit with the HCU". He further recommended that HCU should return to its core business of financial services and expand insurance.

F261 There was a BOD meeting on 29 May 2008. It was attended by Mr Harnarine, Mr Ramnath and Mr Lachlan. Mr Harnarine is recorded as having informed the meeting that in view of the current cash flow problems HCU might have to make "further adjustments to keep the organisation from further expenses". He added:-

"Notwithstanding these adjustments the organisation remains solvent with assets well over liabilities."

F262 This was an entirely misleading statement, as appears from the preceding paragraphs of this Report, and this Commission finds that Mr Harnarine knew that it was untrue. However, the Ackbarali report was put before the meeting and it was resolved that management's recommendation to write off capital

loans to subsidiaries and accrued interest totalling \$196,643,092 be accepted but should be referred to the Supervisory Committee for consideration and approval.

F263 On 5 June 2008 Mr Harnarine informed the Minister of Finance that HCU was no longer “interested in pursuing the sale” of Twin Towers. He blamed the other shareholder for “reneging” on a shareholders agreement. He indicated that HCU would be offering for sale other property in Freeport solely owned by HCU at a price of \$52 million and enclosed copies of the title deeds and a valuation report.

F264 On 7 June 2008 there was another meeting between Ms Tesheira, Mr Harnarine and Mr Bachan. Mr Dhanpaul, the Permanent Secretary was also present. Mr Harnarine admitted that Twin Towers was encumbered but maintained that the Freeport property was not. Ms Tesheira said a title search on the Freeport property would have to be carried out and that the fair market price would have to be determined by an independent separate valuation. However, she insisted that assistance from GORTT would be conditional on its being confirmed that HCU was illiquid, as distinct from insolvent.

F265 On 9 June 2008 the Supervisory Committee recommended that the BOD should consider whether the CCD should be called in to assist with the management of HCU. The loss of confidence by the Supervisory Committee in the ability of HCU management to run the credit union unaided in the face of the many claims against it and the liquidity crisis is a strong indication that the deficiencies in management were plainly apparent to objective observers.

F266 Eventually, the CCD's tendering and selection procedures for the appointment of outside accountants to conduct the Section 4 Inquiry concluded with the appointment of EY on 10 June 2008. This was six months after the CCD, Mr Charles Mitchell, had written to the MOL recommending that a Section 4 Inquiry be instituted. Given the obvious urgency of the situation by December 2007, it is deplorable that the procedures and decision-taking apparently required for the appointment of an outside accountant should have been allowed to delay to such an extent the commencement of an administrative operation the whole purpose of which was to protect the public from possible ongoing maladministration of the credit union.

F267 During the first half of 2008 HCU management deliberately adopted a policy of issuing cheques in response to withdrawal requests when it was known that they could not be met by the bank on which they were drawn because there were no available funds. When HCU advised a member to re-present a cheque, it was also usually the case during this period that it was known by management that it would not be met. The only imperative was to play for time in the hope that somehow GORTT could be persuaded to come to the rescue.

F268 On 12 June 2008 the CCD notified HCU of the appointment of EY, with the inquiry to begin on 16 June and to last 6 to 8 weeks. HCU was required to give EY access at all times to its books, accounts, records, securities and cash in hand and all such information respecting HCU's operations and transactions as EY might require. A list of requested records and documents was attached.

F269 In the meantime, on the previous day, Mr Bachan had sent to Mr Ramnath a report to the BOD relating to loans to members of HCU's BOD and Committees. He asked Mr Ramnath to discuss this matter with the relevant people "with a view to having these persons bring their accounts into good standing". On the attached Schedule there were listed 19 names with total arrears of \$5,277,600.78 (principal) and \$806,746.10 (interest). Mr Harmarine's outstandings were \$2,615,055 (principal) and \$537,029.07 (interest). Mr Ramnath owed \$305,883.23 (principal) and \$79,083.48 (interest). Mr Lalchan owed \$660,140.86 (principal) and was up to date on interest payments.

F270 There were numerous coincidental issues between Mr Harnarine and Ms Tesheira and the MOF as to discussions said by Mr Harnarine to have taken place between them. During this period she was on public business in Dubai together with the Permanent Secretary. The only material matter of disagreement relates to discussions on 20 June 2008 with regard to an alleged plan for HCU to sell all its assets to GORTT for \$300 million. Ms Tesheira denied that this was ever contemplated. Mr Dhanpaul had no recollection of any discussions of such a plan with MOF. According to Mr Harnarine, at a special meeting of leading shareholders and depositors this plan was opposed.

F271 A SGM of HCU was held on 20 June 2008. Three resolutions were passed:-

- (i) That HCU divest its entire real estate property portfolio so as to settle withdrawal requests by investors;
- (ii) That there should be an agreed moratorium of proceedings between members and HCU for 6 months;

(iii) That HCU's maximum liability be extended from \$100 million to \$1 billion and that CCD's approval should be sought.

According to the evidence of Mr Harnarine, the substance of which is accepted on this point, he was telephoned by Ms Tesheira shortly after the SGM and she told him, having read a report of the SGM, that he had gone his own way and had not dealt with her with clean hands. Mr Harnarine, having told her that he had to respect the views of the shareholders, then discussed the matter with the Prime Minister, Mr Manning who, according to Mr Harnarine's evidence, did not find the plan for sale of assets and application for a loan "unpalatable" and said that he "would take care of" the matter.

F272 The EY team began work on the Section 4 Inquiry on 16 June 2008. On 8 July 2008 Ms Tesheira was advised by a MOF official that EY had reported the initial finding to the CCD who had so informed the MOF and that the latter was offering to request EY to make a presentation to the MOF of their findings. Those findings were duly presented by Maria Daniel to a meeting at the MOF attended by Ms Tesheira, Mr Dhanpaul, and the CCD, Mr Mitchell. In substance Ms Daniel reported that their preliminary findings were that HCU was not merely illiquid but insolvent.

At the meeting suddenly convened at the MOF Maria Daniel confirmed that as a preliminary view HCU was insolvent and further stated that its real estate assets were encumbered and their values overstated and further that there had been significant governance and managerial irregularities. The main features of this presentation are given in Section J of this Report. Given this information, Ms Tesheira arranged for the EY team to make an

oral presentation of their findings to the Policy Formulation Committee of GORTT, a standing committee of the Cabinet chaired by the Prime Minister, Mr Manning, and whose members were the Ministers of Finance, Energy, Housing and Development, their Permanent Secretaries and the Governor of the CBTT.

F273 On 11 July 2008 Ms Tesheira was informed by an official in the MOF that, contrary to what she had been told by HCU, the valuator whom HCU had retained to value the Freeport property had never been employed or retained by the CBTT. She then immediately personally telephoned Mair & Co, the MOF's valuers and they told her that the Freeport property was encumbered, as were most of the other properties on a list of properties said to be available for sale which HCU had previously provided to the MOF in response to her specific request to Mr Harnarine to provide a list of unencumbered properties. Ms Tesheira described her feelings in evidence:-

“Well, I said that this is it. How are you going to deal with someone who cannot tell you the truth? This is not about-how am I going to do that?

So immediately I realised that this could not go on. But I have to say just for the record, at that point in time, for reasons best known to Mr. Harnarine, he was co-operating. He was co-operating with the Commissioner. So I did not want him to stop co-operating, because I needed him to get the information to confirm to us whether the Hindu Credit Union was in fact insolvent and the reasons for it”.

F274 The Policy Formulation Committee met on 16 July 2008. The Commissioner, Mr Mitchell and some of his officials also attended. EY orally presented their preliminary findings, Ms Tesheira described in her evidence the reaction to the presentation:-

“And at the end of the presentation - the Governor of the Central Bank was there; my colleague Ministers were there; their permanent secretaries were there and we came to the conclusion at the end of that presentation that not only was this company insolvent but the way they became Insolvent was their practices that they had.

So how could I go ahead? How do you put money into a company that's not only insolvent but the person simply cannot tell you the truth. How could I do that?”

F275 In her witness statement she explained that what the Committee was told made it clear that GORTT would not continue to pursue the possibility of a rescue operation based on sale to GORTT of HCU's properties. In the course of her oral evidence Ms Tesheira emphasised that both she, and particularly Mr Manning, were very keen to find a way of assisting HCU but, having regard to the public interest, the credit union could not be relied upon to deal honestly with GORTT.

F276 EY's provisional findings having been presented, it was agreed with the CCD that the scope of their engagement should be extended to cover the following areas:-

“Assessment of the recoverability of the loan portfolio;

Assessment of the quality of the fixed assets and investment properties;

Assessment of the financial viability of HCU's subsidiaries;

Assessment of members' fixed deposits/holdings;

Preparation of Statement of Assets and Liabilities as at 31 May 2008”.

F277 On 15 July 2008 EY presented Mr Bachan with a list of “must have” documents required by 18 July.

F278 On 16 July 2008 Mr Harnarine wrote to Ms Tesheira, copied to Mr Manning and Mr Mitchell (CCD), informing her that he had met Mr Manning on 10 July 2008 and had been advised to meet her to find a way forward and requesting an urgent meeting which had become necessary “as it has become extremely difficult to meet the day to day demands placed on the Company by Creditors, members etc.” He enclosed copies of various invoices, including one from HCU’s attorneys in the sum of \$3,633,950 of which only \$1,200,000 had been paid, a letter from Telecommunications Services concerning an outstanding invoice for \$904,475.29 and a warning that, unless that was paid by 31 July 2008, all services would immediately be terminated. The letter also listed payments that were due and owing, including NIB \$1,699,930.08, Revenue \$1,549,927.87, VAT \$463,651.63, pending withdrawals \$139,877,428 (approximately), outstanding judgments awarded by the High Court \$27,827,984, judgments awarded by the CCD \$44,802,412, letters raising claims \$41,099,160 and matters pending before the CCD \$2,589,531. The letter further included the following:-

“We are confident that this run, which started in September 2004 and continuing until today, was not caused by mismanagement but rather by continuous attacks on HCU by various religious organisation. This has resulted in a loss of confidence within our membership and severe cash flow problems within the Society”.

and

“We have at all material times co-operated with all regulators and have carried out their numerous instructions. This was pursuant to the advice of your good self and other senior officials of Government. As you are aware a position audit is currently being carried out by ... EY and we can assure you that we have and will continue to provide our full co-operation”.



F279 Two days later, on 17 July 2008, the BOD closed all HCU offices and branches and sent home its employees. Mr Harnarine informed Ms Daniel that the Head Office (in which the EY team was working) would be closed on 18 July because it was anticipated that bailiffs acting at the behest of the NIB would carry out a levy that day and EY's equipment would not be safe. Mr Harnarine agreed with Ms Daniel that files necessary for continuation of EY's work could be removed from EY's room but must be delivered to the CCD. Ms Daniel discussed the position with Mr Mitchell who offered to go to the Head Office to pick up the required files. When he arrived, the Head Office was locked and no one was present to admit him. EY were therefore locked out on both 18 and 21 July.

F280 On 18 July 2008 Mr Dhanpaul, Permanent Secretary to the MOF, wrote to Mr Harnarine and informed him as follows:-

“The Minister wishes me to communicate her grave concern at the information revealed by the contents of your letter under reference as well as information coming to hand from the inquiry/audit process being conducted by Ernst and Young. You will no doubt recall the Ministry's clear and unequivocal position articulated in all discussions and communications with you and your officers of your Credit Union that any assistance, including assistance to mitigate an illiquidity situation, which you maintained to the Minister was the position of the Credit Union, would be dependent on:

- HCU allowing an independent firm of auditors to perform an independent audit and examine the books and records to verify the financial condition of the Credit Union;
- The HCU providing the Ministry with a list of all HCU properties; and

- On the HCU writing to the Ministry of Labour and Co-Operatives informing that Ministry that the HCU was willing to allow/facilitate an independent audit.

In light of the matters referred to and in particular, the ongoing inquiry commissioned by the Commissioner of Co-operatives, your letter under reference has been referred to the Honourable Attorney General. Pending the receipt of definitive advice from the Attorney General the Minister considers it prudent to advise you that (a) the Commissioner's statutory inquiry should be cooperated with by you and the Hindu Credit Union fully and (b) the Minister considers it advisable to permit that inquiry to take its course and therefore, subject to advice, to terminate discussions on behalf of the Ministry with you with immediate effect".

F281 Also on 18 July the CCD wrote and delivered to Mr Harnarine a letter directing that EY be given success at all times to HCU's documentation and be given such information as they required.

F282 On 19 July 2008 the BOD passed resolutions calling on the CCD to halt and discontinue the Section 4 Inquiry by EY on the grounds that the inquiry had been tainted by interference by the MOF because information from it was passed and leaked to the MOF without the approval of HCU and in violation and contravention of confidentiality and Section 58 of the CS Act 1971. It was further resolved that a new inquiry should be commissioned and should report exclusively to the CCD and also that the CCD should appoint a Liquidator to co-operate and work in collaboration with the BOD and the Corporate Team so long as might be necessary to manage the business of HCU with the paramount objective of paying all depositors and shareholders and payment and settlement of all judgment debts and all liabilities, to sell all the assets of HCU necessary for the above purposes and to assist, if

necessary, to restructure and re-organise the operations and business of HCU.

F283 On 21 July 2008 Mr Harnarine addressed a meeting of HCU's staff at which he advised all of them to look for alternative employment. On the same day he told Maria Daniel that co-operation with EY would cease because the situation had been changed by EY having broken their duty of confidentiality by disclosure of findings to the MOF.

F284 In the meantime, EY having been unable to regain access to the files and documents on which they needed to work, on 23 July 2008 the CCD applied to the High Court for an injunction against HCU to allow the Inquiry to continue and for the appointment of a Provisional Liquidator/Receiver. R. D. Rampersad & Co. was appointed as Provisional Liquidator and immediately took possession of HCU's Head Office. By an order made in the High Court on 21 August 2008 the previous order was continued but with Rampersad now designated the Receiver.

F285 From 23 July 2008 EY regained access to the Head Office and such files and documents as were there but, because a virus had infected HCU's computer data base, it was difficult to obtain information about historic transactions and their work took longer than anticipated.

F286 On 8 August 2008 the Receiver provided his interim report to the CCD. This showed that HCU had reached the point of financial collapse. Mr Rampersad's main findings included the following, more details of which are set out in Section J of this Report:

- (i) Immediately available cash in various bank accounts for paying recurrent expenses and creditors was only \$89,995.88.
- (ii) Indebtedness immediately due and payable to the Board of Inland Revenue, \$3,126,125.11.
- (iii) Contributions and Penalties due and payable to the National Insurance Board for May 2007 to June 2008 was \$1,601,683.09.
- (iv) Amount due in respect of land and building taxes: \$191,021.00;
- (v) Outstanding salaries due to HCU employees;
- (vi) Indebtedness on electricity, telephones, postal services and to the water and sewerage authority: approximately \$522,541.
- (vii) Indebtedness on loans which had not been serviced by the payment of accruing interest: to CLICO in respect of a loan of \$35.2 million, to S.R. Projects Ltd in respect of a loan of \$16 million, to Exim Bank of the USA in respect of a loan of US\$4,802,699 (\$30 million) to Intercommercial Bank where the HCU overdraft was \$7,004,669.24 and in respect of a loan of \$3,556,354.67.
- (viii) Outstanding judgment debts: \$53,908,825.62.

F287 Of the total loan portfolio amounting to \$225 million, approximately \$65 million was regarded as composed of bad or doubtful debts.

F288 On 15 August 2008 EY invited Mr Harnarine to discuss matters within the Section 4 Inquiry. He ignored that invitation. He did so, according to his evidence, because Ms Daniel had already given affidavit evidence against HCU in support of the injunction application and because HCU had given up all its books and records to EY.

F289 On 9 September 2008 EY provided its Section 4 Inquiry Report to the CCD.

F290 The main findings were as follows. This Commission finds that each was substantially accurate.

- (1) HCU's liabilities exceeded its recoverable assets by \$486.5 million.
- (2) Such a large balance sheet deficiency indicated that the credit union was insolvent.
- (3) Factors immediately contributing to that state of insolvency included:
  - (a) Of HCU's 28 subsidiaries all except Bankers' Insurance were operating at a loss;
  - (b) Loans to such subsidiaries totalled \$211 million, none of which had been repaid and none of which could be repaid by the subsidiaries. \$195 million had been written off by the BOD resolution in May 2008.
  - (c) HCU had thrown away \$4.1 million by having carried out major improvements to property which it was leasing and then having vacated it.
  - (d) HCU had included in its asset base intangible assets and property for which it had no legal title valued at \$38.5 million and which were worthless.
  - (e) Television equipment originally purchased for \$36 million was now worth no more than \$4.9 million in a loss of \$31.7 million.
  - (f) The stated value of fixed assets had not been adjusted to take account of a write-off of \$49 million due to non-use and depreciation and should have been stated as no more than \$20.4 million.
  - (g) Loan amounts due for mortgage and interest payable on loans totalled \$45.8 million.
  - (h) HCU was indebted to the extent of \$10.6 million in respect of pension plan expenses, tax and payment to NIB and the Inland Revenue mainly by reason of having made deductions from the salaries of its employees for which it had failed to account to the relevant public authority.

- (i) HCU, having sold off \$242 million in assets, had sold off \$42 million at an apparent loss in as much as the sale price was less than the carrying value shown in HCU's accounts.
- (j) Significant amounts were spent on capital improvements to property which did not result in an equivalent increase in the value of the property as reported by HCU's valuers.
- (k) Over \$40 million in loans to members were more than 6 months in arrears and which had not been fully provided for in HCU's accounts.

F291 The CCD considered EY's report and concluded that the key findings set out above should be brought to the attention of the members of HCU. He therefore exercised his statutory powers to convene a SGM to be held on 17 September 2008 at the HCU Convention Centre in Freeport. The HCU BOD objected to the calling of a SGM on procedural grounds and by its lawyers formally called on the CCD to withdraw the notice of the meeting that had appeared in the national press. The CCD refused to withdraw the notice whereupon the BOD applied to the High Court for an injunction against the CCD. The application was refused by Madame Justice Pemberton on the basis that it was an abuse of process.

F292 While the hearing of that application was in progress, the CCD, Mr Charles Mitchell, the Receiver, Mr Rampersad and Ms Daniel of EY went to the Convention Centre for the purpose of conducting the SGM. In summary, the meeting could not be commenced because it was disrupted by supporters of Mr Harnarine. The disruption caused all attempts to start the meeting to be abandoned after about 45 minutes.

F293 This Commission is satisfied that this was a pre-arranged attempt to pre-empt the decision of the High Court and that it would not have taken place unless it had been procured by Mr Harnarine personally or at least organised by senior management and with his knowledge and overt approval.

F294 The CCD decided that, in view of these events, it was not appropriate to attempt to re-convene the SGM and that a notice ought to be published in the national press explaining this course and additionally summarising the findings in the EY Report upon which members of HCU would be given the opportunity of commenting in writing to the CCD. Accordingly, a notice published in the national press dated 21 September which included a summary of EY's key findings with an invitation to members to send in comments by 1 October so as to enable him to "arrive at such decisions under the Act as may be warranted on all the information to hand from the Inquiry Report and members' input/comments by 9 October 2008" — the date up to which the Receiver had been appointed by the High Court order.

F295 In response to his invitation for comments the CCD received three main submissions.

F296 By a body called The Credit Union Members' Group there was advanced a nine-point recovery plan. The details are set at Section J of this Report. Essentially, this plan was built on the premise that liquidation was not a good idea because it would involve a fire-sale of the credit union's assets at distressed prices. In practical terms it recommended that administrative and management deficiencies in HCU should be rectified by reconstitution of the

BOD with knowledgeable and experienced personnel who could gain the trust and confidence of members and that it should submit a plan for approval by the CCD. It noted that shareholders and depositors would be prepared to leave their deposits in HCU if they had confidence in the new BOD. Apart from those general comments, the plan reflected the need for a practical recovery regime by its recommendation to resume business with the focus on core credit union business functions and the installation of a strong recoveries unit that would vigorously implement systems and procedures to collect loan payments and recover debts. Further, there should be an orderly sale of all assets except the credit union itself over a period of at least two years, so as to avoid a fire sale at depressed prices. Most importantly, there should be a cash infusion from GORTT to tide HCU over the next few months and a bridging loan over the next two to three years while assets were unwound.

F297 A second group maintained that the CCD was being unfair to the HCU BOD and ought to restore control to it and provide it with the full EY Inquiry Report. It was said that the figures put forward in the summary of EY's findings did represent the true state of HCU.

F298 A third group, which included Mr Harnarine, raised a number of questions but insisted that as the BOD had no input in compiling the EY report, it did not accept its findings which were based on "bundling of accounts and misrepresentations of fact and out-dated book values".

F299 After considering EY's report, Mr Mitchell referred some of its contents to the Fraud Squad. In the course of September to November 2008 he was visited



on four occasions by Acting Superintendent Phillip. He did not release to the Police the full EY Report because, as he explained, he did not want to compromise their investigation. In the course of the next three years nothing more was heard from the Police by the CCD Department and when in 2011 the then CCD caused enquiries to be made as to the progress of the police enquiry, he was told that the investigation had been discontinued due to insufficient personnel.

F300 Following receipt of the submissions referred to above and as 9 October approached, Mr Mitchell had the difficult decision as to whether to exercise his statutory powers to put HCU into liquidation or to exercise the powers given to him under the CS Act 1971 Section 4(2)-(4) which provide as follows:-

- “(2) Where having held an inquiry under this section the Commissioner is of the opinion that the board has mismanaged the affairs of the society or otherwise performed its duties improperly, he may by notice to the society call upon it to remedy the situation within three months from the date of such notice.
- (3) Where a society fails to comply with the notice referred to in subsection (2), the Commissioner may, after giving the board an opportunity to be heard in general meeting called by him for the purpose, order the dissolution of the board and direct that the affairs of the society be managed by such persons as he may appoint for a period not exceeding two years.
- (4) Persons appointed by the Commissioner under this section shall exercise all the powers and perform all the functions as a duly constituted board and in particular shall make arrangements prior to the end of their term of management for the election of a new board in accordance with the bye-laws of the society”.

- F301 In view of the current state of financial collapse of HCU, to do nothing was clearly not an option. HCU could not continue as a credit union without new immediate management and a vast bailout from GORTT without delay. On the other hand, if he exercised his powers to the full by putting HCU into liquidation, he knew that many thousands of depositors and shareholders would lose their savings and major unsecured creditors would go substantially unpaid.
- F302 Mr Mitchell's evidence was that he was not prepared to use his Section 4(2) powers to call on the Board of HCU to remedy the situation in three months, failing which, he would have power to order the dissolution and replacement of the Board, but only after calling a General Meeting. In view of the findings of EY, he was not prepared to hand back any control of HCU to the BOD even for a limited period. Management would thereafter be under the control of the CCD but for a maximum of two years. His experience with other credit unions suggested that, when that two year period expired, they re-elected the old board which had been responsible for mismanagement. Since he was satisfied that HCU was in truth insolvent and there was no indication that GORTT would be willing to provide a bailout, he considered that his only realistic course was to put HCU into liquidation.
- F303 This Commission finds that Mr Mitchell's decision to put HCU into liquidation was entirely reasonable. HCU could not continue except for a matter of days without a massive cash injection from GORTT which he understood would not be available if HCU was insolvent. It would also be impossible to replace the present management except by operation of the Section 4(2) powers

which would involve not only a delay of over three months but the need for yet another general meeting which would quite likely be disrupted.

F304 On 9 October 2008 Mr Mitchell took the only course which realistically was open to him: he put HCU into liquidation.

## **Section G: Questionable Transactions**

G1 This section does not set out a complete account of transactions which involved senior management of HCU and which either materially prejudiced HCU or exemplified its lax corporate governance. The transactions identified in this section could not be said either individually or in aggregate to have been a major cause of the collapse of HCU because the amounts involved were small by comparison with the amounts being drained out of the credit union by reckless investments and distortion of the nature of the credit union's business. However, these transactions did make some limited contribution to HCU's collapse and in several cases demonstrate the poor level of corporate governance which prevailed.

G2 These are the transactions.

G3 In 2001 HCU purchased real estate from a related party for a price of \$350,000 in 2001 and sold it to Mr Harnarine's wife in 2007 for \$300,000. There were no independent valuations in either 2001 or 2007 which related these prices to market values. The land consisted of two plots to be held respectively in the names of Mr Harnarine's wife and sister. In a letter dated 6 November 2006 to Mr Bachan referring to an agreement, of which there is no documentary evidence, that the sale price of \$600,000 should be paid out of the proceeds of Mr Harnarine's Fixed Deposit but subject to reconciliation and settlement of amounts owed by HCU to the sister representing expenses incurred by her for HCU. This Commission accepts the evidence of E&Y that between 2001 and 2007 there was a very large increase in land prices. It is to be inferred that by 2007, when this transaction was

completed, the true market value of both these two plots was far in excess of their value in 2001, yet the plots were sold to related parties for less than HCU paid for them.

G4 In 2003 HCU purchased a Toyota Land Cruiser from Mr Harnarine's wife for \$430,000 and payment was made to her. There was, however, also amongst HCU's records produced by the Liquidator, an account in the total amount of \$970,010.70 for the purchase and maintenance of the same vehicle. However, in 2009 the Transport Commissioner certified that the car was still owned by Mr Harnarine's wife and not HCU. Mr Harnarine said in evidence that the car was always in the possession of HCU and not of his wife. Yet he also said that HCU asked her to give HCU a lien on her fixed deposit account for \$430,400.

G5 On 1 July 2004 HCU USA purchased a property in Pembroke Pines, Florida, for US\$185,000. The seller was Seepersad Harnarine, brother of Mr Harnarine. HCU transferred a total of US\$45,000 by two wire transfers on 13 and 14 July 2004. A down payment was made by HCU to Larry Curran, a Florida lawyer. It was agreed that HCU USA would assume responsibility for a pre-existing mortgage on the property in favour of Wiltshire Credit Corporation. Eventually, Mr Harnarine's sister, Homawatie Harnarine, purchased the property. The account at HCU was debited by HCU with an amount of \$40,000. To the extent that money was paid by HCU in relation to this transaction, no account entries appear to have been made. It appears that Mr Harnarine was using HCU as a convenient bank and paying agent for family transactions.

- G6 Further, payments totalling \$986,000 were made by HCU to Homawatie Harnarine for a variety of purposes said to be payments made by her in the United States in respect of transactions entered into by HCU or for the purposes of HCU. Under a memorandum dated 9 December 2002 she agreed to disburse US dollar funds to HCU for the purchase of goods and services. Neither HCU nor any members of its management had a United States credit card. In the period October–December 2003 the expenses for which she claimed re-imbusement included hotel accommodation for Mr Harnarine and others from HCU at Walt Disney, in Jamaica and in Miami.
- G7 By 2008 \$1,011,631.64 had been paid to Homawatie Harnarine which related to expenses apparently unrelated to the business of HCU USA or to any other aspect of HCU's business.
- G8 In 2002 HCU purchased 9 lots of residential land at Macaya Trace for \$700,000. In 2004 and 2005 HCU conveyed the same land split into three lots to Mr and Mrs Lachlan, Mr and Mrs Ramnath and Mr Bachan. There is no evidence that a BOD decision was made authorising these sales. However, a memorandum dated 15 September 2004 from the Chairman of HCU's Supervisory Committee to Mr Ramnath reported on a visit to the land and recommended that Mr Ramnath, Lachlan and Bachan be invited to purchase it. The whole area was sold to those three at an overall loss of \$25,000. Before the date of such purchase Mr Ramnath had already started building a house on the plot eventually sold to him. There is no clear evidence that any outside valuation for these plots was obtained. Land values had risen very substantially between 2002 and the dates of re-sale. It is to be inferred that the re-sales were at a substantial undervalue. All three

purchasers borrowed the whole or a substantial part of the purchase price from HCU against a mortgage of their respective plot.

G9 Over the period 2002–2008 Mr Harnarine drew a total of \$7.6 million in respect of his expenses, including \$5 million for foreign travel. Most of these expenses claims were unsupported by vouchers. Most of the travel claims related to travel to the USA. In the HCU accounts for the year to 30 September 2004 total foreign travel expenses claims and payments were stated to be \$3,402,585. Payments were made to Mr Harnarine, his Visa account, Mr Bachan and Sharmela Sadaphal. In the HCU accounts for the year to 30 September 2005 total foreign travel expenses were \$1,617,742.34 of which approximately 80 per cent was paid into Mr Harnarine's Visa account. Most of these expenses claims were not supported by vouchers.

G10 After HCU USA had been sold, HCU continued to pay Mr Harnarine a monthly sum of \$60,000 from 1 June 2006 part of which was said to be for his function as Chairman of HCU USA. This was reduced to \$50,000 per month by BOD resolution on 16 January 2008.

G11 Both Mr Harnarine's salary and expenses continued to be paid in cash up to 2008 even though cash withdrawals for salaries due to the rest of the staff were retained.

G12 As at 25 June 2012 Mr Harnarine was indebted to HCU in a total amount covering principal and interest of \$3,735,133. He remained in arrears from 2006 to 2008 inclusive. Under the Bye-Laws he ought on that account to have ceased to hold office. Mr Harnarine claimed in evidence that there was an agreement that, instead of paying monthly, he should be allowed to make

lump sum payments from time to time covering accumulated principal and interest. However, he paid only \$15,000 on 6 June 2006 and nothing further until 4 March 2008.

- G13 In July 2006 HCU advanced to Mr Harnarine \$800,000 by way of loan for a period of 5 years “for investment purposes” which were not identified. The Credit Manager and Credit Committee approved it but the Supervisory Committee and the BOD did not sign it off. Of the total advanced \$757,000 was paid to a related party’s fixed deposit account.
- G14 In July 2007 at a time when HCU was, as this Report finds, palpably insolvent, HCU advanced \$100,000 to Mr Harnarine for a period of 20 years for personal expenses. There was no BOD or Credit or Supervisory Committee approval. The period of this loan was four times longer than that of any similar loan granted by HCU.



## **Section H: The Relationship between HCU and its External Auditors**

H1 For the years ending 30 September 2001, 2002 and 2003 the external auditor was Mr Madan Ramnarine. He had previously been appointed auditor for a period of three years in the 1990s.

H2 When it came to the audit of the year to 30 September 2004 Mr Ramnarine first worked on a review of the first three months of that year. The draft financial statements provided by management were hard to verify because the documents provided were inadequate or irreconcilable with the statements. On 16 June 2004 Mr Ramnarine sent to Mr Ramnath, HCU Secretary, a letter containing 31 specific requests for information and/or documents. The HCU accountant replied on 24 June 2004, but failed to provide any independently verifiable information which could be used to explain certain of the transactions queried by the Auditor.

H3 Following the Auditor's review of the draft financial statements for the period 1 October 2003 to 31 December 2003 he wrote to the Directors of HCU on 1 July 2004, drawing their attention to 12 areas of weakness in the system of internal controls or the implementation of such controls. The letter stated:

“In addition, we wish to remind management that the responsibility for establishing and maintaining controls adequate to safeguard the assets of the society and to ensure that accounting records are accurate and reliable, rests with management.”

H4 The following were the most concerning matters raised by the Auditor.

- (1) There was no register or schedule of fixed assets in spite of the fact that such a schedule had been promised by the Chairman and Financial Controller before the AGM in December 2003.
- (2) Substantial amounts of investment income had not been accounted for by being booked in the general ledger.
- (3) There was no register for investments. Quick action was needed to establish such a register and the correct value of such investments should be shown in the general ledger at any point of time.
- (4) The payroll system was deficient, no letters of appointment appearing on employee's files, no letters indicating salary increases/decreases on file, and no TDI declaration forms completed by employees enabling PAYE to be accurately deducted.
- (5) Incorrect accounting for expenditure on furniture, equipment and air conditioning on the Pineview Gardens development by allocating it to fixed assets accounts instead of to Investment Property.
- (6) Inadequate journal entries on the general ledger.
- (7) Under the heading "Capital Structure at Risk" the Auditor wrote the following:

"As discussed in the past, the society's management needs to look carefully at its capital structure since a substantial portion of its Fixed Assets, Investment properties, and loans to and Investments in Subsidiary companies have been funded by members' deposits. This is not recommended but in the short term this may be okay as corrective action can be taken. However in the long term this can be disastrous for it would lead to liquidity problems and a reduction in income generated.

Based on the above, the society may need to re-visit and re-think its entire strategy for maintaining a safe and substantial liquidity position. This is relevant since out of Total Assets of \$909m as at 31 December, 2003, liquid assets represents under six (6%) per cent. Our view is that confidence in the society is based on your ability to manage the society's liquidity risk.

In addition to the above, and other risks associated with Credit, Operations, interest rate and now Exchange rate, management

needs to look at the society's subsidiary companies with respect to its management, control, profitability and accountability.”

H5 According to his evidence, which I accept, Mr Ramnarine had by July 2004 become seriously concerned about the apparent lack of remedial response to the criticisms referred to in that letter. He thought it necessary to set up a meeting with HCU's management to bring home to it the need for a change in the management style of HCU for he considered that the investments of the members would be at risk if no changes were made and he was not convinced that this was appreciated by management. That meeting took place on 27 July 2004. It was not attended by Mr Harnarine. The key points made by Mr Ramnarine, as recorded in the minutes of that meeting, included the following:

“Organisation not properly managed

- (1) Quality of management lacking based on the growth and size of the organisation
- (2) Not happy with the trend of the Credit Union and its Investment policies
- (3) Business decisions made by persons with little or no business acumen
- (4) Confidence and credibility of the Credit Union has started to decline.

Profitability/Liquidity

- (1) The organisation is no longer profitable:
  - Audited three months accounts to December 2003 – loss of 3.5m
  - Unaudited three months accounts to March 2004 – loss of 3.3m, however after audit adjustments it may be 6m.

- Total six month loss estimated at 10m.
- (2) Liquidity position is worsening
- The liquid assets to total asset ratio based on the Pearl system, should be around 10%, however the Credit Union is at 6%.
  - Overdraft increased from 5m as at September 2003 to 11m at December 2003 and then to 22.4m at March 2004

#### Utilisation of funds (Members Deposits) received

- (1) Year to September 2003;
- There was an increase in deposits of 255m, however it was utilised in the following ways:
    - 7m to Investments
    - 116m to Loans to members
    - 37m to Subsidiaries
    - 130m to Investment Properties/ Fixed Assets
- (2) Three months to December 2003;
- An increase in funds of 41m utilised as follows;
    - 7m to Subsidiaries
    - 34m to Investment Property/ Fixed Assets
- (3) Three months to March 2004;
- An increase in funds of 44m utilised as follows;
    - Majority to Subsidiaries.

Out of a total of 340m received by way of members' deposits and shares in the last year and a half, only 123m (36%) was put in areas that would generate income immediately.

At this point, Mr Bachan joined the meeting

#### Delinquency

- Currently, the delinquency of the Credit Union is estimated at around 60-65m

– Risk Management Fund, however is only around 4m.”

H6 It was the evidence of Mr Ramnarine, which I accept, that he was most concerned at this time by the fact that during the six months October 2003 to March 2004 HCU had experienced a loss of approximately \$10 million, a position made worse by the fact that although during the preceding 18 months HCU had received deposits of approximately \$340 million, only \$123 million had been invested in areas that were capable of generating immediate income which would be available to cover withdrawals. During this period investment in the Subsidiaries amounted to \$88 million. Most of those Subsidiaries were loss-making. The profits recorded by the remainder were trivial and could have only a slight impact on the position of HCU as a whole.

H7 The increasing tendency of HCU to dissipate deposits into illiquid assets and to pump money into its loss-making commercial subsidiaries was thus well developed by early 2004. This tendency, more than anything else, was to cripple HCU's ability to avoid causing public loss of confidence accentuated by the international economic downturn four years later. The attitude of the Board members and the HCU management team present at the 27 July 2004 meeting was that they preferred Mr Harnarine to deal with the Auditor's primary concern. This reflected the fact that by 2003/4 the conduct of corporate governance at HCU was increasingly becoming that of a personal autocracy.

H8 A further meeting with the board was arranged for 29 July 2004. Mr Harnarine attended. The meeting took the form of a review of the Auditor's concerns as they appeared in the minutes of the 27 July meeting.

The minutes of this meeting disclose a discussion point by point of the concerns raised by the Auditor on 27 July. Mr Harnarine's responses to those matters disclose that he did not share the concerns of Mr Ramnarine. As can be seen from the following passages from the minutes. Mr Harnarine was entirely satisfied with the conduct of HCU's business. For him there was no call for urgent remedial action.

*"Mr Ramnarine:*

Organisation not properly managed

- (1) Quality of management lacking based on the growth and size of the organisation.
- (2) Not happy with the trend of the Credit Union and its investment policies.
- (3) Business decisions made by persons with little or no business acumen.
- (4) Confidence and credibility of the Credit Union is being eroded.

*Mr Harnarine:*

- Is happy with the current management team which is involved in the decision making of the Society and its subsidiaries.
- No response to the trend of the Credit Union and its Investment policies.
- Makes decisions based on the strength of the Credit Union which is the labour market.
- No response to the public's confidence and credibility of the Credit Union.

*Mr Ramnarine:*

Profitability/Liquidity

(1) The organisation is no longer profitable:

- Audited three months accounts to December 2003 – loss of 3.5m.
- Unaudited three months accounts to March 2004 – loss of 3.3m, however after audit adjustments it may be 6m.
- Total six month loss estimated at 10m.

(2) Liquidity position is worsening:

- The liquid assets to total asset ratio based on the Pearl system, should be around 10%, however the Credit Union is at 6%.
- Overdraft increased from 5m as at September 2003 to 11m at December 2003 and then to 22.4m at March 2004.

*Mr Harnarine:*

- Disagrees with the fact that the Credit Union is no longer profitable.
- Can attract depositors to the amount of 10m by the morning to wipe out the losses.
- Some projects now being financed by external loans e.g. FCB and Eximbank.
- Property purchased in Freeport for housing development for 5m, but can now fetch a price of about 25m.

- Some properties may be up for sale in the near future e.g. Impressions building in Port-of-Spain and Yattins building in San Fernando.
- Some properties are currently up for rent e.g. properties held at Mulchan Seuchan Road, Chaguanas.
- Believes that the Credit Union's liquidity position can be improved in one week.
- Chaguanas Twin Towers to be removed from the books of the Credit Union and a joint Venture to be established with Rohan Saisban and Priya's Creations for the construction of the hotel.
- Lending market is now saturated.
- Currently looking for a place to invest liquid assets.
- Overdraft currently reduced to 2m.

*Mr Ramnarine:*

Utilisation of funds (Members Deposits) received

(1) Year to September 2003;

- There was a net increase in deposits of 255m, however it was utilised in the following ways.
  - 7m to investments
  - 116m to loans to members
  - 37m to subsidiaries
  - 130m to investment properties/ fixed assets

*Mr Ramnarine:*

Utilisation of funds (Members Deposits) received – cont'd

(2) Three months to December 2003 ,



- A net increase in funds of 41m utilised as follows;
    - 7m to Subsidiaries
    - 34m to Investment Property/fixed Assets
- (3) Three months to March 2004 ;
- A net increase in funds of 44m utilised as follows;
    - Majority to Subsidiaries.

Out of a net amount of 340m received by way of members' deposits and shares in the last year and a half, only 123m (36%) was put in areas that would generate income immediately.

*Mr Harnarine:*

No response given for the above, however Mr Jameel Ali believes that the loans portfolio is constantly increasing.”

H9 Having heard Mr Harnarine’s replies to these and other concerns, Mr Ramnarine was not satisfied that HCU management under Mr Harnarine would make serious efforts to rectify these defects. He therefore informed the meeting that he intended to resign at the next AGM.

H10 On 6 September 2004, having prepared unaudited income and expenditure statements for June and July 2004 in order to assist the HCU Finance Committee in a cost-cutting exercise that should be undertaken, the Auditor wrote to Mr Harnarine drawing attention to the losses suffered during those two months. These were summarised thus:

“June 2004

- The total group loss for the month was 5.6m, with the Credit Union contributing 3.5m.
- The second highest loss was made by HCU Security Services Limited of about 7m.

- The Communication Group, including HCU Publications Limited, made a loss of .7m.
- The HCU Foundation made a loss of 80K, with zero income, which means the Foundation is still giving donations from advances from the Credit Union.
- HCU Financial is running at a high cost of about .2m and this is only operating as an accounts department.
- The only company that seems to be profitable is the HCU Food Corporation Limited, which made a profit of 46K.

#### July 2004

- The loss made by the group for this month (excluding The Hindu Credit Union) was 2.2m.
- Again HCU Security contributed the highest loss of just under 1.0m.
- The Communication Group made a loss of .7m.”

H11 The letter of 6 September 2004 concluded:

“Kindly note that the above brings to light a very worrying situation that needs your immediate intervention and attention. The estimated adjustment to expenses should be at least 6.0m per month and this should take effect immediately as I believe the situation has reached crisis proportion. Please do not hesitate to contact me, as I believe it is incumbent upon us to discuss the above matter as soon as possible.”

H12 The Auditor’s staff experienced great difficulty throughout 2004 in obtaining responses to their requests for information. Further, by September 2004, in the course of completing the review of financial statements for the first quarter of 2004, it was apparent that little or nothing had been done to improve the system of internal controls. It was found that there had been no obvious effort to implement the recommendations made brought home to the

Board and Mr Harnarine in July 2004. Mr Ramnarine re-iterated his concerns in a letter dated 14 September 2004 which included the following:

“Capital Structure and Risk

As discussed in the past, the society's management needs to look carefully at its capital structure since a substantial portion of its Fixed Assets, investment properties, and loans to and investments in Subsidiary companies have been funded by members' deposits. This is not recommended but in the short term this may be okay as corrective action can be taken. However in the long term this can be disastrous for it would lead to liquidity problems and a reduction in income generated.

Based on the above, the society may need to re-visit and re-think its entire strategy for maintaining a safe and substantial liquidity position. This is relevant since out of Total Assets of \$943m as at 31st March, 2004, liquid assets represents under six (6%) per cent. Our view is that confidence in the society is based on your ability to manage the society's liquidity risk.

In addition to the above, and other risks associated with Credit, Operations, interest rate and now Exchange rate, management needs to look at the society's subsidiary companies with respect to its management, control, profitability and accountability.”

H13 In attempting to complete the audit for the second and third quarters of 2004 the Auditor was driven to make repeated requests to HCU management for routine financial information which, had proper financial records been kept, would have been readily available to an external auditor. The management simply failed to respond to most of the Auditor's requests.

H14 The difficulties of completing the audit of the year to 30 September 2004 in the absence of complete documentation of transactions were compounded by the fact that there were massive disparities between what the audit team found from the available primary materials and what was recorded in the financial statements and accounts prepared by HCU management. Thus, for

example, as at 30 September 2004 members' loans totalled \$434,470,634 and the total of delinquent loans provided by the recoveries department was \$82,997,898, whereas the provision for delinquent loans shown in the accounts was only \$8,650,742.

H15 Without a completed audit it was impossible to hold the AGM for 2003-4. In the course of a meeting with Mr Ramnarine on 17 December 2004 the Board eventually undertook to provide all "auditable information" and documents supporting the management's schedules requested on or before 31 December 2004, but no other information. On 17 December 2004 Mr Ramnarine wrote to the Board informing it that, if the requested information and documents were indeed provided by that date, it was anticipated that the audit could be completed by 28 February 2005. He also wrote on the same date to the CCD informing Mr Keith Maharaj that the audit could not be completed by the date required under the Bye-Laws, namely two months after the end of the HCU financial year – 30 November 2004 – so that the AGM could be held one month later. In the event the AGM announced to take place on 19 December 2004 had to be cancelled at the last minute.

H16 On 22 December 2004 Mr Ramnarine sent to Ms Sharmala Sudaphal a comprehensive list of outstanding required information and documents. Only on 30 December did she respond with answers, in some cases only partial, to some of the requests.

H17 The result of this lack of information and documentation was that it was only on 17 February 2005 that the Auditor was able to finalise draft accounts for

the year to 30 September 2004. The Board then informed him that certain further transactions needed to be included. Repeated promises from the Secretary (Mr Ramnath) and others to provide yet further required information and documents were not fulfilled by HCU and in the event it was impossible to finalise the audit by 25 February 2005 on which date HCU by Mr Jebel Ali presented draft accounts drawn up by management to the Auditor. Those draft accounts were seriously deficient. On 28 February 2005 the Auditor wrote to Mr Ramnath, Secretary of HCU, copied to Mr Harnarine and others, pointing out the deficiencies, including, remarkably, the absence of a cash flow statement and the receipts and payments account, as well as an explanation for the lack of any additional provision for bad and doubtful debts. That letter concluded with the following:

“In addition to the above, we need management's plan for dealing with the loss position and the negative operating cash flows which may give rise to significant doubt on the Credit Union's ability to continue in operation. We also need your plans for dealing with matured and maturing deposits, the Credit Union's financial support for the subsidiary companies, the significant withdrawal of deposits together with the inability to attract new ones and the increasing level of delinquency.”

H18 Mr Ramnath replied to this letter on 1 March 2005 stating that “the concerns expressed as well as provision of documents... will be addressed and forwarded to you as soon as possible.” In the event nothing further was provided by 3 March 2005 on which date the Auditor completed his work on the financial statements which were then sent to HCU and the CCD on the following day.

H19 The Auditor's Report which accompanied the financial statements was a disclaimer report. That report explained why the Auditor was unable to express an opinion on the financial statements:

In accordance with Section 51(3) of the Co-operative Societies Act 1971, we have made an examination of the members' overdue accounts, which amounted to \$55,967,721 at September 30th 2004. Of this balance \$32,755,779 represents unsecured amounts, which are in excess of shares, deposits and other securities held. A provision of \$11,422,012 has been made in the financial statements and in our opinion, an additional provision is required. Further, we are unable to report that the \$225,468,990 due from the HCU subsidiary companies are stated at their fair values. In order to make any statement of its collectability, the financial position of each subsidiary must be ascertained with a view to determine, if any, the level of provision for bad and doubtful debts. Management has included in the financial statements \$14,677,466 which represents interest and rent receivable from HCU subsidiary companies which, in our opinion, is not in accordance with the reporting standards since no payments have ever been made either towards principal or interest. The majority of HCU subsidiary companies are dependent on the Credit Union for financial support on a monthly basis and as a result we believe no income should be accrued for Interest and Rent.

The Credit Union has an amount of \$993,718 in the financial statements under Cash in Hand which is in excess of the actual cash held at the Balance Sheet date. In addition, an amount of \$3,226,650 is included in Accounts Receivable which appears to be un-verifiable. These amounts could not be reconciled by the Credit Union's staff and in our opinion, should be thoroughly investigated and the necessary adjustments, if any, be made to the financial statements.

The Credit Union sold thirteen (13) Investment Properties to its Subsidiary Companies and other related parties for \$105,775,000, which yielded a profit of \$46,211,290. We have not seen the relevant documents pertaining to these transactions, therefore we are unable to say whether these transactions were carried out on commercial terms and conditions, at market value.

We could not carry out any examination of some contracts and invoices for the construction and renovations/improvements to buildings as these were not made available to us. In addition, we did

not receive responses to audit confirmations with respect to certain (a) investments held and (b) inquires as to whether or not there are any pending or threatened litigations.

For the period October 1 2004 and February 11 2005, \$108,160,613 has been withdrawn by members' from their deposits and savings accounts. In addition, \$33,049,335 has been withdrawn/encashed by the Credit Union from their Investments and Fixed Deposits held with other financial institutions. The Credit Union therefore, has very little liquid resources to sustain any further demand for members' withdrawals.”

H20 By a letter from HCU dated 25 March 2005 signed by Mr Ramnath, Secretary, Mr Jameel Ali, accounting consultant, Mr Goutam Ramnanan, formerly the Managing Director of HCU and Mr Krishna Harripersad, accountant, HCU set out in respect of each of the criticisms raised in the Auditor's Report matters said to refute those criticisms, including statements that some of those matters raised by the Auditors were untrue and referred to the CLICO divestment “agreement” for the sale to CLICO of 52 per cent of the shares in the subsidiary companies, thereby raising \$200 million which was enough to recover fully all the balances due from those subsidiaries (\$225,468,990).

H21 On 7 April 2005, unknown to Mr Ramnarine, the HCU Board resolved to terminate his services as Auditor and to appoint in his place Chanka Seeterram & Company (“CS”) as Auditor for the financial year to 30 September 2004. By his letter of 5 April 2005 Mr Ramnarine had already indicated to the Board that he was not seeking reappointment as Auditor for any subsequent year.

H22 The Board resolution of 7 April 2005 was prefaced by a list of allegations as to the conduct of the Auditor which were relied upon by the Board to justify termination of Mr Ramnarine's services. These included:

- (i) His having departed from the International Standards on Auditing (ISA) in the discharge of his duties;
- (ii) Failure to engage sufficient staff with the required expertise and exposure;
- (iii) Refusal to acknowledge the reports on internal controls and corporate governance produced by PWC;
- (iv) Failure to hold meetings with management or to perform audit programmes relevant to risk;
- (v) Unprofessionally causing delay to production of the audit by ignoring the inputs of the management of HCU.

H23 On the evidence given by Mr Ramnarine and as shown in the contemporary documents I have no doubt that there is no substance in any of these allegations. In particular, it is quite evident that the predominant cause of the delay in finalising the audit was the deficient record-keeping and filing by HCU management which made it very time-consuming, if not impossible, to respond to the audit team's reasonable requests for information and primary documents that ought to have been readily available to management had proper recording and retrieval systems been in place.

H24 Mr Ramnarine's dealings with management involved no departure from ISA audit principles. Failure to acknowledge the PWC reports was the consequence of Mr Ramnarine never having been informed by management of their existence.



- H25 I infer from Mr Ramnarine's evidence that he had previously been offered inducements by Mr Harnarine, specifically a telephone call from Mr Harnarine before issue of the final audit report, the gist of which was "give us a clean report. Do what you have to do and we will sort you out", that the Board resolution of 7 April 2005 was a self-serving cosmetic designed for consumption by CCD and others to justify the appointment of a replacement Auditor whom Mr Harnarine may have hoped would be more compliant, more tolerant of inadequate records and open to persuasion than Mr Ramnarine. However, Chanka Seeterram, having been engaged by HCU, told Mr Harnarine that he would have to carry out an entirely fresh audit on the basis of consolidated accounts and not a stand-alone audit for HCU. Mr Harnarine was very unwilling to allow that but had to yield to Chanka Seeterram's insistence.
- H26 On 19 April 2005 Chanka Seeterram wrote to Mr Ramnarine asking whether there were any professional reasons why his firm should not accept appointment as Auditors of HCU. On 29 April 2005 Mr Ramnarine replied that there were no such reasons but drew attention to the fact that the Audit for the year to 30 September 2004 had been completed and that the financial statements had been forwarded to the Directors for approval.
- H27 Upon commencement of the audit work Chanka Seeterram discovered that many of the subsidiaries of HCU had not been audited for several past years and that it would therefore be necessary for them to be audited as well as HCU before consolidated HCU accounts could be prepared. This whole exercise was unwelcome to HCU. Mr Harnarine was anxious to have them completed as soon as possible. He was aware that the audited accounts for

the year to September 2004 should have been filed with the CCD by 30 November 2004 and the AGM should have been held on the basis of those audited accounts by 30 December 2004.

H28 However, Chanka Seeterram insisted that the audit should be carried out properly which could only be done if consolidated accounts were prepared with reference to properly audited subsidiaries. For this purpose he deployed practically his entire office staff on what was a completely fresh audit. The work took over five months.

H29 On 19-23 August 2005 Chanka Seeterram produced Audit Reports on the Financial Statements for the following subsidiaries.

HCU Food Corporation – year to 30.9.2003

HCU Financial Ltd – years to 30.9.2001, 30.9.2002, 30.9.2003

HCU Global Television Co. Ltd – year to 30.9.2004

HCU Real Property Developers Ltd – years to 30.9.2002, 30.9.2003, 30.9.2004

Jovi's Island Company Ltd – year to 30 September 2004

HCU Sajeevan Medical Complex Ltd – year to 30 September 2004.

H30 All the above showed substantial losses and the financial statements had been prepared on a going concern basis. That basis was expressed to assume that funds would be provided to finance the losses so far incurred and also any subsequent losses. However, the losses of the subsidiaries, as well as their ability to service loans from HCU, could only have been funded by yet further loans from HCU which would have totally eroded HCU's liquidity or by raising loans on the market which would in practical terms have been impossible or by HCU's own resources derived from disposal of the

subsidiaries under the CLICO Divestment Plan. If that last means of support disappeared, all the subsidiaries except Bankers must necessarily be perceptibly irremediably insolvent.

H31 As at August 2005 HCU was the only possible source of continuing funding for those subsidiaries. From the beginning of 2005 HCU had been beset by acute liquidity problems. By 27 January 2005 Mr Harnarine told the HCU Board of Directors that the granting of loans had to be stopped in order to provide funds for repayment of deposits. On 3 March 2005, the day before Mr Ramnarine, HCU's external auditor, issued his disclaimer opinion audit, there took place a meeting between Mr Harnarine and Mr Duprey and Mr Dacon of CLICO, in consequence of which CLICO issued a press statement to the effect that it was bailing out HCU. On 25 March 2005 Mr Harnarine reported to the Board of HCU that an agreement had been reached with CLICO for the divestment of 52 per cent of shares in the subsidiary companies for \$200 million. This transaction was said to provide enough funds to repay all the outstanding loans due to HCU from those subsidiaries. At a Board meeting held on 31 March 2005 this proposed divestment agreement was approved, as was the arrangement of a mortgage facility with CLICO of \$100 million. The so called Strategic Alliance with CLICO and the divestment transaction were approved by a SGM on 7 April 2005. At the same meeting Mr Ramnarine was replaced as external auditor of HCU by Mr Chanka Seeteram.

H32 On 3 May 2005, just as Chanka Seeteram was beginning work on the 2004 HCU audit, the agreement between CLICO and HCU Financial Ltd, HCU

Real Property Developers Ltd and HCU was entered into. The main features of that agreement were that:

- (i) HCU would assign to CLICO all payables of HCU up to \$200 million.
- (ii) HCU would execute an option to CLICO to purchase for not more than \$200 million 70 per cent of all issued shares of HCU Financial and 100 per cent of all issued shares of HCU Real Property and/or CLICO's option to purchase all the real properties listed in a schedule to the agreement at a price of 75 per cent of the market price as determined by PWC or a mutually acceptable third party.
- (iii) HCU would execute a first mortgage for \$100 million over those scheduled real properties.

H33 The potential result of this agreement was therefore that HCU would divest its payment obligations and would in exchange transfer shares in HCU Financial and HCU Real Property or, at CLICO's option, land at a discounted market price. If the scheduled land was not transferred, HCU would also have the benefit of a \$100 million mortgage over it.

H34 This transaction thus potentially provided a significant alleviation of HCU's liquidity problem. Consequently, had it gone forward and been performed, there would have been tenable grounds for the assumption that HCU would have had the resources to finance losses made by such subsidiaries as were not transferred to CLICO. Although there is no evidence that Mr Chanka Seeteram ever considered by what means HCU could continue to provide financial support to any of the subsidiaries for which he produced Audit Reports on a going concern basis in August 2005, had he done so, he might well have concluded that the CLICO agreement enabled HCU to fund that support at least for those subsidiaries which had not been divested. Indeed,

even if he had done so, it is hard to see how he could have concluded that any of the non-performing loans to those subsidiaries could be repaid or even that the interest on them could have been regularly paid to HCU. In his oral evidence, Chanka Seeterram asserts that he relied on the existence of the CLICO agreement to justify the inclusion in the September 2004 accounts of the loans and investment in subsidiaries without any irrecoverability write down. According to his evidence Chanka Seeterram's understanding was that the CLICO agreement was in place for the 2004 audit, but had been changed for the 2005 audit.

H35 Chanka Seeterram issued HCU Consolidated Financial Statements for the year to 30 September 2004. They were dated 30 August 2005 but issued several weeks later. The HCU stand-alone Audited Accounts were not ready until after 10 October 2005. Financial statements for another subsidiary – HCU Communications – for 2002 and 2003 showed that company had incurred substantial losses. The Report had also been prepared on a going concern basis on the assumption that funds would be provided to finance losses so far incurred and any subsequent losses.

H36 Shortly after 10 October 2005 Chanka Seeterram produced stand-alone Audited Financial Statements for HCU for the year ending 30 September 2004. Like the financial statements audited by Mr Ramnarine these showed that by comparison with the year to 2003 HCU's cash flow position had been very considerably eroded. Indeed, the net cash and cash equivalents provided by operating activities (\$94,214,728) together with that provided by financing activities (\$25,637,160) was exceeded by cash used in investing activities (\$151,650,499) by some \$31,798,611. That in turn had diminished

net cash and cash equivalents in hand at the beginning of the 2003-4 year (\$20,788,369) to a cash flow overdraft of \$11,010,242 by 30 September 2004. This cash flow deterioration was mainly due to a massive decline in members' deposits and savings and members' shares combined with a smaller increase in cash used for investment activities.

H37 In the course of September 2005 Chanka Seeterram produced audited financial statements for 14 more subsidiaries, mainly for the year to 30 September 2004 and most were shown to be loss-making. All accounts were prepared on a going concern basis which assumed that funds would be provided to finance the losses. Three out of the 14 subsidiaries appeared to have sufficient positive net assets at 30 September 2004 to the effect that they could be treated as going concerns even absent the prospect of external funding. These were Masala Radio, HCU World Select Gem Hotel (undated) and HCU Trust and Asset Management. That was not true of the other 11 subsidiaries.

H38 In a management letter dated 16 October 2005 Chanka Seeterram drew attention to those areas of corporate management which were open to criticism. These included the following:

- (i) The lack of a fixed asset register.
- (ii) The purchases of certain fixed assets and investments were not approved by the Board of Directors.
- (iii) In respect of the subsidiaries, most of them made substantial losses and some of those might be trading while insolvent.
- (iv) Payments for foreign travel were not supported by documents.

- (v) The lack of personal files for employees and completed TDI forms were not obtained from all employees.
- (vi) In respect of inter-company accounts, it was noted that in most instances the balances due to/by the subsidiaries in their books did not agree with that stated in the books of HCU.
- (vii) There was no evidence that monies remitted to HCU Financial Company (USA) LLC which was registered in the name of Messrs Harnarine, Ramnath and Lalchan were held on behalf of HCU.
- (viii) 0% loans totalling \$8,261,472.48 were outstanding of which \$619,983.38 were new loans granted in 2005 and were contrary to the approved Bye-Laws.
- (ix) The failure, contrary to the Co-operative Societies Regulations to obtain from borrowers instruments in writing containing the terms of repayment as well as recording any security.
- (x) Many loans were inadequately secured or not secured at all.

It is to be observed that not even of the most serious of these criticisms notably (iii), (vii), (viii), (ix) and (x), were referred to in the Auditor's Report on the Financial Statement for that year and were therefore not brought to the attention of the members of the Credit Union or to the general public. In view of the lack of disclosure by management of any of these criticisms in the accounts, Mr Chanka Seeteram should have qualified his audit report by reference to these matters because, although they referred to events subsequent to the end of the year to September 2004, they were all directly material to whether those subsidiaries and HCU continued to be a going concern.

H39 By the date in October 2005 when Mr Chanka Seeteram had completed the stand-alone HCU Audited Financial Statements for the year to 30 September

2004, the CLICO agreement had already seriously foundered. The valuation reports by Raymond and Pierre on the scheduled properties obtained by CLICO had shown all of them to be substantially less valuable than the assumptions underlying the agreement. At a meeting on 3 October 2005 attended by M Harnarine and Mr Dacon, on behalf of CLICO, the latter stated that CLICO, having already provided \$160,000,000 refused to provide any further funding. CLICO further insisted on exercising its purchase option on certain of the properties in the schedule to the agreement but declined to do so in respect of any of the subsidiaries and further that it would re-transfer other subsidiaries, within the HCU Financial Group, after having stripped out plant, equipment and machinery. Thereafter the Agreement was effectively dead except for the sale and lease back by HCU of certain properties.

H40 According to Mr Chanka Seeteram's evidence, which I accept, he was unaware of the collapse of the Agreement at the time when he issued the stand-alone Audited Financial Statements for HCU for the year ending 30 September 2004. He said that, had he known about this, he would have regarded those matters as material and he would have qualified the accounts because, subsequent to the end of the accounting period, the collapse of the CLICO agreement had caused HCU not to be able to meet their liabilities as they fell due.

H41 There is no evidence before this Enquiry that in the course of the period from the time in May 2005 to the issue of the stand-alone Accounts in October 2005 Chanka Seeteram ever examined the post-September 2004 financial condition of HCU. No doubt he had his hands very full in dealing with the 2004 audit. Nonetheless, it was the duty of an auditor under ISA 560 to



identify and consider material subsequent events. Among those events the CLICO agreement was highly material. If he knew of its existence, as he must have done, it was clearly his duty to ascertain whether and if so, to what extent, it was being implemented. In the event, no mention was made of the collapse of the Agreement or of the asset-swap arrangements which replaced it. The dating of his audit reports on 30 August 2005 was a breach of the applicable audit standard, ISA 700. Under ISA 700 the auditor should not date the report earlier than the date on which the financial statements are signed or approved by management. Although when signing the financial statements the directors did not date them, from Mr Chanka Seeterram's evidence the consolidated financial statements were signed in late September 2005 and the stand alone financial statements in late October 2005. Mr Chanka Seeterram admits he did not update the subsequent events review required by ISA 560 and as he considered that the audit report should be dated when the field work was completed he would have no need to do so. However, ISA 700 requires otherwise. Therefore the audit report on the consolidated financial statements should have been dated in late September 2005 and, on the stand alone financial statements, in late October 2005 and the subsequent events should have been reviewed to these dates.

H42 The Audited Consolidated and Stand Alone Financial Statements of HCU for the year ending 30 September 2005 were not signed by Chanka Seeterram until 8 September 2006. The Stand Alone Financial Statements were not qualified but the Consolidated Financial Statements were qualified as follows.

“The Society has incurred substantial losses of \$84,395,131 as at 30 September, 2005. These financial statements have been prepared, however, on the going concern basis which assumes that funds will be provided to finance the losses to date and any subsequent losses.”

H43 The statement of income and expenses in the Consolidated Account showed a loss of \$54,349,423. This compared with a profit of \$4,060,976 in the previous year. The impact of combining in the Consolidated Accounts the subsidiaries' losses with the results in the stand-alone 2005 accounts can be observed from the fact that the stand alone accounts recorded an apparent surplus of \$6,019,878. The negative impact of combining the subsidiaries' losses was therefore on the face of it \$60,369,301.

H44 In the Statement of Changes in Members' Equity & Reserves as at 30 September 2005 there is shown to be a Prior Year Deficit on Revaluation of Fixed Assets of \$31,032,034. That arose from the Auditor's discovery that properties which had formed part of the figure of \$84,435,487 – “Appreciation in Value of Investment and Investment Properties” – in the year to 2004 Statement of Income and Expenses had been sold subsequently for amounts significantly less than their individual values used in the overall valuation and that it could be inferred (as I accept) that the valuation of those properties by management and therefore the overall valuation of \$84,435,487 was excessive. The aggregate amount of the over-valuation was the amount of the deficit in the 2005 accounts given as \$31,032,034. If, as should have been done, that figure were taken out of the Statement of Changes in Members Equity and Reserves and inserted into the Statement of Income

and Expenditure, for the 2005 year, the impact would have been to wipe out the surplus of \$6,019,878 and to give rise to a deficit of \$25,012,156.

H45 In the Statement of Income and Expenses for the 2005 year a figure of \$25,583,749 is recorded as Appreciation in value of Investment and Investment Properties. However, in the management letter from Mr Chanka Seeterram dated 3 October 2006 it is stated that this was a net aggregate appreciation after taking into account depreciation of \$27,444,638. That too was the consequence of over-valuation by management of a member of properties which were in addition to the over valuations giving rise to the net deficit of \$25,012,156 referred to above.

H46 It follows that across the Financial Statement for the year to 30 September 2005 the total deficit attributable to over-valuation of properties amounted to \$58,476,672.

H47 The evidence of Chanka Seeterram was that management had confined the revaluation depreciation of \$31,032,034 to a prior year (2004) "deficit on revaluation" in view of a developing run on HCU experienced in 2005-2006 and the adverse effect on the public perception of the Credit Union and therefore on its ability to survive had there been shown a net deficit of \$25,012,156 in the 2005 Financial Statements. That which had caused the depreciation in value of the properties in 2005 was the depression in prices due to the sale of a large part of the property portfolio at depressed prices in order to raise cash to satisfy withdrawal demands. Had a deficit of that magnitude been shown by the stand alone financial statements for 2005

Chanka Seeterram rightly accepted that he would have had to qualify the accounts.

H48 Accordingly, by a cosmetic device management, through the Financial Statements for the year 30 September 2005, masked a significant deficit due to the sharp reduction in property valuation by taking out of the surplus/deficit calculation the sum of \$31,032,034 and treating it as a “deficit on revaluations” recorded as reducing Members’ Equity. Chanka Seeterram stated in evidence that he went along with this cosmetic exercise in the belief that by avoiding a further run it would give HCU more time in which to turn round what had become an untenable deterioration. However, when he was recalled for re-examination on 2 May 2013 Chanka Seeterram said that since the previous hearing his firm had discovered various working papers which suggested that the figure put forward by HCU Management for excessive revaluation was at least in large, albeit unquantifiable, part the result of treating repairs and maintenance as distinct from capital improvement expenditure as an accretion in capital value. In consequence the capital values of various assets were over-stated and the profit and loss account was inaccurate because the maintenance and improvement expenditure should have been treated as expense items in the previous years. In the result the profit and loss result appeared to be less unhealthy than in reality it should have been. Further, this error was compounded by the over valuation of assets.

H49 In the 2004-5 accounts, if the expenditure on maintenance and repairs and other expenditure on improvements had in truth been incurred in the previous year it should have been described as a prior year error in the

calculation of expenses. As it was, according to the evidence initially given by Chanka Seeterram, HCU's records of capital asset values and of expenditure on repairs and maintenance were so unreliable that precise calculation of the amount by the 2005 Accounts was distorted and impossible. However, when re-called to give further evidence Chanka Seeterram pointed to an improved register of assets which may have been more accurate. His evidence on this matter was therefore contradictory.

H50 Chanka Seeterram believed that the vulnerable condition of HCU alone was largely due to the drain on its available resources by the loss-making subsidiaries, which he said was mainly the result of bad management. However, following completion of the 2005 Audit in October 2006 he warned Mr Harnarine of the urgent need for action:-

“Q. If we can just move on, do you accept that an auditor ought not to give a client management advice?”

A. I think an auditor has a responsibility to management that if he sees something was wrong and they're doing it the wrong way to advise them on how they should correct it.

Q. Don't you think that that impairs your independence as an auditor?

A. Management has the choice to comply or don't comply.

Q. I'm not talking about what management does, I'm talking about you as auditor. Ought you to be entering into the fray, as it were, and giving advice to management as to how they could sort out -

A. Well it depends upon what you call advice. If advice is informing management of deficiencies found and telling management how to correct those deficiencies, I think that's an auditor's responsibility to do.

Q. What about that you could get about 10 to 12 successful businessmen to assist the HCU by taking over management of subsidiary companies?

A. I thought that was what they really needed and as an individual when Mr. Harnarine - when I finished the audit for 2005 the company was definitely going down and I told him point blank that come next year it will be a real problem to do this audit because we may have to qualify everything. He said what do you mean? I say, well I'm telling you. Right now the company is showing an \$80 odd million cumulative loss and if those losses continue we cannot give an opinion on those accounts next year.

So he asked me, "What do you suggest? Could you recommend something?" And I told him that I think the haemorrhaging of the Hindu Credit Union lies in the subsidiary companies and it appears that those companies do not have proper management. Those companies never had board directors meetings, they never had anything for the subsidiaries and what he needs is some hard-nosed businessmen to take over those subsidiary companies and there were very good subsidiary companies in good fields of travel, in auto care.

When you go through the list of companies, they were excellent companies relating into very good fields and it's 130 odd million - 130,000, you know, members with proper management, all those subsidiary companies could have been turned around".

H51 The 2004-5 Audit was the last external audit conducted prior to HCU's being wound up. However, the effect of producing Stand-Alone Financial Statements for HCU was to create a seriously misleading representation of the financial condition of HCU as at October 2006. Not only were those Financial Statements intrinsically inaccurate in those respects already described but they represented HCU's financial position without regard to the dire condition of the many loss-making and substantially insolvent subsidiaries. Thus the presentation of HCU's loans to most subsidiaries as an asset falsely suggested both that the subsidiaries could not only service but also re-pay those loans and that the subsidiaries were going concerns. The fundamental effect of this factor, once the CLICO rescue transaction had collapsed on 3 October 2005, was to cripple HCU irretrievably.

Chanka Seeterram's evidence was that had he been aware of the collapse of the CLICO rescue transaction, as he should have been, at the time when he signed his audit report on the 2004 HCU stand alone accounts, he would have had to deal with it in his audit report as HCU would not have been a going concern. Nothing took place to alleviate this position, in the 2004-5 financial statements.

H52 Thus, the audit management letter from Chanka Seeterram dated 3 October 2006 to the Directors of HCU showed the following:

- (i) The net assets shown in the audited accounts in the audit report dated 8 September 2006 amounted to \$142 million.
- (ii) As at the date of the letter of 3 October it was known to Chanka Seeterram that adjustments were required whereby those net assets as at 30 September 2005 would be extinguished and would indeed go negative to the extent \$3.552 million.
- (iii) In the audit management letter from Chanka Seeterram the following matters were raised:
  - a) Over valuations of HCU's investment properties (Para 3).
  - b) There was no record of fixed assets totalling \$208m (Para 15).
  - c) There were non allowed 0% loans totalling \$4.6m (Para 16).
  - d) ATM machine had not been depreciated and was unlikely to be used – amount \$1.5m (Para 21).
  - e) TV equipment was not in use and not depreciated. Total value \$22.7m (Para 23).
  - f) All the subsidiaries made substantial losses and some might be trading whilst insolvent (Para 26).
  - g) HCU was losing \$2m per month with a consolidated loss of \$150m for the year to September 2006 (Para 28).

h) HCU was having grave problems repaying depositors (Para 28).

- (iv) These matters called for adjustments to the net assets of \$146.401 million, thereby reducing the assets to minus \$3.552 million.
- (v) That calculation does not take into account the extent to which investment properties at \$254 million were overvalued or the extent to which fixed assets given as \$208 million were not accounted for accurately due to the lack of a fixed assets register.
- (vi) By the date of the accounts referred to in the audit management letter (8 September 2006) the net assets were \$121.346 million but loans to the subsidiaries had increased to \$131.612 million. Taking into account the adjustments for investment in the subsidiaries, excluding Bankers Trust, (\$17.261 million) zero per cent loans (\$4.602 million), redundant ATM equipment (\$1.486 million), redundant television equipment (\$22.720 million) and loans to subsidiaries (\$131.612 million, the adjusted assets as at 30 September 2006 would have fallen to minus \$56.355 million.
- (vii) This negative asset value was or ought to have been apparent to anyone who was aware of the contents of the audit management letter of 3 October 2006.

H53 There is, however, further evidence of the true financial condition of HCU as at 30 September 2006, as ascertained by EY when they came to calculate the 30 September 2007 Statement of Affairs. The adjustments made by EY to the starting asset value of \$121.346 million amounted to \$324.625 million excluding nil per cent loans. This adjustment was made up as follows:

	<b>30.9.06 Balance</b>	<b>Statement of Affairs/balance</b>	<b>Adjustment</b>
Accounts receivable and prepayments	10.888	930	9.958
Loans to subs	131.612	-	131.612
Investment in Subs	17.261	12.000	5.261
Investment property fixed assets	367.674	250.142	117.532



Due by related parties	44.829	2.367	42.462
Intangible assets	17.800	-	17.800
			<b>324.625</b>
			<b>million</b>

H54 Thus the negative asset position as at 30 September 2006, assuming there were no disposals of assets in that year to 30 September 2007 involved reduction from \$121.346 million by \$324.625 million and a further \$4.602 million, taking into account nil per cent loans, to give an asset deficiency of \$207.881 million.

H55 Thus when in or about October 2006 Chanka Seeterram signed off the stand-alone HCU Financial Statements he ought to have appreciated at least that by that time HCU was no longer a going concern. The Audit Report should therefore have been qualified or if properly disclosed in the Financial Statements, the Audit Report should have contained an emphasis of matter. Mr Chanka Seeterram's evidence was that with hindsight the stand-alone accounts for 2005 should also have been qualified.

## **Section J: The Relationship between the CCD and the HCU**

J1 HCU was registered by the CCD under the CS Act 1971 on 23 December 1985.

J2 On 22 March 1998 Mr Harnarine was elected President of HCU by a re-convened AGM. An internal CCD Memorandum signed by Keith Maharaj dated 23 October 1998 recorded 6 turbulent months in the history of HCU. It was noted that the election of Mr Harnarine “signalled the beginning of a rift within the Board as some of the officers starting questioning the reasons and motives behind some of the decisions of the President”, the Board of Directors being later equally split between two factions and “the President (using) his casting vote on every issue” to give “his side” the edge in the decision-making process. The memorandum identified the problem in the following words:-

“There is serious concern about the direction in which the President (together with his other 5 supporters) is taking The Credit Union. It has been reported by Officers that branch offices have been opened in Penal/Debe and Princes Town and several others are being planned without approval from Board & members. There are also other matters which includes the Alliance with a particular Hindu group and an Insurance company where the President is employed. The recruitment of staff by the President is also being challenged”.

J3 In an attempt to diffuse the tensions a number of meetings were arranged between senior officers of the CCD and the CCD himself and the HCU Board. The memorandum records that these meetings resulted in even more intense animosity among members and that “threats, abuse and false accusations were levelled at the (CCD) officers” who were prevented from

entering the HCU premises and from examining the records in accordance with their powers under the CS Act 1971.

While recognising that his powers of intervention were limited, the CCD decided to hold an inquiry under Section 4 of the CS Act 1971 and appointed Mr Joel Edwards, an independent accountant, to enquire into the constitution, operations and financial position of HCU and to report back by 16 October 1998. The memorandum observed:-

“This Credit Union has enormous potential for growth but is stifled by individuals who assume power bringing with them their own agendas, expectations and ideologies which are inimical to the proper development of a sound financial institution”.

- J4 By 30 October 1998 two attempts by Mr Edwards to meet HCU’s Board had been declined by HCU.
- J5 In the meantime a number of directors of HCU had been expelled following internal disciplinary decisions. They then referred their expulsion to the CCD under Section 67 of the CS Act 1971.
- J6 On 11 November 1998 the CCD then issued a directive under Section 3 of the CS Act 1971 requiring the cancellation of the AGM scheduled for 14 November 1998.
- J7 The directive drew the attention of the Board of HCU to consequences that might flow from any decision not to comply with the directive. Reference was made to Section 71 of the CS Act 1971, which provides:-

“(2) Any person who wilfully or without reasonable cause disobeys any summons, order or direction lawfully issued under this Act or the Regulations is guilty of an offence.”

- J8 The letter from the CCD also advised HCU of a conciliation meeting regarding the expulsion of Board Members fixed for 19 November 1998.
- J9 It was at about this time that Keith Maharaj stepped down from the position of CCD for a period of about 14 months to act as Director of Labour Administration at the MOL, his place being taken by Hyder Ali.
- J10 On 14 November 1998 the HCU held its AGM in spite of the directive of 11 November 1998. The minutes record that the CCD had been invited but did not attend. The expulsion of the 6 Board members was confirmed.
- J11 On 25 and 30 November 1998 Kenrick Bridgewater, a CCD Officer II visited HCU to investigate the holding of the AGM. He was informed that it had been held and when he requested to see the audited accounts of HCU he was informed that the audit was incomplete.
- J12 On 21 December 1998 Hyder Ali wrote to the Permanent Secretary at the MOL under the heading "Request for Legal Assistance – Hindu Credit Union". He drew attention to his letter of 11 November 1998 and to the report of Kenrick Bridgewater and concluded:
- "The obvious disregard of the Hindu Credit Union to a directive given by the Commissioner has serious implications to the exercise of the "general powers of supervision of the Affairs of Societies" given by the Commissioner under Section 3 of the Co-operative Societies Act. Your urgent assistance is required to deal with this matter."
- J13 There is no evidence that either the Minister of Labour or the Permanent Secretary took any action in response to this letter by way of the provision of legal assistance. However, on 15 April 1999 there took place a so-called conciliation meeting between the CCD, represented by Hyder Ali and

Diaram Maharaj, and HCU, represented by Mr Harnarine and others, with the Minister of Labour, Mr Harry Partap, acting as conciliator. The matters covered included the convening of the AGM in defiance of the CCD's directive, the exclusion of Joel Edwards from HCU's premises, the obstruction of Kenrick Bridgewater's attempt to inspect with regard to the expulsion of the six Board members, the need for HCU either to participate in a hearing by the CCD or to consent to an independent arbitrator, the failure to comply with the legal requirement that audited financial statements should have been submitted to the CCD before the holding of an AGM, the establishment of HCU branches, despite lack of provision in the Credit Union's Bye-Laws, without the permission of the CCD and the disrespect shown by HCU to the CCD Department. Mr Harnarine responded by referring to the beginning of the Board's problems when he used his casting vote in support of affiliation of the HCU with several Hindu factions, the increase in HCU membership to 7000 with \$15 million in share capital, the holding by the expelled members of an unconstitutional meeting of less than 50 members, the visit by Bridgewater being in company with the expelled members; the expulsion of those members due to their refusal to appear before the Board, the CCD's views that Mr Harnarine should not have used his casting vote and a personal dispute between Vashist Maharaj, a Board member, and the CCD.

J14 The Minister decided that there should be an immediate commencement of an Inquiry under Section 4 of the CS Act 1971 and that all matters should be dealt with and that another meeting within the CCD should be arranged. Mr Joel Edwards then proceeded with his Inquiry.

J15 On 19 May 1999 there was commenced a Special meeting of the HCU Board. It was adjourned to enable Mr Edwards to report to the Board on his findings and recommendations. Amongst these were the following:

- a. Credit administration was very poor; in particular there were several breaches of the loans policy, files were not found in order and completeness of the documents was very bad;
- b. Although HCU had the intention of computerising for several years, there was no sign of the required structure being in place;
- c. There was a general need for delegation of duties and of authority;
- d. The failure to provide a member of the Supervising Committee with access to one of the files, to which Mr Harnarine responded that the Committee was acting irrationally;
- e. There was a need for a strategic plan to highlight the HCU goals by the end of the year, to which Mr Harnarine responded that there were plans for the opening of a new branch, the opening of savings and fixed deposit accounts, increase in membership by at least 2000 and switch to full computerised operations.

J16 In addition Mr Harnarine informed the meeting that Mr Edwards had raised concerns about loans to directors, the inactivity of members of the Board who held minimum shareholdings and the failure of the Supervisory Committee to fulfil its role.

J17 The 14<sup>th</sup> AGM of the HCU was held on 20 November 1999. It was attended by both Mr Harry Partap, Minister of Labour and Mr Hyder Ali, Acting CCD. The minutes record that Mr Partap expressed his confidence in the present leadership which had “come a long way” and which must set achievable goals so that the new millennium could meet HCU “amongst the rightful place of larger credit unions”. Hyder Ali is recorded as having complimented

HCU on the standards that it had set at the present AGM and promised “full support in its future endeavours”. There is, however, no evidence that the CCD took any particular steps to ensure that HCU had done anything to improve its corporate governance in the manner which Mr Joel Edwards had recommended.

J18 Mr Anirudh Rai, an officer of the CCD, attended a Board Meeting held on 16 February 2000 and, as the minutes recorded:

“He further commended the Board for showing growth and expansion to meet the challenge for a viable financial institution. Also that each branch be made profitable and don’t be a white elephant, a lot of effort should be put on the membership drives. It was also noted that the Hindu Credit Union should take a bigger share of the financial market and this is possible by having produces equal to or better than Banks; savings, low costs loans, and financial counselling. The Bye-Laws must be amended before any co-op is to be formed; he further stated that his function is to guide and assist and ensure that the HCU operates within the co-operative laws.

The HCU was invited to call any time for assistance and that there is only one Hindu Credit Union existing”.

These comments reflected a strong policy predisposition on the part of the CCD at that time, namely to encourage the credit unions to expand their activities in the interests of economic growth at a national level.

J19 The President is recorded as having reported that an AGM could change the Bye-Laws of HCU in accordance with the CS Act 1971 but the new Bye-Laws must be sent to the CCD for ratification.

J20 It is to be noted that on 3 April 2000 there took place a Special Board Meeting of HCU. It marks a turning point in the history of that body. Amongst the 14 decisions taken the crucial one was “to form an investment

company by the name of HCU Financial”. The underlying motive for that decision is to be found in the observations of Mr Harnarine as recorded in the Minutes.

“It was further agreed that the Credit Union look into purchasing the buildings/properties for other existing and future branches. It was subsequently agreed unanimously that these properties could be held as collateral to raise liquidity in the event that there was an overwhelming demand for loans.

The chairman spoke of the ever changing financial environment and the need for diversification and development of the credit union, he further stated that there should be the creation of a corporate image to better enhance the investment appeal of the credit union. After a lengthy discussion members present agreed that there should be a company formed to look at investments and businesses which the credit union cannot go into. It was further agreed to name this company HCU FINANCIAL”.

J21 On 6 May 2000 there was held a Special General Meeting of HCU attended by Mr Rai. The ACV accountant, Mr Ramnasian, brought forward a resolution to amend the HCU Bye-Laws to permit the establishment of HCU Financial. Mr Harnarine’s explanation is recorded as follows:

“The Chairman explained that HCU would be like heading to the planets with feet on the ground and there would be subsidiaries of HCU Financial:

- |                                |                          |
|--------------------------------|--------------------------|
| 1. HCU Home Furnishing         | 4. HCU Security Services |
| 2. HCU Housing and Real Estate | 5. HCU World Travel      |
| 3. HCU Finance House           | 6. HCU Foundation”       |

J22 Mr Rai advised the meeting that HCU Financial could not be a co-operative unless it were formed, registered and operated in accordance with the CS Act 1971. As it was agreed that HCU was to be a shareholder in HCU Financial, Mr Rai advised that it would require the permission of the CCD to



be such an investor. This requirement for HCU to obtain the CCD's permission to form subsidiaries was to be repeatedly ignored during the next seven years.

J23 On 28 June 2000, the CCD in response to a request by HCU for approval of Maximum Liability under CS Act 1971 Regulation 12(2), granted approval to a maximum of \$650,000 and reminded HCU that under Regulation 14(3) it was not permitted to receive loans (including bank overdraft facilities) or deposits in excess of that maximum.

J24 HCU Financial was incorporated on 7 July 2000. By September 2000 its activities had begun to attract the attention of CCD. Mr Rai visited HCU on 9 September to ascertain what involvement HCU had in three recently formed subsidiaries of HCU Financial, namely HCU Security Services Ltd, HCU Travel Service Ltd and HCU Furnishings Ltd. On the basis of his interviews and his examination of records he concluded that :

HCU had not invested in the formation of these companies, there was no intention at this time to convert any of the companies into co-operatives, the companies had their own structure, staff, bank account and records which were not connected to HCU's operations, the companies were occupying the CU's building but an agreement was being drawn up, and HCU had granted a loan to HCU Security Services Ltd. The intention was to convert this loan into a share investment by the HCU. HCU were advised that the CCD's approval must be sought for the CU to make this investment. It was emphasised that the companies' operations must at no time be tied in with HCU's operations since they were two different types of organisation, each with its own structure, legislation and characteristics.

- J25 On 5 October 2000 Mr Kazim Ali, a CCD Officer III, visited HCU to investigate certain allegations which had been made by an anonymous letter to the Governor of CBTT by “Concerned Members”. Among those allegations were that paper loans totalling \$2500 had been given to members, there had been an increase in the rate of share withdrawals and members had used shares to offset loans, the overdraft of \$650,000 was to offset cash-flow problems; there was a huge file of problems before CCD awaiting his determination and that the CCD was “incapable of handling Mr Harnarine and ‘his boys’.”
- J26 Mr Kazim Ali reported to the CCD that the allegations were for the most part false. To write in that way to the Governor of CBTT implicating the CCD was a mischievous act ... intended to bring disrespect to both CDD and CBTT. If there was a cordial relationship between Mr Harnarine and the Governor, so be it.
- J27 Mr Rai attended the 15<sup>th</sup> AGM of HCU on 2 November 2000 at which he heard Mr Harnarine tell the members that:

“...the Credit Union was no longer just a lending agency, but also an investment agency as well as a one-stop shop for all financial services”.

and that:

“...the various subsidiary companies were financed by depositors monies from the Credit Union and within months members will be able to invest in these companies”.

The drive to convert the credit union into an organisation marketing diverse financial services was thus very much in progress by the end of 2000.

J28 On 19 February 2001 the CCD granted approval to a request by HCU for an increase in the Maximum Liability to \$3.5 million.

J29 On 19 July 2001 CBTT wrote to the CCD (once again Keith Maharaj) and asked for his opinion and comments on HCU's financial viability and its current activities arising out of HCU's application to create a bureau de change at 12 locations. On 13 August 2001 Mr Maharaj asked the Deputy CCD to arrange to have an inspection conducted into the operations and management of HCU with special emphasis on the functioning of the Board of Directors to see whether they were in compliance with CS Act 1971.

J30 In late 2001 CUSU conducted a financial review of HCU. Some of its findings were, to say the least, disturbing. For example:

“It should be noted that while net loans increased by 240% from \$33mn in 2000 to \$111mn in 2001 the allowance for loan loss increased by 1,573% to \$1.1mn in 2001. This suggests some recognition of a significant deterioration in the quantity of the loan portfolio. The extent to which this deterioration is attributable to new business would raise questions regarding the management of the growth of the loan portfolio and in particular the adequacy of the institution's Credit Administration Practices.

Although the solvency ratio is 105% and above the pearls standard of 100% this should be viewed with caution as the adequacy of the allowance for loan loss cannot be determined without data on delinquency. If the allowance for loan loss is inadequate it would impact negatively on institutional capital and hence solvency of the institution.

The value of land and building increased from \$96,000 in 1999 to \$6,519,000 in 2000. During 2001 land and building was revalued upwards and a capital reserve of \$6,040,000 was created. This has resulted in a short-term boost to non-institutional capital. The solvency ratio would decline to 101% if the capital reserve is disregarded. The basis of the revaluation should be reviewed as the timing and quantum thereof seems inappropriate.

and

The change in the Balance Sheet structure to 45% of Total Asset invested in Financial Investments and Real Estate creates greater risks than that of a balanced Loan Portfolio. Further there is no coverage for this exposure as the ratio of Net Institutional Capital to Total Assets declined from 1.7% in 2000 to 0.9% in 2001 and is well below the Pearls Standard of minimum 10%. Upon further review it may be necessary to factor in dividends declared and additional allowance for loan loss which would result in a further deterioration in the ratio of net institutional capital to total assets.

and

Of major concern is the amount of \$106mn placed in the institution by members as a flexible share deposit. An examination of the investment of the institution revealed holdings in CLICO Flexible Premium Annuity totalling \$25mn. Further investigations are necessary to determine whether the terms and conditions of the flexible share deposits require the placement of same with CLICO Flexible Premium Annuity Fund”.

The references by CUSU to the PEARLS Standard are to an international measure of Protection, Effective Financial Structure, Asset Quality, Rates of Return and costs and Liquidity and Signs of Growth.

J31 The review observed that in relation to asset quality the trend in allowance for loan loss and the growth in the loan portfolio was “cause for serious concern”. It also drew attention to the low proportion of net income to average total assets which might partly be attributed to the substantial holdings in Non-Earning Assets but which was resulting in inadequate growth in institutional capital.

J32 With regard to liquidity, the review stated:

“The Liquidity condition of the institution is considered weak as the key liquidity ratios as at September 2001 compared unfavourably with the Pearls Standard. Outstanding Loans and Overdraft amounted to \$11.5mn or 6% of Total Assets. This condition is indicative of either a cash flow problem or a policy by management

to use borrowings as a major source of funding. However, this condition has serious implications for cost of funds”.

J33 Having regard to the situation that was to dominate HCU seven years later, the concluding comment of the review is remarkably prescient.

“With the exception of Liquid Investments all major indicators experienced growth in 2001. However, there are some concerns regarding the effective management of this growth. Of particular concern would be concentrations in the deposit portfolio, the volatility of such deposits and the extent of which same have been invested in Long Term Securities, disbursed as Long Term Loans and invested in subsidiaries”.

J34 Diaram Maharaj, a CCD Officer III, conducted an inspection of HCU in late October 2001 with regard to its outstanding application to open a bureau de change. He reported that the HCU was well-structured to provide several products and services at its 13 branches and that the frequency of board meetings and meetings of other committees exceeded statutory requirements. All nine branches visited and the head office had well-documented policies and procedures and members seemed satisfied with the services. However, random checks on loan files showed that “a significant amount” of the loans were unsecured and nil per cent and 1 per cent to 2 per cent loans were made to members in violation of the Bye-Laws. Checks on loans to directors and members showed that all were within HCU’s Lending Policy. However it was discovered that, without provision in the Bye-Laws, HCU had created a novel class of “Auxiliary Members” to whom it had proceeded to make loans. Mr Maharaj’s efforts to obtain vital information about HCU’s macro-plan were unavailing because, according to the Secretary, Mr Ramnath, only Mr Harnarine could provide it and he failed to attend an arranged meeting on 22 October 2001.

- J35 Mr Diaram Maharaj recommended that permission to open a bureau de change should be granted. Amongst other recommendations were that the CCD should request from HCU details of all its investments and whether CCD's approval for them had been obtained, that CCD should monitor its operations to ensure it met all its statutory obligations and that CCD should assist HCU with "a comprehensive review of its Bye-Laws in order to meet the rapid changes in the organisation".
- J36 CCD in the person of Mr Diaram Maharaj, put a stop to the class of "auxiliary" members and the CCD Department reviewed amendments to the Bye-Laws. It was Diaram Maharaj's evidence, which is accepted, that apart from those two matters, none of his recommendations had been attended to up to 2008. There would seem to have been no proper system at CCD of carrying forward outstanding decisions and recommendations which remained to be implemented.
- J37 On 5 November 2001 HCU asked the CCD to approve an AGM resolution that the loan portfolio be securitised in the sum of \$20 million. This was immediately approved by the CCD in terms of a Maximum Liability in the sum of \$20 million.
- J38 In the course of 2002 CUSU in the person of Mr Pierre began to receive by telephone allegations from a whistle-blower, who withheld his name, but claimed to be a HCU Board Member, about "management practices" at HCU. It was alleged that the "CCD was a waste of time and in conspiracy with (Mr Harnarine)". It was further alleged that HCU was secretly giving out scholarships without disclosure to members, that properties were being

purchased without proper documentation on the basis of “falsified” valuation reports. Mr Pierre referred these allegations to the Minister of Finance, Mr Enill. A letter to the Prime Minister, Mr Manning, dated 13 January 2002 from an anonymous writer who described himself as a former Member of Parliament and Member of HCU alleged that HCU had “significant and mutually unexplainable interests in CLICO”. It was said that financial assets of HCU were being channelled through CLICO. There was “premature” (sic) evidence of money laundering within HCU and CLICO and this had been encouraged by the previous (UNC) Government. The letter went on to observe that care should be taken by all HCU and CLICO members “to avoid sudden depletion of and loss of all forms of life savings and pension plans.” The letter ended by asking the Government to investigate the regulatory compliance of HCU and CLICO via a commission of enquiry. The Prime Minister passed this to Mr Enill with a request to look into the matter. According to the then CCD, Keith Maharaj, he received no contact about this letter from Mr Enill. Nor did he recall ever seeing this letter.

J39 On 26 February 2002 a letter from an unnamed writer, who described himself as a member of HCU, was sent to the CCD containing serious allegations against HCU. The writer appears to have misunderstood the pending proposal for the securitisation of \$20m whereby the loan portfolio was to be assigned to Intercommercial Bank. Having stated that he had heard that HCU was going to buy the Bank, he went on:-

“I am a member of the Hindu Credit Union. I hear that they are going to buy the Intercommercial Bank. But Mr Commissioner have you checked the accounts of this credit union for last year. They are very

week. Like CLICO they could be technically insolvent. This is the weakest credit union in the country today.

They are buying so much land and buildings but they did not give us a dividend. The senior officers and directors are having a good time buying all those building and cars etc. A lot of wrong things are being done in the credit union.

Before you give permission to commit the money of the credit union to buy a bank you should do an investigation into the credit union. There are rumours that certain senior officers and directors are using my credit union money for their benefit. Friends and family are living high on the money of the poor members of the credit union. The directors and senior officers do not care for the poor members they want to have these grand building and grand schemes”.

J40 A CCD Officer III Mr Daniel Ramjit, was deputed to see Mr Ramnath, the HCU Secretary, to investigate such anonymous allegations, but Mr Ramnath failed to make himself available for more than a few minutes at the time appointed.

J41 On 27 February 2002 the CCD Accountant recommended rejection of the application for \$20 million securitisation on the principal ground that HCU was then operating far beyond its authorised Maximum Liability and if the application were granted, the additional liability thereby incurred would cause greater expenses in the form of loan interest. It is to be observed that the Accountant calculated the excess over permitted Maximum Liability by including Members' shares and Members' Savings.

J42 More complaints about HCU rapidly emerged.

J43 On 5 March 2002 a letter was written to the Prime Minister by a member of HCU. It referred to the assets of the HCU Financial Group having multiplied “in unaccountable amounts with reference to present market trends.” and



“lack of transparency and accountability” and asked for an investigation by a commission of inquiry of member deposits, tax accountability, statutory declarations, asset declaration and all regulatory compliance.

J44 On the same day one R. Persad-Maharaj wrote to the CCD with copies to the Prime Minister, the Attorney General and the Minister of Labour, setting out specific complaints:

1. “Non-Hindu members are admitted as members and loans and other facilities are provided to them. This Credit Union is not serving the members it was established to serve.
2. The Bye-Laws have been openly disregarded and the Board of Directors have no voice in the management of the Credit Union which is run solely by the President who describes himself as an Executive President and performs or directs the duties of all the officers and employees. The Treasurer does not control the funds. All payments are controlled by a financial controller who was employed by the President and who is not a qualified accountant or person with banking knowledge or experience in finance. This person earns \$22,000.00 per month.
3. The Supervisory and Credit Committees exist in name only and have no voice totally contrary to the Bye-Laws. The President personally hears all applicants who apply for loans and grants loans on his terms and conditions. There is no standard regulation or practice. The President presides at all Committee meetings. He demands loyalty from all employees all of whom are handpicked by him and most of whom do not have a proper secondary school education. Even members of the Board of Directors are handpicked by him. The Annual General Meetings are manipulated and controlled by him and are a farce.
4. The President has no regard whatever for the Co-operative Society Act Chap. 81:03 and acts as if he is the sole owner of the Credit Union. He has used Credit Union moneys to form and register private Companies without the approval of members and/or the Commissioner of Co-operations. He alone and nobody else makes all decisions on behalf of the Credit Union and there is nobody to question him.

5. He decides on all investments and purchases of properties without any technical or expert advice.
6. He runs an alleged insurance company and a brokerage company without licences. All loans granted by the Credit Union are insured by him. His insurance office is in the same building owned and occupied by the Credit Union. Large sums of moneys are paid out to his insurance company by the Credit Union.
7. During the last twelve months he has spent more than 25 million dollars to purchase several properties together worth not more than 10 million dollars. All these transactions should be scrutinised by the Commissioner of Co-operations because peoples' moneys are involved. None of these properties can fetch the prices allegedly paid and/or invested in them. The prices are grossly inflated while moneys are disappearing.
8. The President personally offers very attractive interest rates and terms to unsuspecting depositors with millions of dollars and pays out, up front, large sums as interest. This is exactly what several financial institutions did some years ago and citizens lost millions of dollars when the Companies went into liquidation. I fear that depositors in the Hindu Credit Union might suffer the same fate.
9. There is no transparency or proper accountability in this Credit Union. Accurate figures are hidden and bold statements are made by the President e.g. he says that the Credit Union has more than One Billion Dollars and has more money and assets than the Inter Commercial Bank. This is false and is meant to fool people into making deposits.

I urge you, Mr Commissioner, to act before it becomes too late. The Employees will not give out information. Apart from the financial wrongdoings there is massive immorality. There is a secret board room with a well stocked bar and beds in its Administrative building with a lavish swimming pool, all at the Credit Union's Cost. The Temple Complex and the alleged foundation are only a camouflage. At the present time, this Credit Union is not serving the purpose it was intended to serve when I established it. I am very worried by its unlawful activities and would like to protect the name of the Hindu Community”.

J45 These were extremely serious allegations each of which clearly needed to be thoroughly and immediately investigated. However it was not until 26 March 2002 that Keith Maharaj, the CDD, noted on the letter a message to his Deputy asking him to have the matters investigated and to report back no later than 10 May 2002 (over two months after the date of the letter). Remarkably, Mr Maharaj first said in the course of his evidence that he could not remember having seen this letter. Then, subsequently, in the course of his evidence he said that he had investigated the position and had a meeting with Mr Persad-Maharaj who had asked Mr Maharaj to remove Mr Harnarine from the Presidency and to appoint him in his place, a request which Mr Maharaj there and then refused. Whereupon Mr Persad-Maharaj had threatened to destroy him. However, having admitted that he had never seen any paper issued by either the Supervising Committee or the Credit Committee of HCU, Mr Maharaj accepted in his evidence that the HCU Board was totally out of control. This Commission finds further that by this time the Board was in substance the tool of a qualified personal autocracy operated by Mr Harnarine. It was qualified to the extent that on many matters he caused resolutions to be put to the BOD as a means of rubber-stamping earlier decisions to which in some cases effect had already been given. The complete lack of evidence of any communication to the CCD or response by the Prime Minister, the Attorney General or the Minister of Labour exemplified a pervasive tendency by GORTT to avoid as far as possible becoming involved in any issue going to the probity of HCU.

J46 At a Special General Meeting of HCU held on 23 March 2002 resolutions were passed that the liability limit be increased from \$20 million to

\$50 million and that HCU should set up its own life insurance company. Mr Harnarine told the meeting that, given that a previous General Meeting had authorised the Board to set up investment operations abroad, legal technicalities prevented these being direct branches of HCU Financial.

J47 On 26 March 2002 CCD wrote to the HCU Secretary, Mr Ramnath, reminding HCU that it had failed to apply to CCD for permission to make substantial investments in certain companies in accordance with Section 45(d) of the CS Act 1971 and calling upon it to do so by 12 April 2002 failing which the CCD would proceed under Section 71 of the Act (on the basis that a criminal offence had been committed).

J48 On 2 April 2002 CCD received yet another anonymous letter copied to the Minister of Finance calling for an investigation into HCU and alleging that Mr Harnarine, the treasurer, secretary, general manager and CEO had visited Miami with their families, that being the second such trip. The letter continued:

"Another matter to be investigated by the Commissioner and the Ministry of Finance. The President of the HCU has given his personal instructions to constructing a building on main road Chaguanas without the proper approvals from the authorities and the ministry concerned. This project costing millions of dollars was not brought to the membership for approval. He decides on design layout etc without having profession input. He is also hiring his own contractors and giving them directions. There is no professional monitoring of the building. No quantity surveyors reports etc. He is misusing his position as president of the credit union. This matter should be investigated immediately. Misconduct in public office should be considered here. The matter is in your hands mister commissioner. The president is again exposing the credit union to possible charges from the government by acting as a one man show. His directors are all helpless to object since they are being paid off

by the president with credit union money. An investigation in this credit union is long overdue.”

J49 In the course of his evidence Keith Maharaj agreed that by that stage HCU had really become synonymous with Mr Harnarine and that it was “his organisation”.

J50 Nevertheless Mr Maharaj appears simply to have passed on the letter to his Deputy CCD marked “for your advice please” (fya).

J51 The efforts of CCD to get HCU’s response to its requests for information exemplified what was becoming a set practice of HCU; namely taking the step, such as making an investment, which required the permission of CCD but applying for that permission only after taking the step and having been reminded by CCD of the statutory requirement on several occasions.

J52 On 16 May 2002 the Deputy CCD, Mr Hyder Ali, reported to Keith Maharaj that CCD had still not approved any amendments to the original Bye-Laws pertinent to HCU’s investment in the subsidiaries already incorporated. In relation to HCU’s assets the report observed:

“Total assets as at 30<sup>th</sup> September 2001 were \$202 million dollars. This represented an increase of \$149 million dollars or 382% over the year 2000. The increase resulted from increases in loans to members, the acquisition of fixed assets and investments.”

and further

“Hindu Credit Union has expanded rapidly in the last two (2) years especially in the area of membership, and in the variety of financial products that they have placed on the market. It is extremely important and possibly critical to the securitisation of the Credit Union Sector as it relates to safety and soundness that the Credit Union be supervised and regulated at the highest level. The Division, a present continues to monitor the operations.”

- J53 The Deputy CCD also made the point that in accordance with the Cabinet Minute of 27 June 2001 CUSU was responsible for financial supervision of credit unions.
- J54 Meanwhile the Permanent Secretary to the MOL had asked CCD for an urgent report on the status of HCU.
- J55 On 23 May 2002 Mr Keith Maharaj reported back to the Permanent Secretary (Mr Hart Edwards) at MOL that the Board of HCU was then “co-operating and responding positively” to CCD especially in the areas of amendment of the Bye-Laws and the “investment practices” of HCU. This description of the contemporary relationship between HCU and CCD was unjustifiably benevolent. He then went on to complain that CCD had not had the benefit of any financial inspection report from CUSU which was now responsible for the financial supervision of credit unions and notwithstanding that CCD had issued precepts to the Director and Officers of CUSU delegating to CUSU the CCD’s powers to conduct financial inspections under the CS Act 1971. The report stated, which I accept, that the urgency and importance of an inspection by CUSU had been requested in every meeting held with the Director and other officers of CUSU right up to 2 April 2002.
- J56 On 6 June 2002 Mr Hyder Ali, Deputy CCD, reported to Mr Maharaj in response to a further request for information from the Permanent Secretary, that HCU, although previously warned, had failed to obtain CCD’s prior approval to undertake investments and, although HCU had submitted amended Bye-Laws for approval, they contained numerous errors and were

returned to HCU for correction. Mr Keith Maharaj said in evidence that he had relied on Mr Hyder Ali to prepare a response because his own workload was very heavy, particularly in his judicial capacity of hearing disputes.

J57 On 13 June 2001 HCU applied to CCD under Section 45(d) of the CS Act 1971 for permission to invest \$250,000 in each of seven HCU companies, all of them subsidiaries of HCU Financial.

J58 On 14 June 2002 CCD granted HCU's applications to amend the Bye-Laws and to invest in the seven HCU Financial subsidiaries, but reiterated that permission should be applied for before making such investment.

J59 On 20 July 2002 Mr Harnarine informed a Special General Meeting attended by Mr Eden Charles, CCD Officer III, that HCU Financial had opened a branch in Miami and that it intended to spread to New York and Canada with the following objective:

1. "To bring investment into Trinidad and Tobago to be re-invested into Sovereignty Bills
2. To bring National's funds into Trinidad and Tobago to be re-invested
3. To operate a Money Transfer Unit".

J60 On 20 August 2002 HCU applied to CCD for permission to increase HCU's Maximum Liability from \$20 million to \$50 million.

J61 On 29 August 2002 HCU applied for approval to invest in three further companies, including \$500,000 in HCU Bankers Insurance and \$250,000 in HCU Food Corporation.

J62 By letter dated 5 September 2002 Mr Ramnath, HCU Secretary, set out an explanation of the reasons for his earlier request for approval of an increase in the Maximum Liability. This included:

“ ...

2. The credit union is now attracting multi-million dollar deposits that are increasing with time. This increase in liability is also to meet any sudden demand by depositors for return of their investments ...”.

J63 On 28 October 2002 CCD wrote to HCU informing it that, as the information requested concerning the investment in three further HCU Financial subsidiaries had not been provided, the approval was withheld.

J64 At an AGM held on 14 December 2002 and attended by Mr Keith Maharaj resolutions were approved to amend the Bye-Laws by removing the cap of three consecutive terms to which an elected officer of HCU could serve and for the continuation of its operations in 2002-3 to increase the liability limit for HCU to \$2 billion.

J65 On 29 April 2003, following very lengthy attempted and actual negotiations between MOF, CUSU and CCD, Mr Keith Maharaj informed HCU that the CCD would be conducting a review of HCU's operations which was scheduled to commence on 12 May 2003. In that exercise the CCD would be assisted by CUSU. On 7 May 2003 HCU replied that the executive officers would be out of the country on 12 May and its external auditors were conducting a semi-annual audit and offering 20 May 2003 as an alternative start date. However, for unexplained reasons the CCD and CUSU personnel involved were not informed of that letter, although it was marked as received



by the CCD on 8 May 2003, and the two teams duly turned up at HCU Head Office on 12 May only to be told that a postponement had been requested.

J66 On 20 May 2003 the CCD (Keith Maharaj) wrote to HCU granting permission under Section 45(d) of the CS Act 1971 to invest \$250,000 in each of HCU Food Corporation and Banker's Insurance. In this connection, Mr Maharaj explained in the course of his evidence that successive governments had supported the investment by credit unions in preference to the banks in small enterprise activities such as agriculture, consumer shops, housing and land development so many of the credit unions acquired substantial investments in activities other than savings and loans. Accordingly the CCD advised that such activities should be carried out by separate companies, under a recommended business plan, which would report to the board of directors of the credit union which remained responsible for such companies. However, he went on to comment that HCU set up so many of these companies that, in his estimation, they were "unmanageable". Nevertheless, apart from the approved business plan the reason that he approved investment in HCU Food Corporation was because its objectives had noble ideals and it was to be a means of feeding the poor and was a sort of outreach to those less fortunate in society. He made the point that no government minister had ever criticised any of his decisions to approve investment by a credit union in companies with diverse activities. This mind-set of personal sympathy with the socio-economic advantages of credit union investments may well go some way to explaining why during his long tenure as CCD Mr Keith Maharaj was prepared to tolerate the dangerous level reached by HCU's defective corporate governance and flawed investment policy.

J67 Mr Maharaj conceded that he knew that, contrary to Section 45(d) of the CS Act 1971, HCU did not wait for his approval before making investments in subsidiary companies. By knowingly permitting that practice to develop the CCD was allowing HCU's investment operations to be effected outside supervisory control.

J68 The two inspection teams from CCD, under Mr Hyder Ali, and from CUSU, under Mr Pierre, attended HCU on 20 May 2003. Mr Harnarine raised a number of concerns about the Inspection, including that he did not recognise the Director of CUSU as having any legal status and would therefore not allow him to speak. The meeting and the decision to give further consideration to written terms of reference are fully described in Section E of this Report. There subsequently developed an issue between Mr Pierre and Mr Hyder Ali as to whether in the course of the 20 May meeting Mr Pierre had put forward an alternative approach to that of opposite sides negotiating terms of reference and which involved HCU putting in writing Mr Harnarine's expressed concerns about the proposed inspection so that CCD and CUSU could then reply to those concerns. The probability is that this alternative approach only evolved after the abortive meeting following some firm direction from the MOF Permanent Secretary that questioned why HCU was being treated in such a deferential manner, different from that applied to other credit unions, and that there should be no exchange of written positions by both sides. In the end, as described in Section E of this Report, Mr Hyder Ali and his team attended at HCU on 22 May 2003 but the CUSU team did not, Mr Pierre having been so instructed by the Permanent Secretary.

- J69 On 9 June 2003 Mr Ramnath of HCU wrote to CCD requesting submissions of the documented proposed scope of the inspection of HCU and stating that HCU remained receptive to any such examination provided it was conducted under the authority and instruction of the CCD.
- J70 CCD replied to this letter on 11 June 2003 informing HCU that he had decided to defer the review of HCU's operations because the Deputy CCD and Accountant had gone on vacation leave. This letter is also referred to and quoted in Section E of this Report. There is no explanation as to why the decision to hold the Inspection was not implemented upon their return from leave.
- J71 On 15 July 2003 the CCD, Keith Maharaj, wrote to CBTT on the subject of HCU's application for a licence to operate a bureau de change. He recommended that the application be accepted on the following grounds:
1. "The Credit Union has consistently conducted its Statutory Annual Audits and held Annual General Meetings in conformity with the requirements of the Act and its Bye-Laws.
  2. The Board of Directors and other Statutory Committees (and ad hoc Committees) perform their functions in accordance with the Bye-Laws of the Credit Union, consistent with sound business management practices and in the interest of the membership.
  3. The Credit Union adheres to the Philosophy and Principles of the Co-operative Movement.
  4. The unaudited Balance Sheet as at March 31, 2003 indicates an increase in Total Assets from \$550 million to £722 million over the six (6) month period from September 30, 2002 and Net Surplus of \$5.8 million over the six (6) month period as

compared to \$3.26 million for the financial year ended September 30, 2002.

5. The Credit Union has the managerial capacity and capability to operate this facility (Bureau de Change).
6. The membership which is in excess of 100,000 will benefit from the ease of conducting foreign currency transactions with their own institution and gain from the savings realized”.

J72 In cross examination Mr Maharaj said that he had been told by the CBTT representative that it conducted its own very robust due diligence before permitting establishment of a bureau de change and that such an operation had as its object the attraction of foreign exchange and would therefore not drain the finances of the credit union in spite of the serious shortcomings of HCU management. However, he agreed that in retrospect he “very much” regretted his decision to recommend the application. This Commission finds that Paragraphs 1, 2 and 5 of Maharaj’s letter of 15 July 2003 were wholly misleading and did not give to CBTT a fair appraisal of HCU’s statutory compliance record or of the quality of its corporate management.

J73 On 17 April 2004 HCU convened a Special General Meeting. It was attended by a representative from CCDs office. A motion was moved and passed that HCU’s Maximum Liability be raised to \$100 million. Mr Harnarine explained the need for this increase by referring to the growth of the number of depositors and the need to cover the increased number of deposits and the shareholders.

J74 On 5 May 2004 there was issued the first draft of the Final Evaluation Report for the Inter-American Development Bank Project.

It included the following observation:

“At present the situation in the CU movement is potentially dangerous. Deposits have grown substantially over the past few years, but CU capacity to manage them has not grown accordingly. As of December 2003, the CUs combined have excess liquidity in an amount estimated at \$0.9 billion or US\$150 million. These deposits are managed by a system characterized by lack of transparency, little accountability, possible corruption and poor managerial capacity, and an absence of regulation and supervision. CUs are already talking about investing in stock and establishing mutual funds. This combination of factors could easily be a prelude to a financial crisis, at least for the CU sector”.

This Commission entirely accepts this evaluation of the system of supervision of HCU by CCD which was tentative, haphazard, and unfocused. Lack of transparency, little accountability and poor managerial capacity all applied to HCU. However, there was no evidence of corruption before this Commission.

- J75 On 21 June 2004 HCU by Mr Ramnath wrote to the CCD applying for approval for an increase in the Maximum Liability to \$100 million.
- J76 The reasons given differ to a significant extent from those given to the Special General Meeting on 17 April 2004. Specifically, although the only reasons given to the meeting by Mr Harnarine were the growth in the number of depositors and the need to cover the increased number of deposits and shareholders, this explanation was said by the 21 June letter to account for \$45 million while \$5 million was said to enable debt to be incurred in the purchase of printing equipment and \$30 million was said to enable debt of \$30 million to be incurred in the purchase of television equipment, two purposes not mentioned to the Special General Meeting.

J77 CCD approved the application on 25 June 2004. There is no evidence to suggest that, before giving that approval, the CCD considered what impact those additional liabilities might have on HCU's liquidity or whether the expenditure on equipment was commercially justifiable.

J78 On 24 September 2004 there appeared reports in the press that proceedings had been brought to place HCU in receivership and that PricewaterhouseCoopers ("PWC") were carrying out a forensic audit. Mr Ramnath wrote to the CCD, Mr Keith Maharaj, personally on 29 September 2004 requesting CCD to issue a statement that those reports were untrue and enclosing a copy of HCU's Management Accounting Statements as at 31 August 2004 and asking CCD "to review same and allow us the benefit of your assessment viz a viz (sic) the financial stability of our organisation". Mr Keith Maharaj was on leave at this time and Mr Hyder Ali was Acting CCD. On the evidence before him Mr Hyder Ali had concluded that the HCU situation was so serious as to warrant the appointment of an Inquiry under Section 4 of the CS Act 1971. When Mr Maharaj returned from leave he countermanded Mr Hyder Ali's decision without giving reasons that are in evidence.

J79 Mr Keith Maharaj therefore replied confirming that the reports were untrue and expressing the view that HCU was "a viable Co-operative financial institution" for which conclusion he gave the following reasons:

"The Commissioner has examined the following:

- The statutory annual audits to September 30, 2003
- The monthly financial statements to August 31, 2004

- The Review of The Co-operate Governance and Internal Controls to September 3, 2004 submitted by Pricewaterhouse Limited
- Discussed with the principal auditors the status of the current auditing exercise being undertaken by Ramnarine and Company, Chartered Accountants
- The various reports of the officers of this Division who are directly responsible for the supervision of the Society”.

J80 On 17 December 2004 Mr Madan Ramnarine, HCU’s external auditor, informed the CCD that the audit of HCU for the year to 30 September 2004 could not be completed by 30 December 2004. The circumstances giving rise to this delay are described in Section H of this Report.

J81 The immediate consequence of the auditor’s refusal to finalise the audit was that the AGM fixed for 19 December 2004 had to be aborted. When that occurred Mr Ramnarine, the auditor, according to his evidence, received a personal telephone call from Mr Keith Maharaj asking him to attend the meeting and to sign the report, by which he meant the audit report. Mr Harnarine made it clear that he had not yet written an audit report and was not prepared to sign an audit report and therefore refused to go to the meeting. His evidence was that he had had earlier conversations about the incomplete audit work with CCD officials. He said in evidence that he suspected that if any such report existed on 19 December 2004, it had been concocted by HCU.

J82 Accordingly, the CCD was aware on 17 December 2004 that HCU had provided insufficient information to Mr Ramnarine to enable him to complete the audit and sign off the report.

- J83 On 2 February 2005 two officers from the County Caroni office of CCD made a routine visit to HCU's Head Office in Chaguanas "to determine the status of the Audit". Mr Ramnath told them that HCU was providing the further information requested by the Auditor.
- J84 The CCD Officer III reminded Mr Ramnath that HCU should not schedule the AGM until the HCU received the Audited Financial Statements.
- J85 Mr Ramnarine presented draft financial statements to the HCU Board on 12 February 2005. However they were not in final form because some accounts still remained to be reconciled by HCU and because HCU had indicated that some transactions remained to be included. Mr Ramnarine informed CCD of this position whereupon Mr Hyder Ali, Deputy CCD, wrote on 2 March 2005 to HCU drawing attention to Sections 33 and 48 of CS Act 1971 and the requirement for the audit to be completed within two months of the end of the financial year, which for HCU was 30 September 2004. The letter called on HCU to provide Mr Ramnarine with the relevant documents.
- J86 It is to be observed that, given that the completion of the audit was by then five months overdue, the letter from Mr Hyder Ali was couched in remarkably un-peremptory language.
- J87 Eventually, on 4 March 2005 Mr Ramnarine issued his audit report for the year ending 30 September 2004 to HCU and to Mr Hyder Ali, Acting CCD. It was not a consolidated financial statement for the HCU Group, which included 22 subsidiaries, but a stand-alone (HCU only) report. The report ended with the statement that the auditors expressed no opinion on the financial statements. It included the following passages:



“In accordance with Section 51(3) of the Co-operative Societies Act 1971, we have made an examination of the members’ overdue account, which amounted to \$55,967,721 at September 30<sup>th</sup> 2004. Of this balance \$32,755,779 represents unsecured amounts, which are in excess of shares, deposits and other securities held. A provision of \$11,422,012 has been made in the financial statements and in our opinion, an additional provision is required. Further, we are unable to report that the \$225,468,990 due from the HCU subsidiary companies are stated at their fair values. In order to make any statement of its collectability, the financial position of each subsidiary must be ascertained with a view to determine, if any, the level of provision for bad and doubtful debts. Management has included in the financial statements \$14,677,466 which represents interest and rent receivable from HCU subsidiary companies which, in our opinion, is not in accordance with the reporting standards since no payments have ever been made either towards principal or interest. The majority of HCU subsidiary companies are dependent on the Credit Union for financial support on a monthly basis and as a result we believe no income should be accrued for interest and Rent.

The Credit Union has an amount of \$993,718 in the financial statements under Cash in Hand which is in excess of the actual cash held at the Balance Sheet date. In addition, an amount of \$3,226,650 is included in Accounts Receivable which appears to be un-verifiable. These amounts could not be reconciled by the Credit Union’s staff and in our opinion, should be thoroughly investigated and the necessary adjustments, if any, be made to the financial statements.

and

For the period between October 1<sup>st</sup> 2004 and February 11<sup>th</sup> 2005, \$108,160,613 has been withdrawn by members from their deposits and savings accounts. In addition, \$33,049,335 has been withdrawn/encashed by the Credit Union from their investments and Fixed Deposits held with other financial institutions. The Credit Union therefore, has very little liquid resources to sustain any further demand for members’ withdrawals”.

J88 This report had an immediate effect within the CCD. Ms Latchmin Rampersad, Account III, wrote a Memorandum for Mr Hyder Ali in which there was set out a detailed analysis of the audit report and statements.

This drew attention to the fact that, although CCD had repeatedly requested consolidated financial statements in view of the 22 subsidiaries of HCU, none had been prepared, there was no statement of receipts and payments and although the auditors stated that the financial statements were prepared on a going concern basis, after the balance sheet date HCU had withdrawn/encashed \$33,049,335 from investments and fixed deposits wherefore it had “little liquid resource to sustain further demand from member’s withdrawals”.

J89 Immediately upon receipt of this Memorandum Mr Hyder Ali reported to Mr George, Permanent Secretary to MOL. He noted that the membership of HCU then amounted to approximately 184,000, equivalent to about 36 per cent of all members of credit unions in Trinidad and Tobago. Under the heading “Analysis of Illustration” Mr Hyder Ali listed out CCD’s concerns as follows:

“As at the end of September, 2004 there was a decrease in cash and cash equivalent to the tune of thirty million, eight hundred and four thousand, eight hundred and eighty-four dollars (\$30,804,884.00) with a resulting negative net cash and cash equivalent of ten million, sixteen thousand, five hundred and fifteen dollars (\$10,016,515.00). The resultant effect is that the Credit Union’s liquidity has disintegrated and therefore it has found itself in a position where it is unable to meet its immediate liquid needs. This is consistent with the Auditor’s observation that the Credit Union has very little liquid resources to sustain demands for members’ withdrawal of their deposits and shares.

The Commissioner continues to be confronted with complaints from members seeking to cash in their matured deposits or willing to cash in their deposits and accept a break-rate interest, however, even if he seeks to conciliate between parties, the reality is that the Credit Union is unable to meet its financial responsibilities.

The Board of Directors has breached the law in the following respects:-

- i. Granting of Loans to Non-Members, especially since no accounts were prepared for these Companies and therefore the inability of the Commissioner to determine their viability. The action on the part of the Directors can be best described a mis-appropriation of members' funds.
- ii. Investment in Hindu Credit Union Subsidiary Companies without the necessary approvals from the Commissioner.
- iii. The Board/Credit Committee acted recklessly when they granted zero interest loans to staff and the failed to manage the portfolio allowing for the high rate of delinquency. On the schedule, Mr Gawtam Ramnanan is listed as being delinquent.

Mr Gawtam Ramnanan is the Chief Executive Officer of the Credit Union and his behaviour is not symbolic of good leadership.

- iv. It is noted that Directors' Fees and Stipend is listed at one million four hundred thousand, two hundred and fourteen dollars (\$1,400,214.00). The Credit Union Bye-Laws do not allow for Directors' Fees, however, if (a) Director(s) is in the employ of the Credit Union, he must resign from the Society as an Officer.
- v. Wilfully breaching provisos of the act, Regulations and Bye-Laws.

Mr Hyder Ali's report concluded:

In the context of an auditing environment, inherent in the Auditor's expressed concerns are the following threats and dangers –

- (i) Possibility of fraudulent activity.
- (ii) Possibility of loss to members' savings as a result of negligence on the part of the Directors and Management.
- (iii) The negative impact on the Credit Union Sector which may tarnish the philosophy, principles and practices of Credit Unionism as enshrined in its ideology.
- (iv) The issue of confidence among people in the nation, especially in the Credit Union Movement.

Given the above, I recommend that;

- (i) An auditing firm be appointed to conduct an inquiry into the financial operations for the Credit Union and its Subsidiaries with a focus on determining whether any fraud was perpetuated on the membership.

- (ii) That the Directors be held responsible for all illegal loans granted and that all such loans should be called in on demand.
- (iii) That zero rated loans should be reviewed and where possible, new agreements be drawn up.
- (iv) That these accounts be sent to the Director of Public Prosecution (if possible) for possible interdiction”.

J90 On 14 March 2005 the CCD wrote to HCU (Mr Ramnath) calling for the comments of the HCU Board of Directors by 25 March 2005 on the Audited Financial Statements and on other specific requests for information made by the Auditor.

J91 On 23 March 2005 Mr Hyder Ali attended a meeting with Mr Harnarine, Mr Ramnath and other officers of HCU at which Mr Harnarine made clear that the HCU Board did not agree with the Auditor’s Report, that the Auditor’s conduct had been unprofessional, that there was a current run on HCU by depositors and that a Divestment and Strategic Alliance agreement had been entered into by HCU with Clico Investments (“CLICO”) under which CLICO would purchase 52 per cent of the shares in five subsidiaries of HCU for \$200 million. A Special General Meeting had been called for 7 April 2005 to deal with that agreement and with re-appointment of the auditor for the year to 2004.

J92 On 29 March 2005 Mr Hyder Ali wrote to the Permanent Secretary MOL informing him of this meeting and of HCU’s subsequent response to his concerns expressed in the audited statements “in which the explanations given in respect of the issues raised by Ramnarine’s report were:

“...very shallow in depth and nature and in my opinion does not adequately address the issues, but seem to justify if not legalize them.”

J93 The letter stated that it was the CCD’s intention to exercise his powers under Section 4(1)(a) of the CS Act 1971. That would involve the hiring of a recognised auditing/accounting firm but that although the Section 4(5) made provision for payment to be made from the credit union’s own funds, because of the risk that the HCU Board might refuse to accept responsibility for this payment, the letter asked for permission to use money from the Liquidation Account of the CCD.

J94 On 5 April 2005 Mr Ramnarine informed HCU, with a copy of the CCD, that he did not wish to be appointed auditor for the following years.

J95 On the same day HCU informed CCD that it had decided to replace Mr Ramnarine as auditor for the following reasons:

1. “That the Auditor’s conduct and approach was not in keeping with required standards.
2. That the Auditor departed from International Standards on Auditing in the discharge of his duties.
3. That the Auditor did not engage sufficient staff with the required expertise and exposure necessary to conduct the Audit Exercise.
4. That the Auditor refused to acknowledge reports on Internal Controls and Corporate Governance produced by PricewaterhouseCoopers.
5. That the Auditor held no meetings with Management and performed no Audit Programmes relevant to the assessment of Risk as regards the operations of the Credit Union.

6. That the period of work by the Auditor exceeded the Financial year, and that the Auditor abandoned all tenets of timeliness, access, and conduct becoming a professional organization”.

J96 It also informed CCD of the entering into by HCU of the so-called Strategic Alliance with CLICO. On 8 April 2005 HCU advised the CCD that at the Special General Meeting on the previous day, Ramnarine had been replaced as external auditor by Chanka Seeterram.

J97 On 21 April 2005 the CCD by Mr Hyder Ali notified HCU that pursuant to Section 4 of the CS Act 1971 the CCD had decided to appoint the firm of Pannell Kerr Foster to undertake an inquiry into the constitution, operations and financial position of HCU. He also informed the Permanent Secretary of the MOL that he had appointed that firm and that the inquiry was expected to begin on 2 May 2005 and that a final report was expected on 10 June 2005.

J98 A meeting then took place on 25 April 2005 between a CCD team consisting of Keith Maharaj and Hyder Ali and an HCU team consisting of Mr Harnarine, Mr Ramnath and others. At the suggestion of Mr Keith Maharaj HCU put in writing by letter dated 25 April 2005 to CCD its strong objections to the holding of a Section 4 Inquiry. The letter asserted that HCU had complied with every instruction, directive and request from the CCD, that it had changed its auditors and given reasons for so doing to the CCD and further:-

- “3. “It is no secret that the Hindu Credit Union has suffered tremendously from adverse publicity and misdirected reactions, resulting in a major run on the organization, which has just now reached manageable proportion, and which could be jeopardized by leakage of this Inquiry, leading to further losses.

4. The Hindu Credit Union has entered into discussions with major Financial Institutions including CL Financial Limited to redress any further financial run on our organization. These discussions are at a sensitive stage which could be jeopardized by this inquiry.
5. Any announcement of such an Inquiry will pose a credibility problem for the Hindu Credit Union with other major investors who weathered the storm with us.
7. Any announcement of this Inquiry into the public domain could provide a feeding frenzy for the media, further eroding public confidence in the Hindu Credit Union Cooperative Society Limited”.

The letter further stated:

“The Business Guardian Newspaper of the previous week listed the Hindu Credit Union Cooperative Society Limited as the largest Credit Union in Trinidad and Tobago. Despite all the rumours and speculations, the Hindu Credit Union Cooperative Society Limited has been able to meet all demands from its members for every single payout requested to date, a fact that is not cornering the attention it deserves.

We have treated no one with malice or ill will, yet we find ourselves being pushed around as a deliberate delinquent in the approach and manner of this announcement and delivery or the notice of this Inquiry.

We were not consulted, called in to discussions, nor given any courtesies that should be extended to an Institution of our status. Ours is an institution of 180 thousand members with 17 branches in Trinidad and Tobago, touching lives across the country. We should have at least had the courtesy extended to us where some kind of reason would have been given for such an Inquiry. None has been forthcoming”.

J99 The CCD then wrote to the Permanent Secretary at the MOL passing on HCU’s concerns and stating that a further meeting with HCU was to take place on 2 May. Following that meeting, CCD by letter dated 4 May 2005 informed HCU that the decision to appoint a Section 4 Inquiry would not be

reversed – the facts and information considered by the CCD in making his original decision had “not changed significantly enough (if at all) to warrant the reversal of the said decision”.

J100 On 6 May 2005 there took place a meeting attended by the Minister of Labour, Mr Anthony Roberts, Mr Keith Maharaj, Mr Hyder Ali, Mr Harnarine, Mr Ramnath and others from HCU and other legal advisors. The latter attempted to persuade the Minister to rescind the decision to appoint a Section 4 Inquiry but Mr Roberts, whose advisors at the meeting included his legal advisers, told HCU that he had no power to do so under the CS Act 1971. This was certainly correct.

J101 Shortly after this meeting Mr Roberts ceased to be Minister of Labour and was replaced by Mr Danny Montano. By letter dated 17 May 2005 Mr Ramnath of HCU wrote to CCD indicating that HCU wished to meet the new minister “to discuss the pending issues that were addressed to the former minister” and suggesting that the instructions to Pannell Kerr Foster be put on hold until there had been a “formal meeting” with the new minister.

J102 According to Keith Maharaj, he forwarded to Mr Montano all the relevant reports and financial statements and asked for directions.

J103 Between May 2005 and October 2005 the commencement of the Section 4 Inquiry remained pending. That was because the CCD was unable to authorise Pannell Kerr Foster to start work until funding had been provided by MOL. CCD held no funds from which it could pay for a potentially substantial inquiry. Mr Roberts had at first informed Mr Maharaj that the matter would have to be considered by the Cabinet. So the whole matter of



the inquiry stalled. Without funding from the Government there was nothing that the CCD could do to progress the inquiry. Mr Hyder Ali retired. The Permanent Secretary at the MOL changed. In August 2005 the new auditor, Chanka Seeterram, produced proposed Consolidated Financial Statements for HCU for the year ending 30 September 2004. These were signed by Mr Harnarine and other officers on or just after 8 September 2005. Chanka Seeterram also produced stand-alone Financial Statements for the year to 30 September 2004 which, although dated 30 August 2005, were not delivered until October 2005. Chanka Seeterram also produced in August 2005 numerous audit reports for HCU Financial and subsidiaries which were all loss making.

J104 On 26 September 2005 Mr Harnarine wrote to Keith Maharaj enclosing the Consolidated Financial Statements for HCU for the year to 30 September 2004 and asked for a meeting with the CCD to discuss these before the AGM on 30 September 2005. The letter also asked the CCD to consider cancelling the inquiry by Pannell Kerr Foster, the commencement of which was still pending, "given the contents of the auditor's report (by Chanka Seeterram) together with the results and financial status" of the HCU as given in the financial statements.

J105 Keith Maharaj referred their Consolidated Financial Statements to the CCD Accountant who on 3 October 2005 produced a report drawing attention to these important concerns: it was impossible to compare 2004 with 2003 and the consolidation of the subsidiaries into the statements distorted the picture with regard to HCU itself. The report stated:

“As indicated by the negative Cash and Cash equivalent figure of \$7,638,055, the HCU and its subsidiaries seem to be facing a severe cash problem. Notwithstanding the previous concerns, the importance of this to the Credit Union and its members is whether the HCU would have the ability to meet its short-term debts. The question is raised therefore, of whether fears and rumours circulating among the public are justified.

The debt ratio measures the ratio of a company’s total debt to its total assets. Although the calculations are for the HCU in 2003 and the HCU and subsidiaries in 2004, in both instances, the organisation’s total debts account for over 80% of total assets. If interest rates were to increase on loans and bank overdrafts or the company borrow more, the company’s liquidity situation would again be adversely affected”.

J106 On 10 October 2005 CCD wrote to HCU drawing attention to deficiencies in the Consolidated Financial Statements as presented and calling for Financial Statements which complied with the requirement of Section 51(3) and Regulation 48(2) of the CS Act 1971 by no later than 25 November 2005.

J107 At about this time Keith Maharaj had a meeting with the Minister (Mr Montano). The latter said that, based on the audit report of Chanka Seeterram, he was not convinced that a Section 4 Inquiry should proceed; he viewed such action as both “dangerous and a last resort” because it might give rise to a run on HCU. The minister instructed Mr Maharaj to implement such measures as would enhance the supervision of HCU. Further, it was asserted that under anticipated legislative changes credit unions were about to be supervised by the MOF or CBTT. Consequently the MOL would not make funds available to CCD to pay Pannell Kerr Foster to conduct an inquiry.

J108 It is to be observed that the risk of a run on a credit union would almost always be a potential consequence of the commencement of a Section 4 Inquiry. If that risk were to be a material consideration in a minister deciding to provide funding, the CCD's power to order such an inquiry could almost never be exercised. In each case the CCD is likely to have greater facilities through its periodic inspections and general familiarity with a particular credit union than the MOL and to be in a better position to weigh up the effect on the reliability of a credit union of the commencement of such an inquiry than central government. In the present case the shortcomings of the 2004 Financial Statements as produced by Chanka Seeterram were such that Mr Maharaj was justified in wishing to proceed with the Section 4 Inquiry regardless of the chances of a run on HCU. Given the information as to HCU's management and over-investment in illegal assets in 2005, the risk of collapse if nothing were done was sufficiently serious to justify the commencement of the inquiry.

J109 Given that the function of a Section 4 Inquiry under the CS Act 1971 is to provide to the CCD information directly material to the exercise of his powers of control over credit unions and given that the exercise of those powers has the overriding objective of the protection of depositors and others having dealings with the credit union, it is not for central government to arrest the CCD's operation of that protective machinery by withholding essential funds from the CCD. Even if there were a perceived risk of a run on HCU, it was for the CCD and not the Minister to judge the magnitude of such risk as against the necessity for an inquiry.

- J110 Accordingly, Mr Montano must be considered to have been seriously at fault in refusing funding to the CCD on that occasion.
- J111 On 12 January 2006, Deborah Ann Scott, Co-operative Officer II, County Caroni, visited HCU and discussed with Mr Ramnath the situation which had developed between HCU and CLICO in view of press reports of pending litigation. Mr Ramnath told her that the bailout of HCU by CLICO took the form of a loan of \$167 million of which HCU used \$100 million to refund deposits by providing depositors with CLICO financial products, such as the Executive Flexible Premium Annuity, and \$67 million was used to manage the HCU Overdraft Facility and to pay out those depositors in HCU who insisted on cash refunds. HCU had sold certain of its properties to CLICO, including the HCU Convention Centre in Freeport to finance repayment of its indebtedness to CLICO, to the effect that a balance of \$34 million plus interest was still due to CLICO. Negotiations with CLICO were under way for the settlement of that balance. Mr Ramnath promised a full report by 16 January 2006.
- J112 By 2 March 2006 HCU had failed to provide any such report and the CCD (through Mr Charles) called upon Mr Ramnath to ensure that the report reached the Department by 15 March 2006.
- J113 On 14 March 2006 Mr Ramnath wrote to CCD that negotiations with CLICO were continuing and a detailed report was being prepared.
- J114 On 6 April 2006 Mr Ramnath wrote to CCD summarising the outcome of negotiations with CLICO as follows:

- (i) Contrary to the original mutual negotiations there had been no divestment to CLICO of any of HCU subsidiaries and there had been no strategic alliances between HCU and CLICO;
- (ii) Benefits received from CLICO were cash (\$56,240,331) and transfer of the depositor liabilities to CLICO (\$111,344,866), totalling \$167,585,197;
- (iii) Sale of 20 properties to CLICO plus printing press equipment and medical equipment for \$167,585,197.

J115 It was added that the proceeds of sale to CLICO of the 20 properties crystallised a capital appreciation of in excess of \$35 million. In fact the HCU Convention Centre was not included in these sales. Instead, it was mortgaged to CLICO for 5 years.

J116 On 12 May 2006 there took place a meeting between Mr Diaram Maharaj, who had recently taken over as CCD from Keith Maharaj and Mr Emmanuel George, Permanent Secretary at the MOL. This was at the request of Mr George who wanted to know why an inquiry into HCU had not taken place. This is somewhat surprising, given that Mr Montano, a former minister at MOL, had blocked the previous CCD's efforts to set up an inquiry.

J117 Mr Diaram Maharaj explained in his witness statement that since taking over as CCD at the end of January 2006, he had been confronted by acutely difficult issues involving Eastern Credit Union and Housing Investment and Land Ownership Co-operative ("HILOC"), both of whose members and depositors were publicly pressing demands for intervention by CCD. Indeed, the CCD's offices were besieged by the media. Managing these issues, including numerous meetings with the minister at MOL and the Permanent

Secretary, which, according to the evidence of Mr Diaram Maharaj, took up so much time that he was unable to attend further to HCU for some four months.

J118 In response to the Permanent Secretary's enquiry Mr Diaram Maharaj set out in his Memorandum of 12 May 2006 his reasons why an inquiry into HCU should not be held. The Memorandum was prefaced by a reference to Mr Maharaj having noted advice received from the Attorney General, but that has not been put in evidence. The Memorandum then set out the following reasons for non-intervention in HCU:-

1. No follow up comprehensive assessment has been done on the entire operations of this Credit Union since the Commissioner's request for the opinion given one year ago. The situation could have changed since.
2. Hindu Credit Union, Eastern Credit Union and First National Credit Union, the three (3) largest Credit Unions in Trinidad and Tobago all qualify for Inquiries into their Constitutions, Operations and Financial Positions. Any such move to hold Inquiries at this juncture will only cause a loss of confidence in these organizations and may result in a run on their operations. Together, the three of them have almost seventy-five (75%) per cent of the total membership of all Credit Unions in Trinidad and Tobago.
3. With respect to the Hindu Credit Union with an asset base of approximately one billion dollars and a membership of approximately 150,000 members and branches throughout Trinidad and Tobago, I regret to report that supervision of this Society by the Co-operative Division has been compromised because of the acute shortage of Co-operative Officers over the past ten (10) years.

4. Due to this shortage of Co-operative Officers over the past ten (10) years, this, and other Credit Unions were starved of appropriate supervision.

The Memorandum then sets out Remarks and Recommendations. These explain why the request for a Section 4 Inquiry was not pursued further.

#### “REMARKS

The Hindu Credit Union is part of the Co-operative Sector which is an important contributor to the national economy. All approaches to solutions of its problems should be well thought-out and should be geared towards its sustainability. Any sudden action will only hasten its demise with the resultant losses by members and erosion of confidence in the Credit Union Movement. It should also be noted that the lack of appropriate supervision by the Co-operative Division could have been a contributor to its deteriorating operations. Too much is at risk to pursue an Inquiry at this time.”

#### RECOMMENDATIONS

1. A team comprising seven (7) senior Co-operative Officers and the Accountant III should inspect and assess the entire operations (all branches included) of the Hindu Credit Union.
2. Based on the findings of the team, if necessary, the team should provide the necessary technical help and advice for the institutional strengthening, for example, the team could assist with institutional planning, securing of assets, financial monitoring and control, compliance with statutory requirements and training.
3. Thereafter the Co-operative Division should monitor the Society's operations at least monthly and ensure that preventative measures are put in place for future avoidance of problem situations.
4. Decision to hold the Inquiry should not only be informed by advice only, but by prudent judgement and I may add not by recrimination or any prejudice real or perceived. The same

should be applicable for Eastern Credit Union and First National Credit Union respectively”.

J119 In the course of his very frank evidence Mr Diaram Maharaj said in cross-examination that his main reason for not wishing to institute a Section 4 Inquiry in May 2006 was that the information as to HCU's financial position then available to CCD was a year old and the situation could have changed in the meantime. However, he also conceded that HCU had not been properly supervised for some ten years up to 2006 and confirmed that if the CCD had carried out its duties fully to enforce the CS Act 1971, a lot of the losses eventually suffered by the members could have been prevented. In order to give a fair picture of Mr Diaram Maharaj's evidence, it is right to say that he was really deeply concerned about the risk of an adverse impact by the setting up of a Section 4 Inquiry on the well-being of depositors in HCU, should that cause a fatal run on HCU.

J120 There can be little doubt that during the period immediately before and during Mr Diaram Maharaj's tenure as CCD (January-May 2006) there were shortcomings in the supervision of HCU to which the lack of Co-operative Officers at CCD was the main contributing factor. The in-house supervisory facilities available to CCD had not grown commensurately with the expansion of HCU into a multi-faceted corporate group and with the overall expansion of several other credit unions.

J121 Following delivery of the 12 May 2006 Memorandum, Diaram Maharaj retired and was replaced as Acting CCD by Mr Bheemal Ramroop. On 2 June 2006 he submitted to the Permanent Secretary at MOL a comprehensive Action



Plan for the conduct of an inspection of HCU under Section 5 of the CS Act 1971 by a team of seven under the leadership of Mr Eden Charles, Co-operative Officer III, who was in charge of the Caroni District CCD Office in the territory of which HCU's Head Office was located. A report was to be prepared and submitted by 30 June 2006.

J122 On 7 June 2006 the Acting CCD agreed to a request by HCU for the inspection to be postponed for three weeks to enable HCU's statutory audit to be completed.

J123 The inspection eventually commenced on 4 July 2006. However, the production of the inspection report was considerably delayed. Indeed, it was not sent to CCD until 2 April 2007. It was delayed, according to the evidence of Mr Karyl Adams, a Senior Co-operative Officer who was a member of the inspection team, due to the failure of HCU to produce the documents essential to the inspection as and when they were needed to progress the inspection team's work.

J124 The inspection report set out very serious criticisms of the management and commercial activities of HCU. In the course of his evidence, which this Commission accepts to be an accurate account of what was found on the inspection, Mr Adams gave the following account:-

- (i) HCU had purchased land and buildings without carrying out proper searches to see whether the property was subject to a prior mortgage and without first carrying out due diligence and obtaining a proper and independent valuation.

- (ii) Although HCU had a fixed deposit portfolio of \$621 million, it failed by its financial managers to monitor the availability of adequate cash reserves to repay these deposits at their maturity.
- (iii) The core business of HCU of the granting of loans was replaced by the acquisition of property which placed HCU in an adverse cash flow position.
- (iv) In consequence of these defects in management HCU failed to pay 60 per cent of the deposits on maturity. Further 25 per cent of deposit holders were given cheques on maturity although HCU management knew that there were no funds in the bank to honour the cheques with the result that they were dishonoured.
- (v) The amendment to HCU's Bye-Laws in 2002 was expressed in terms which were so broad as to encourage investment in subsidiaries without CCD's approval which ought first to have been obtained in accordance with Section 45(d) of the CS Act 1971.
- (vi) HCU flouted all its internal policies and procedures by
  - (a) Management and directors granting loans to themselves even though most of them were already delinquent, that is to say in default on repayment, at the time of the further grant;
  - (b) The applications for loans not being always correctly made out by the directors;
  - (c) There being a lack of written approvals on loan forms for directors and senior management by the credit committee and by the directors themselves in granting the loans;
  - (d) Illegally granting loans to non-members, in particular to HCU subsidiaries contrary to the CS Act 1971.

In this connection the Reports' findings on Loans and specifically Officers' Loans amount to an appalling story of mismanagement.

The Report continued:

## “2.4 Loans

The Society has a written detailed and comprehensive Loans Manual. The loan policy is well documented and detailed and contained relevant information pertaining to the administration of loans. Loans to Officers and staff, mortgage and commercial loans are approved at the head office. In addition branch managers approve ordinary loans within specified limits of authority.

Generally members' loan files at the head office were not updated with relevant documents in a timely manner. We found that there were violations to the loans policy. In some instances:

- Generally it was found that persons became members by purchasing \$25.00 in shares and received huge loans in excess of \$100,000 on the same day. There was little or no Securities found for these loans.
- The Facts Findings Sheets in member's files revealed that although member did not qualify for a loan, telephone conversation from the President and other Officers and Senior Management inform the loans officers to grant the loan. These subsequently became delinquent.
- Incomplete loan applications were found and the payments were disbursed.
- There were no valuations for security offered.
- There was a large number of unsecured loans.
- Instruments of Charge/Mortgage Bill of Sale were not duly executed.
- Members did not qualify for loans, as debt service ratios (DSR) were very high (beyond 40%).
- Loan agreements were not adhered to.
- Loans were restructured without necessary approvals.
- The Loans Manual is silent with respect to zero % loan.
- Loans were granted to non-members without the approval of the Commissioner for Co-operative Development.

### 2.4.1 Officers Loans

We examined loans to officers on the Board of Directors, Credit Committee and Supervisory Committee. We observed the following in some instances:-

- Officers with delinquent loans continue to serve on the Board of Directors in contravention of Bye-Law 29(f).
- Loans were not granted in accordance with Section 43(3) of the Co-operative Societies Act and Bye-Law 40(f).
- There were cases where Officers had more than one (1) mortgage loan, which violated Bye-Law 40(e).
- Huge loans were granted (over \$500,000.00) in excess of their shareholding (some officer holding shares of only \$30.00)
- Delinquent loans were refinanced which contravened the Loans Policy.
- Loan payments were not made in accordance with the loan agreement.
- There were incomplete loan application forms but funds were disbursed.
- No documents were seen for the disbursement of loan.
- Officers were granted 0% loans, in contravention of the loans policy.
- There were irregular transactions regarding the repayment and disbursement of loans, e.g. loan application forms were not properly approved, IOCs and/or securities were not duly executed yet senior management approved vouchers for disbursement”.

(vii) HCU granted loans to subsidiaries for the purpose of paying for operating expenses, such as power and water supplies and salaries for staff and that suggested that the subsidiary in question had severe cash flow problems.

- (viii) The subsidiaries failed to repay such loans and thereby rendered the loans irrecoverable by HCU because they were unlawful in the first place.
- (ix) The HCU loan recovery unit failed to report the contents of its delinquency portfolio to the HCU Board of Directors.

J125 Arising out of these observations, the report recommended the following:

“In light of the findings listed above, the following recommendations are submitted:-

5.1 Minutes of meetings

- a) Minutes should be clear and concise.
- b) Minutes should contain accurate financial reports and details of all decisions taken.
- c) Training for the Board of Directors and all relevant Committees.

5.2 Fixed Assets

- a) There should be a properly structured and detailed Fixed Asset Register.
- b) A written policy should be established for the purchase and disposal of fixed assets.
- c) The policy should include details such as quotations, valuations and appraisals of fixed assets.
- d) Deeds of Conveyances and other legal documents should be executed and registered expeditiously.

5.3 Loans

- a) The Loan Policy should be strictly adhered to.
- b) Instruments of Charge/Mortgage Bill of Sale and other legal documents should be prepared, executed and registered for all loans.

- c) Approval from the Commissioner for Co-operatives should be sought for all loans on real property in accordance with Section 43(2) of the Co-operative Societies Act.
- d) Loans to Officers should be granted In accordance with Section 43(3) of the Co-operative Societies Act.

#### 5.4 Delinquency

- a) The Recoveries Department should submit monthly reports to the Board of Directors.
- b) A quarterly review should be conducted on the Recoveries Department to evaluate the delinquency and collection rate.

#### 5.5 Subsidiaries

- a) Prior approval should be sought for investments from the Commissioner for Co-operatives in accordance with Section 45 of the Co-operative Societies Act.
- b) The same should be obtained for loans to the subsidiaries in accordance with Section 43(l) of the Co-operative Societies Act.
- c) A proper and detailed Register of Subsidiaries should be maintained.
- d) The subsidiaries should submit annually audited financial statements to the Society, its Parent.

J126 The report concluded:-

#### 7.0 Conclusions

In our opinion the Hindu Credit Union Co-operative Society Limited has not adhered to the Co-operative Societies Act, Co-operative Societies Regulations and its Bye-Laws. Further, HCU have violated most of its written policies (loans, investments, etc.). The core business of the Society (Granting of loans) was replaced by the acquisition of properties. This placed the Society in an adverse cash flow position. Management must adhere to the recommendations contained in this report and to return to its core business to ensure its immediate survival and long term stability.

Based on the findings of the Report, an Inquiry under Section 4 of the Co-operative Societies Act, Chapter 81:03 should be held into the constitution, operations and financial position of the Society”.

J127 Notwithstanding the inspection team’s recommendations to hold an Inquiry under Section 4 of the CS Act 1971, no action had been taken on this by the CCD up to 28 August 2007 when Mr Bheemal Ramroop was replaced as CCD by Mr Charles Mitchell. This inaction has not been explained. However, following his appointment, Mr Mitchell informed himself of the inspection report and encountered further matters which led him to write to the Permanent Secretary to the MOL on 4 December 2007 recommending that a Section 4 Inquiry be set up. Mr Mitchell described in his evidence the further matters which had caused him to make this recommendation. These included his review of the latest audited financial statement, that covered the year to 30 September 2005, which showed that HCU had a negative cash position of \$11 million, the result of a bank overdraft of \$14 million and cash in hand of \$3 million. Additionally, the value of the investments at \$20 million was inadequate for a credit union with assets totalling \$966 million. Further, the core business of making loans to members had decreased in the course of the 2004-2005 financial year by 141 per cent.

J128 Mr Mitchell described in his evidence how he was receiving complaints from members of HCU that they could not obtain a loan or that they could not get re-payment of their deposits. When claims for payment were formally raised before him in his official capacity, HCU was present in the person of Mr Harnarine and was legally represented and, although it would usually admit the amounts claimed, it would ask for time to make payment by

instalments. Information would then be received that the cheques by which such instalments were supposed to have been paid were bouncing.

J129 Mr Mitchell also described how he had received complaints from outside contractors who had carried out construction work for HCU that they could not get their bills paid.

J130 According to the evidence of Mr Mitchell, which this Commission accepts, both he and his predecessor as CCD, Mr Bheemal Ramroop, had received personal threats of violence, Mr Ramroop from HCU and from Mr Harnarine personally. In consequence of that, the hearings before him of claims against HCU were conducted with a police guard present.

J131 In his letter of 4 December 2007 to the Permanent Secretary, Mr Mitchell specifically drew attention to the following further matters.

- (i) There were 21 wholly owned subsidiaries, the investment in those companies amounting \$16,975,000 but no income was recorded from any of them, whereas loans to them totalled \$33,999,556 there being no record of repayment.
- (ii) Undivided earnings at \$10,052,160 in the year to 30 September 2005 had decreased by 385 per cent from the previous financial year.
- (iii) Total liabilities were \$823,764,592.
- (iv) The net surplus had decreased from \$25,764,402 in 2004 to \$6,019,878 in 2005.
- (v) The Audited Financial Statements did not show a true and fair view of HCU's financial position.

The letter concluded:

“Based on the foregoing, the members are in serious jeopardy of losing their shares invested in this Society. This will impact



negatively on the entire Credit Union Movement in Trinidad and Tobago, and be quite embarrassing to the Ministry of Labour and the Government of Trinidad and Tobago”.

J132 The MOL having decided to accept the recommendation for the setting up of a Section 4 Inquiry, and to provide funding, it became necessary to select an external firm of accountants capable of conducting this work. This involved putting the appointment out to competitive tender. That in turn involved significant delay. In the event, Ernst & Young (“EY”) were the successful bidders and were appointed by a letter dated 10 June 2008. It had taken over 5 months to go through the processes of tendering and selection. The overall effect was that the very experienced CCD inspection team having been appointed in June 2006, and in its report delivered on 2 April 2007, having included a recommendation for the appointment of a Section 4 Inquiry, no such Inquiry was set up until 14 months later. Given the rate of deterioration of HCU’s financial visibility evidenced by the inspection report and the CCD’s conclusion in his letter to the Permanent Secretary of 4 December 2007 that the members were in serious jeopardy of losing their shares in HCU, this can only be described as a travesty of regulatory control.

J133 There can be no doubt that by the beginning of April 2008 HCU’s financial position had deteriorated well beyond the point at which it could safely conduct the business of taking deposits.

J134 The seriousness of the situation had by that time got home to Mr Harnarine. He claims to have had a number meetings with the then Prime Minister, Mr Patrick Manning, during January/February 2008 in the course of which Mr Harnarine stated that a bailout of HCU was out of the question and that it

should cure its current difficulties by a plan to divest its assets. Mr Harnarine said in evidence that the Prime Minister had referred him to the Minister of Finance, Ms Karen Tesheira, with whom he had held meetings in the first half of April 2008. She said in her evidence that she had been informed by Mr Manning on about 8 April that Mr Harnarine had stated that HCU had temporary liquidity problems and that there should be a meeting with her to explore whether the government could assist HCU.

J135 Various inconclusive meetings were held in the first half of April 2008, involving Ms Tesheira, Senator Mariano Browne, acting as Minister of Finance, and the Permanent Secretaries to the MOF and MOL. In the course of a meeting attended by Mariano Browne and Mr Harnarine during the period 10 to 15 April 2008 the latter told Senator Browne that HCU needed a government loan of \$71 million. At a meeting held on 17 April 2008, attended by Ms Tesheira, the Permanent Secretary at the MOF, Mr Harnarine and Mr Bachan, Ms Tesheira told the HCU representatives that GORTT would consider providing assistance to HCU provided that it demonstrated that its problem was that it was illiquid and not insolvent and subject to the conditions that its financial condition was verified by an independent audit, that it provided a list of all its unencumbered properties and that HCU informed MOL that it would permit an independent audit. Mr Harnarine was at no stage given any unconditional assurance by Ms Tesheira that GORTT would provide \$71 million or any other specific amount.

J136 By a letter dated 23 April 2008 HCU by Mr Harnarine wrote to the Minister of Labour, Mr Dumas, referring to the discussions with MOF and the need for a

due diligence review by an independent firm of auditors which would be required if the MOF was to provide financial assistance. The letter confirmed that HCU's Board had agreed that authority be given to the Minister of Labour to appoint the firm of auditors. The letter concluded by saying that HCU was "in dire need of your prompt intervention to avoid collapse...".

J137 On 9 June 2008, just prior to the appointment of EY to carry out the Section 4 Inquiry, HCU's Supervisory Committee sent to the HCU Board a memorandum recommending that, based on reports by the Board on the current status of HCU's operations and its liquidity position with respect to monies and to the membership and litigation by members against it, the Board should consider the intervention of the Office (of CCD) "to assist with the management of HCU". MOF forwarded this memorandum to the CCD on 13 June 2008.

J138 The position that had been arrived at by 10 June 2008 when the CCD appointed EY to conduct the Section 4 Inquiry was therefore that HCU was to be subjected to that Inquiry and that it was not going to receive any financial assistance from GORTT unless and until its financial position was verified by an independent firm of auditors as one of illiquidity rather than insolvency. Government policy was apparently informed by the belief that financial assistance could only be justified if HCU, in spite of liquidity problems, remained a going concern. It was thus expressly made known that no financial rescue would be available if HCU were found to be insolvent.

J139 On 11 June 2008 Mr Ramnath wrote to the CCD, Mr Mitchell, a letter prefaced by a paradigm of an understatement:

“As you are aware, the (HCU) is experiencing some difficulties arising from liquidity pressures”.

J140 It informed CCD that HCU’s Board had that day agreed (i) that the CCD should be required to appoint a small management team to work with EY, to instruct the Board in the management of HCU and carry out the day-to-day management with full authority to direct HCU staff and to report directly to CCD; (ii) to give EY full access to the books, accounts, records, securities and other information of the HCU — with full co-operation and support of the Board, (iii) to comply with the instructions and advice of the management team and (iv) to invest the decision-making and signing authority in the management team.

J141 On 12 June 2008 Mr Ramnath, HCU Board Secretary, met the Minister of Finance, Ms Tesheira, and, as confirmed in Mr Ramnath’s letter of the same date, it was indicated by Mr Ramnath that all the subsidiary companies of HCU would remain under the full control and authority of HCU’s management but that HCU would allow full access to all books and records of such subsidiaries to the proposed management team to be appointed by the CCD. In spite of Ms Teshiera’s denials in her evidence, there is no doubt that she was well aware of the proposals that the HCU Board would delegate its powers of management to CCD. The probability is that the idea originated in the MOF with her approval and that Mr Ramnath’s letter of 11 June 2008 was drafted or approved by MOF which then sent it by fax to Mr

Mitchell. The proposal was neither rejected nor accepted by the CCD. On the face of it, by leaving the subsidiaries under the management of the HCU Board it left open to mismanagement a business sector which was a major cause of the problems besetting HCU.

J142 The work of the Section 4 Inquiry by EY under the leadership of Maria Daniel commenced on 16 June 2008. By 8 July 2008 the initial findings of the Inquiry had begun to take shape and on the following day, at the request of the Permanent Secretary MOF to CCD, Ms Daniel made an oral presentation of those findings to the CCD and to representatives of MOF. The latter had specifically requested a preliminary presentation because MOF had to consider HCU's request for financial assistance from GORTT.

J143 What emerged from the work so far carried out by EY was that HCU's position represented a case of actual or unavoidable insolvency rather than illiquidity. For that reason EY orally requested and the CCD readily agreed to an expansion of the scope of engagement. The original scope of engagement had not been specified except in very general terms and by reference to the list of Information Requirements identified in the Appendix to Mr Mitchell's letter of 12 June 2008 to HCU. This was designed primarily to investigate issues of compliance, rather than solvency. It was now agreed that the following should be covered by the Section 4 Inquiry namely:

- Assessment of the recoverability of the loan portfolio;
- Assessment of the quality of the fixed assets and investment properties;
- Assessment of the financial viability of the HCU subsidiaries;

- Assessment of the members fixed deposits/holdings; and
- Preparation of statements of assets and liabilities as at 31 May 2008.

J144 Although EY had received considerable co-operation from HCU staff up to this time, things changed following a meeting on 15 July 2008 at which EY met the Chief Executive Officer of HCU, Mr Ravindra Bachan, and presented him with a list of “must have documents” which it urgently needed by 18 July in order to service the expanded scope of engagement. On the following day EY personnel found that a virus had infected the computer database which was vital to their work and on the same day Mr Harnarine informed Ms Daniel that the Head Office of HCU would be closed on 19 July because it was anticipated that there would be a levy on that day at the instance of the National Insurance Board. EY were unable to extract from the Head Office certain files essential to progress on their Inquiry, the building having been closed down that afternoon.

J145 EY having remained locked out on 18 and 21 July, Mr Harnarine informed Ms Daniel on 21 July that the situation had changed and that was because EY had broken their duty of confidentiality by their presentation to MOF.

J146 By 9 July 2008, however, EY’s investigations had enabled it to reach the following preliminary findings of which it informed Mr Mitchell and, with his express oral authority, the representatives of MOF, albeit not the Minister.

- (i) Confirmation of the findings of the Inspection Report that the HCU was in breach of its internal controls, policies and procedures, particularly in the case of its loans portfolio.

- (ii) That although the HCU was representing in its Management Accounts as of 30 September 2007 that it had an asset base of \$817 million and liabilities of \$716 million, this did not appear to be an accurate reflection of the financial position of the HCU.
- (iii) The asset base of the HCU as represented in its Management Accounts appeared to be inflated. For example:
  - (a) Loans in excess of \$183 million owed by the HCU subsidiaries were listed as assets in the HCU Management Accounts. However, these subsidiaries (with the exception of Bankers' Insurance) were loss-making entities and did not have any or any sufficient realisable assets to liquidate their debt to HCU. In fact, the HCU subsidiaries (with the exception of Bankers' Insurance) were cash poor and dependent on loans from the HCU to meet their operating and other expenses.
  - (b) That even though there were issues and litigation surrounding the title and ownership of assets and real property, the HCU included these assets in its management accounts as part of its investment properties, thereby inflating the value of its assets.
- (iv) The value of HCU's asset base should therefore be adjusted downwards consistently with the realisable value of those assets.
- (v) The consequence of such a reduced value was that HCU would not be able to discharge its liabilities, there being a short fall of approximately \$170 million which demonstrated that HCU was insolvent. Moreover, there might have to be further reductions in the value of the asset base depending on the ability to recover delinquent loans amounting to \$64 million and by reason of valuations of real estate presented by HCU proving to be excessive.

Further, in certain cases HCU appeared to have disposed of real estate at an undervalue or at less than the acquisition cost and that a forensic inquiry ought to be undertaken to investigate any possible alleged benefits arising from such transactions.

- J147 On 18 July 2008 the Permanent Secretary MOF wrote to Mr Harnarine expressing the Minister's grave concern at the information contained in an earlier letter from Mr Harnarine requesting a meeting with the Minister by reason of HCU's immediately due liabilities listed in the letter and by reason of the information which had been provided by EY. The letter went on to urge HCU to co-operate with the pending inquiry and to state that the Minister considered that the inquiry should take its course and the "discussions" of MOF and HCU as to a rescue should be discontinued. It is to be observed that in view of the preliminary presentation of EY's findings, it was hardly surprising that the Minister took this course. She has already made it clear that financial assistance would only be considered if HCU's problem was illiquidity as distinct from insolvency.
- J148 The following day the HCU Board reacted to that letter by passing a resolution that the Inquiry conducted by EY should be halted and by reason of the intervention and intrusion of MOF and should be replaced by a new Inquiry which would report only to Mr Mitchell. The resolution further called on the CCD to appoint a liquidator over HCU to discharge its liabilities and to restore HCU to "a state of viability".
- J149 On 23 July 2008 CCD applied to the High Court for an injunction to allow the Inquiry to continue and for the appointment of a Provisional Liquidator over HCU. Orders were made for the appointment of a Receiver. R.D. Rampersad & Co was appointed Receiver, which appointment was later converted to that of Provisional Liquidator, and that same day took possession of HCU's Head Office.



J150 An attempt by the HCU Board to have the High Court's order discharged was refused on 22 August 2008. EY continued with its work on the Section 4 Inquiry. Some at HCU, including Mr Harnarine, found it hard to accept that the Board had totally lost control of HCU and Mr Mitchell received physical threats of violence from Mr Harnarine personally.

J151 In the meantime, on 8 August 2008 the Receiver provided his interim report to the CCD. The picture that was then unfolded was of a financially crippled institution. Salient findings may be summarised as follows:

- (i) Immediately available cash in various bank accounts for paying recurrent expenses and creditors amounted to no more than \$89,995.88.
- (ii) Indebtedness immediately due and payable to the Board of Inland Revenue (including in respect of penalties) was \$3,126,125.11.
- (iii) Contributions and penalties due and payable to the National Insurance Board for May 2007 to June 2008 amounted \$1,601,683.09.
- (iv) HCU was indebted to CLICO to the extent of \$259,000.00 in respect of HCU employees' premiums under their pensions plans, that amount having been deducted from the employees' salaries but not transferred to the pension provider.
- (v) Outstanding salaries due to HCU employees totalled \$598,753.77.
- (vi) An amount of \$191,021.00 was due in respect of land and building taxes on properties owned or occupied by HCU.
- (vii) Outstanding indebtedness in respect of utility supplies amounted to:
  - \$186,253.51 for electricity;
  - \$825,927.02 for telephones;
  - \$37,280.25 for postal services;
  - \$23,581.68 to the Water and Sewerage Authority.

(viii) Indebtedness on loans which had not been serviced by the payment of accruing interest, namely:

- (a) CLICO loan of \$35.2 million; interest accruing at 10 per cent per annum;
- (b) SR Projects Ltd US\$ loan (approximately \$16 million), interest accruing at 12% per annum;
- (c) Exim Bank of the USA loan of US\$4,802,699 (approximately \$30 million), interest accruing at 10% per annum;
- (d) Intercommercial Bank overdraft of \$7,004,669.24 incurring interest at 15.25 per cent per annum;
- (e) Intercommercial Bank loan of \$3,556,354.67 incurring interest at 11.5 per cent per annum.

(ix) Outstanding judgment debts totalling \$53,908,825.62.

It is to be noted that the proportion that immediately available cash balances bore to the total indebtedness immediately due and payable was at most about 0.15 per cent.

J152 The total loan portfolio was discovered to be \$225 million. However, approximately \$65 million of that was regarded as made up of bad or doubtful debts.

J153 It was further discovered that HCU did not have a Fixed Asset Register. Given the numerous HCU offices and their contents owned by HCU, this presented a remarkable shortcoming in corporate governance.

J154 The Section 4 Inquiry Report by EY was provided to the CCD on 9 September 2008.

J155 Mr Mitchell, having considered that Report, took the view that its key findings should be placed before the members of HCU to ascertain their views before

he took a final decision whether to order HCU to be wound up. For this purpose he convened a Special General Meeting of HCU to be held on 17 September at the HCU Convention Centre in Freeport. However, the HCU Board objected on procedural grounds to the convening of a Special General Meeting and by their lawyers called on the CCD to withdraw the notice of the meeting which had been published in the national press. When the CCD refused to withdraw the notice the Board applied to the High Court for an injunction against the CCD. The Board's application was heard and refused by Madame Justice Pemberton on the basis that it was an abuse of process. That was a conclusion which ought to have been perfectly obvious to any competent law firm.

J156 While the hearing of HCU's application was in progress, Mr Mitchell, Ms Daniel and Mr Rampersad and their respective legal advisers attended at the HCU Convention Centre for the purpose of conducting the Special General Meeting. Upon arrival they were confronted by a group of 50 to 60 of those in the audience who by shouting, clapping and booing drowned all attempts by Mr Mitchell to explain to the meeting why he had decided to put HCU into liquidation. Apart from shouting "no meeting", the group was shouting "we want Harry". Mr Mitchell, being unable to make himself heard, called upon an Assistant Superintendent of Police who was present with other police, to intervene and restore order by getting the disruptive group out of the building. He declined to do so and told Mr Mitchell to wait for the group to calm down. This stand-off continued for about 45 minutes until at about 1:45 pm Mr Mitchell left the building, having decided that the meeting could not be

commenced. He made a summary of the findings of EY and caused them to be published in the press on 21 September 2008.

J157 There can be no serious doubt that this was a quite deliberate pre-arranged wrecking attempt to prevent the meeting and so to pre-empt the decision of the High Court. It is to be inferred that it would not have taken place unless it had been procured by Mr Harnarine personally or at least organised with his knowledge and overt approval. It was a blatant attempt to deploy mob rule to subvert the lawful operations of the CCD as the only regulatory authority which had the responsibility to protect the members of HCU from the unlawful exploitation of their investments.

J158 The summary of the findings of EY as published in the press listed the following key matters identified by EY and explained by CCD.

- (1) The statement of Assets and Liability as calculated by EY from HCU's files and records showed that HCU had a shortfall of recoverable assets to liabilities of \$486.5 million.
- (2) A balance sheet shortfall of such a large amount meant that the HCU was insolvent.
- (3) Amongst the factors contributing to that state of insolvency were the following:
  - (a) HCU had 28 subsidiaries of which most were operating at a loss, apart from Bankers' Insurance which only traded at a profit after 2006. HCU had provided loans and other financial facilities to these other subsidiaries, amounting to \$211 million. None of those subsidiaries had repaid any part of such loans and facilities, nor could they. On 29 May 2008 the HCU Board had recognised this position by resolving that \$195 million in loans to subsidiaries be written off.

- (b) HCU had carried out significant improvements to properties which it was then renting. Subsequently it vacated those properties and the cost of improvements, \$4.1 million, was then thrown away.
- (c) HCU was including in its asset base intangible assets and property for which it had no legal title and which were valued at \$38.5 million and which were therefore worthless.
- (d) Television equipment purchased for \$36.6 million was now worth only \$4.9 million — a loss of \$31.7 million.
- (e) There was a write-off of \$49 million in fixed assets due to non-use and depreciation, leaving \$20.4 million of fixed assets but as to which the accounts had not been adjusted.
- (f) Loan amounts due for mortgages and interest payable on loans amounted to \$45.8 million.
- (g) HCU owed \$10.6 million in pension plan expenses, taxes to NIB and the Inland Revenue, mainly due to deductions from employees' salaries which were not paid over to the relevant authority.
- (h) Of \$247.2 million in assets sold off by HCU, including \$195.5 million in 2006, some \$42 million were sold off at an apparent loss.
- (i) There was capital depreciation of assets owned by the HCU due to HCU making significant capital improvements on property which did not result in an increase in value of the property. Instead, the valuations obtained by the HCU revealed that the value of the property was less than the purchase price plus the capital improvements.
- (j) There were over \$40 million in loans to members that were in arrears by more than 180 days and which had only partly been provided for in the HCU accounts.

The notices invited members of HCU to send to HCU by 3 October 2008 such written inputs or comments as they might have on the state of finances of HCU. It stated that, after considering such input and comments, the CCD would make a decision. It was implicit that the subject of any such decision would be whether CCD should exercise its powers to put HCU into liquidation.

In response to that invitation the CCD received three main submissions as follows:

- (i) From a body called The Credit Union Members Group, which put forward a nine-point recovery plan:
  1. Do not liquidate and shut down the HCU. Liquidation is essentially a fire-sale at distressed prices that will result in loss of most of members' investments. CRMG believes there is a more compassionate and creative solution than a fast liquidation.
  2. Remove confidential information from the Ernst & Young Audit Inquiry and then release the report to shareholders, depositors, employees, and the Board of the HCU so that everyone can study the report and respond.
  3. Rectify the administrative and management deficiencies in the HCU Group of Financial Companies. The Board should be reconstituted with knowledgeable and experienced personnel who can gain the trust and confidence of members. The Board should include representatives of the Shareholders, Employees, Government, and the Private Sector. The Board should submit a plan for approval by the Office of the Commissioner of Cooperatives. Salaries and perks for Board and executive management should be capped at reasonable levels
  4. The Board should conduct an extensive Inventory of assets and liabilities; design a plan of action for the next 6 months; and

report to the shareholders and depositors. It should be noted that shareholders and depositors are prepared to leave their deposits in the HCU Credit Union Cooperative Society if they have confidence in the new Board. However, the Board should include in the plan a proposal to pay the backlog of Interest and current interest.

5. Consult with members and seek input regarding changes in HCU administration and management. It is Imperative that the Board and the Commissioner of Cooperatives inform and update the shareholders and depositors and try as best as possible to gain the confidence and trust of all members.
6. Resume business with focus on core Credit Union business functions. Re-open at least three branches, preferably Chaguanas, San Fernando, and Aranguetz/St. Juan.
7. Install a strong recoveries unit that will vigorously implement systems and procedures to collect loan payments and recover debts.
8. Liquidate all assets – except the Hindu Credit Union Cooperative Society; this should be done in an orderly manner over the next two years or more so as to extract maximum value. Unwinding of the assets should not degenerate into a desperate fire-sale at depressed prices.
9. The Board should request financial support from the Government: cash infusion necessary to stabilise the HCU over the next few months; and a bridging loan that will be used over the next two to three years while assets are unwound.

Financial support from the Government should be utilised as follows:

- Administration of company: e.g. accounts, recoveries, retail department.

- Funds for members who urgently need money, e.g. sickness, loan payments, clear backlog of interest payments for elderly and pensioners.
  - Assist employees – access to the funds in their accounts; Interim payment of back salaries; retraining of workers.
- (ii) From a second group it was submitted that the CCD was being unfair to the HCU Board, that control ought to be handed back to the Board to which the full EY Report should be provided and that the figures put forward in the CCD's Summary did not represent the true state of the HCU.
- (iii) From a third group there were put forward a number of questions. That group included Mr Harnarine. It made clear that the HCU Board having had no input in compiling the Report, its findings were unacceptable. They were based on bundling of accounts and misrepresentations of fact and on out-dated book values. The response of Mr Harnarine concluded thus:

“I certainly believe that the board of directors should be given the opportunity to respond to all or any findings of your inquire under Section (4) further I certainly believe with the management/Board and support from the commissioner's office as a facilitator for technical support from the Ministry of finance the HCU can remedy itself in the interest of its shareholders/Depositors over a short period of time.” (12mts/18mts).

J159 It is to be observed that all three proposals involved retention of the Board of HCU and none of them put forward any estimate of the size of the bail out which would be necessary to enable HCU to go on trading.

J160 Upon receiving EY's Report, Mr Mitchell referred some of its contents to the Fraud Squad. He was visited on four occasions by Acting Superintendent Phillip during September-November 2008. However, due to information given to him by the Police, he did not release the full EY Report to them in



order to avoid compromising their investigation. Nothing more was heard by Mr Mitchell from the Police while he was in office as CCD. When in 2011 Mr Karyl Adams – then CCD – caused the Police to be asked about the progress of their enquiries, he was told that the investigation had been discontinued due to insufficient personnel.

J161 Mr Mitchell was undoubtedly confronted in September 2008 with an extremely difficult situation. If he exercised his statutory powers to the full by putting HCU into liquidation, he knew that many thousands of depositors would inevitably lose their savings and major unsecured creditors of the Credit Union would go substantially unpaid. On the other hand, if he were not to exercise his powers to wind up, he was left with the powers accorded to him under Section 4(2)-(4) of the CS Act 1971. These provisions are as follows:

2. “Where having held an inquiry under this Section the Commissioner is of the opinion that the board has mismanaged the affairs of the society or otherwise performed its duties improperly, he may by notice to the society call upon it to remedy the situation within three months from the date of such notice.
3. Where a society fails to comply with the notice referred to in Sub-section (2), the Commissioner may, after giving the board an opportunity to be heard in general meeting called by him for the purpose, order the dissolution of the board and direct that the affairs of the society be managed by such persons as he may appoint for a period not exceeding two years.
4. Persons appointed by the Commissioner under this Section shall exercise all the powers and perform all the functions as a duly constituted board and in particular shall make arrangements prior to the end of their term of management for the election of a new board in accordance with the Bye-Laws of the society”.

J162 Mr Mitchell's evidence, which is accepted, was that he was not prepared to exercise his powers under Section 4(2) to call on the Board of HCU to remedy the situation within 3 months, failing which he could exercise his powers to order the dissolution and replacement of the Board, but only after calling a General Meeting. That would involve handing back control to the Board for at least another 3 months, which he was not willing to do with regard to the findings of EY in the Report. His past experience with other credit unions where these powers had been deployed was that, following the expiration of the maximum 2 years suspension under Section 4(3), the credit unions concerned had simply re-elected the original board responsible for the mismanagement. Since Mr Mitchell was satisfied from the EY Report that HCU was insolvent and since there were no indications at that time that GORTT was prepared to provide a bailout, he considered his only realistic course was to put HCU into liquidation.

J163 In determining to put HCU into liquidation, Mr Mitchell apparently did not consider approaching the MOL or MOF to ascertain whether, were he to replace the HCU Board, GORTT might be prepared to make substantial funding available to HCU under new management which would have preserved the organisation.

J164 With regard to that, it was Mr Harnarine's position that he could have raised sufficient funds by way of loans and asset deposits from wealthy investors to save HCU and that liquidation was not necessary.

J165 As to these alternative options, the seriously deficient existing condition of corporate management as described in the EY Report and the experience of

CCD with the “mob rule” tactics of the management when it came to general meetings explains the extreme reluctance of Mr Mitchell to become involved in an attempt to rescue HCU by attempting to replace the Board under Section 4(3). In order to do this he would first have had to give notice calling upon HCU to remedy its mismanagement within 3 months and, only then, should it fail to do so, to convene a general meeting at which the Board would have an opportunity to be heard and, only after that procedure, to appoint a new Board. Not only would this be an extremely cumbersome exercise which would involve the existing management remaining in control for over 3 months with the risk of further damaging mismanagement, but it would also risk holding another disrupted and inconclusive general meeting. Moreover, the whole exercise would only work if GORTT produced a massive cash injection which he understood that it was not prepared to do if HCU were insolvent.

J166 There can be no serious doubt that, given these considerations and having regard to the CCD’s position of autonomous and non-delegable decision-taking under the CS Act 1971, Mr Mitchell was acting well within the scope of reasonableness in the Wednesbury sense when he decided to put HCU into liquidation.

J167 On 9 October 2008 he duly made the order winding up HCU.

J168 Had CCD regularly monitored the financial condition of HCU alongside the PEARLS benchmarks issued by the World Council of Credit Unions, it would at once have observed that HCU’s business practices between 2002 and 2007 differed very sharply from the PEARLS benchmarks. Thus, whereas

the recommended benchmark for the proportion of loans to total assets was 70-80 per cent, HCU's percentages were consistently well below that: dropping from 67.7 per cent at September 2002 to 37.9 per cent at September 2007. Further, as against the recommended liquidity ratio (liquid assets less short term payables against deposits) of minimum 15 per cent, HCU reduced its liquidity ratio from 4.92 per cent in September 2002 to 0.11 per cent in September 2007. These levels placed it in a perilous position.

J169 This striking variance of HCU from the PEARLS benchmarks, which went straight to its day to day cash flow and viability as a financial institution, could have been ascertained by CCD simply by investigation of HCU's Financial Statements. Not only was HCU apparently oblivious to prudent business practices for a credit union, but so, it seems, was the market regulator, CCD.

## **Section K: Reasons for the Collapse of HCU**

K1 A credit union has the primary purpose of promoting thrifty savings by its members and making loans to them. Under HCU's Bye-Law 3 its main objects were stated to be (a) the promotion of the members' economic welfare and (b) the encouragement of the spirit and practice of thrift, self-help and co-operation amongst members and the promotion of the development of co-operative ideals. In 2002 an amendment was added to allow "investing in wholly owned subsidiaries and companies, to provide goods and services for the needs and welfare of members." However, its main purposes required it to keep in balance its disposable assets in the form of cash and relatively realisable investments on the one hand and members' savings accounts and fixed deposits on the other hand. In order to meet the withdrawal requirements of members, there must be sufficient liquid assets at any one time. Although withdrawal requirements may normally be fairly predictable, there may be periods when they are above average because the members' desire for alternative uses for their funds is influenced by outside events over which the credit union has no control. In order to cater for those periods of peak demand a credit union, like a bank, must maintain a liquidity margin of sufficient depth. It must have immediate access to reserves upon which it can draw almost instantly.

K2 HCU came to be dominated by Mr Harnarine from the moment when he was elected President in March 1998. Up to 2003 he was also employed by CLICO to sell insurance and he came to admire Mr Lawrence Duprey as "a visionary par excellence". Having become President of HCU, Mr Harnarine, influenced no doubt by the investment policies of Mr Duprey, set out to

transform the credit union into a similar investment vehicle. He appears to have been driven by a determination to maximise the returns on the moneys deposited at HCU and on moneys paid in as members' shares. This he hoped to do by operating a variety of businesses wholly unrelated to a credit union by means of setting up and investing in companies whose operations would then be financed by funding provided by HCU. His intention appears to have been both that these companies would not only service and repay such loans as HCU made to them but would, in some cases, ultimately be so profitable that they could be sold off at a substantial profit to wealthy investors. He also hoped that by investing part of the credit union's incoming funds in land and buildings there would be substantial profits to be derived from eventual re-sale on a rising market. In fairness to Mr Harnarine, it has to be said that he believed that, in pursuing that investment policy, HCU would ultimately add to the assets of the credit union and would thereby benefit the members.

K3 The emphasis on setting up new companies and investment in them and in the purchase of land and holdings became so strong in the period from 2002 to 2006 that the structure of HCU's business was fundamentally transformed. Instead of deploying the greater part of its total assets in the form of loans to members, which were relatively liquid assets, as might be expected of a credit union, HCU concentrated on increasing its investments in subsidiary companies and real estate, thereby drastically diminishing its liquidity margin. In as much as it made loans to subsidiaries, such loans did not represent liquid assets as might be expected of loans to members because the subsidiaries were unable to repay the loans.

K4 Thus, from the financial year 2002 to that of 2004, members' deposit accounts and saving accounts grew to \$784 million, an increase of 87 per cent, whereas members' loans decreased from 69 per cent of assets to 45 per cent of assets. By the year ending September 2007 loans had dropped to 24 per cent of assets, whereas investments in real estate, subsidiaries and affiliates had risen from 31 per cent of total assets in 2002 to 76 per cent of total assets. Further, in spite of the fact that from 2005 to 2007 inclusive members' deposits and savings declined, HCU's investments in subsidiaries, affiliates and real estate increased so that, year by year, there was a net cash outflow.

K5 Not only did this create an asset imbalance between liquid and illiquid assets but it also strikingly diminished the income returns. The real estate investments produced between 1 per cent and 2 per cent and the subsidiaries' returns were between 9 per cent and 10 per cent. By contrast the return from loans was 16 to 17 per cent. Moreover, the income from the subsidiaries was largely by way of interest on loans as distinct from returns by way of profit and dividends because the subsidiaries, other than Bankers' Insurance, made practically no profits. Additionally, the interest attributable to loans to the subsidiaries went largely unpaid so that the interest made significantly less contribution to liquidity than was apparent from the accounts.

K6 The reason for HCU's collapse constantly advanced by both Mr Harnarine and the BOD was a run on HCU resulting from a bad press and adverse media coverage from September 2004. This was blamed for HCU's financial difficulties throughout the period up to 2008. However, investigation of the

level of members' shares, members' savings and deposits from 2004 to 2007 does not support this explanation. Thus, whereas by September 2004 members' interests in the credit union, that is the aggregate of shares, savings and fixed deposit accounts totalled \$948 million, the decline by September 2005 was no more than 6 per cent (about \$57 million) and by September 2006 it had declined by a total of 16 per cent. A year later, in September 2007, it had risen to \$760 million, an increase of 1 per cent. By mid-2008 the overall decline was approximately \$190 million or about 20 per cent over three and a half years.

K7 This would hardly have represented a calamitous reduction in members' interests by withdrawal had it not been for the perilously slender liquidity margin maintained by 2006.

K8 The deterioration in the liquidity margin between 2004 and 2007 was also caused by the decline in HCU's operating profits. Thus in 2004 there was, according to the accounts, a surplus of \$25.7 million, whereas by 2007 there was a loss of \$6.99 million. The failure of most of the subsidiaries to satisfy loan interest liabilities and rentals substantially diminished the contribution to cash flow of apparent account profits. The cash balance of \$15.7 million in 2004 had dropped to a mere \$866,000 in 2007.

K9 The major defect in HCU's financial operation was the creation and subsequent mismanagement of the subsidiaries. These companies were created or acquired to carry on a bewilderingly diverse variety of businesses. Most of them – with the notable exception of Bankers' Insurance – did not have a board of directors separate from that of HCU. The HCU Board and



the HCU management exercised direct control over these companies for most of the period from 2004 to 2007. Because the selection of which businesses to operate appears to have depended on Mr Harnarine's commercial instincts rather than the available experience of the HCU Board members such as it was or HCU management, HCU ran most of these subsidiary operations without good quality managerial staffing. Bankers Insurance (67 per cent owned by HCU) was the only one of the 28 subsidiaries which had its own board of directors and it was the only subsidiary which did not ultimately become insolvent.

K10 This Commission has seen no evidence of the existence or content of any preliminary business plans for the formation of any of the subsidiaries. If such plans were drawn up, they have not survived and do not appear to have been put before the BOD. There is, however, some evidence that on one or two occasions something referred to as a business plan was provided to the CCD at the time when permission to invest was asked for. There is, however, no evidence that CCD considered any business plan before giving permission to invest in a new company. As to those permissions, the CCD imposed a \$250,000 limit on the amount HCU was allowed to invest. There is no evidence as to the basis upon which the CCD imposed this limit; it appears to have been a rule of thumb amount wholly unrelated to the capitalisation required by any particular business. HCU was therefore in many cases obliged to create under-capitalised companies which could only operate with the assistance of loans from HCU and others in addition to their start-up capital. These loans were made without the consent of the CCD and, since the subsidiaries could not pay the interest as it fell due, the

subsequent loans were made to defaulting borrowers who were not members of the credit union. These loans were therefore made in breach of the HCU Bye-Laws. Indeed, the financial condition of such subsidiaries were, quite correctly, seen by the CCD to be outside its regulatory regime.

K11 The loans were made for many different purposes, including operating expenses, land purchases, pension plan contributions, overdraft servicing, interest on other loans and capital expenditure.

K12 The size of the burden imposed on HCU's resources by the subsidiaries can be appreciated by reference to the following:

K13 The total "investment" in the subsidiaries, including initial equity investment, loans and current account balances by the end of 2007 amounted to \$205.2 million. Of this total some \$56 million was attributable to unpaid or accrued interest. Since the subsidiaries generally operated out of premises which were included as HCU's assets, rent had to be paid to HCU. However, the subsidiaries were heavily in default in payment. By 2007 outstanding rent amounted to \$11.9 million.

K14 It was therefore as if each of these subsidiaries simply existed as an unprofitable division of HCU. They could continue to operate only for as long as HCU was able to provide financial life support.

K15 Indeed, apart from Bankers' Insurance, the financial results of each of these subsidiaries were hidden from both the members of HCU at General Meetings and the HCU BOD. The obvious medium for conveying these results would have been audited accounts for each financial year. But there

were none. It was therefore impossible for the BOD of HCU and indeed the members to appreciate the extent to which those subsidiaries were dragging down the credit union. That could only have been known to the management. Initial investment in them, together with the loans in place of adequate operating capital, represented the largest cash outlay by HCU.

K16 This Commission is satisfied that those directly involved in the management of HCU – Mr Harnarine, Mr Ramnath, Mr Lalchan, Mr Bachan and Mr Jameel Ali – had access to sufficient information for them to have appreciated, had they seriously considered the situation, that the funding of the subsidiaries was draining the credit union of its much needed liquidity. Thus by May 2008 the total of HCU capital that had been made available to the subsidiaries was \$161,444,126 of which \$89,919,266 was outstanding loan principal, \$17,261,000 was equity investment and \$54,263,860 was outstanding net current account. Even at that time, of 28 subsidiaries, although 16 had been closed down, a further 12 remained operating. Of the 12 all were insolvent except Bankers' Insurance, Masala Radio and HCU Electronics & Surveillance Ltd. The management of HCU was therefore, even as late as May 2008, causing nine subsidiaries to continue to trade even though senior management must have known that HCU was in no position to continue to support them.

K17 It was submitted on behalf of Mr Ramnath that in pointing the finger of blame at named members of the BOD and the management, this Commission was ignoring the causal impact of the membership as a whole supporting at AGMs and SGMs the investment policies adopted by Management. This submission has not persuaded this Commission that any significant measure

of blame should be attached to the members as a whole. The truth is that Mr Harnarine and those directly involved in management and to a much lesser extent the BOD had access to financial information not available to the other members and were in a position to evaluate the impact on the credit union's liquidity of the investment policy which they caused the credit union to pursue.

K18 Examples of the mismanagement of the subsidiaries are as follows.

K19 Perhaps the most striking example is that presented by the fate of HCU Communications Group. The total expenditure by way of equity investment, loan capital and operating costs was \$86.1 million. In order to operate the company needed statutory broadcasting licenses. However, it never succeeded in obtaining them. In 2004 it purchased analog television equipment for \$36.6 million on the assumption that the necessary transfer of television licenses to HCU would be accomplished and for which it paid \$17.8 million. It borrowed heavily from a third party for the purchase of the equipment. By 16 July 2008 its outstanding loan balance due to the third party was \$30.32 million. By this time the value of the equipment was estimated to be about \$4.8 million. Notwithstanding this considerable expenditure, the company never broadcast a single programme.

HCU Food Corporation Ltd was created in 2004 by the acquisition of a trading company for \$9.3 million. The transaction originally involved the transfer of a licence to package bulk sugar, but in the event no licence was transferred. Absence of due diligence on the trading company led to a situation in which the equipment purchased with the company proved to be

unworkable and the building was declared unsuitable for food storage. Although in 2004 this company recorded a gross profit margin of 8.6 per cent, by 2005 it recorded a loss of 10 per cent and its indebtedness to HCU had reached \$27.7 million. The company occupied premises belonging to HCU which then incurred significant capital expenditure (\$24.6 million) improvements to those premises – costs which were recorded in HCU's books. By 2007 the company had to be closed down having incurred a loss of \$10,153,582, with total liabilities of \$29.997 million against assets recorded to be \$15.557 million. One of the properties was sold back to its original owners for about \$5 million and the rest of the inventory was sold off for \$250,000.

K20 Notwithstanding that the property was transferred under the sale contract, the full price was never paid to HCU. Although fixed assets in relation to acquisition of the trading company were recorded in HCU's book as valued at \$2.23 million, by May 2008 their realisable value was recorded in the financial statements as nil.

The most obscure and in some respects the most unsatisfactory subsidiary involvement of HCU relates to HCU Financial Company (USA) LLC. Having been incorporated in Florida in July 2000, the corporation was given its present name in April 2003. Because HCU could not under the laws of Florida own a direct interest in the United States, three HCU directors – Messrs Harnarine, Ramnath and Lalchan – were made the only registered shareholders. There is very tenuous evidence of the existence of a deed of trust for the benefit of HCU but no such deed has ever been disclosed to this Commission and no finding is made as to whether it ever existed. The overt

purpose of HCU USA was to provide money remittance services, particularly for Citi 3 and by Trinidad resident in Florida. A licence to perform such services was obtained from the United States authorities on 7 October 2003. It seems, however, that no such transactions ever took place. It is unclear why. HCU failed to disclose to the Section 4 Inquiry any records relating to this company in spite of several requests.

K21 HCU USA appears to have had an unhappy relationship with its management and HCU members. Thus on 14 January 2003 Mr Ramnath wrote to the Managing Director dismissing him and on 21 January 2003 the dismissed Managing Director at that time, Chandradath Singh, wrote to Mr Ramnath raising questions about the company's conduct in Florida and referring to a loss of US\$150,000 on a particular transaction "that went bad", to the purchase of Amar lands for a housing project that was aborted and other projects which showed that HCU engaged in risky business. Further, several HCU members in Florida were complaining about lack of professional service from the company and calling for refunds of deposits and cancellation of membership. There is also evidence that in 2003 HCU USA purchased a property in Miramar, Florida at a cost of US\$156,010 which was intended to be rented out but as to which there subsequently emerged issues as to whether the seller had been the true registered owner. Further, in June 2004 HCU USA purchased for a related party property in Pembroke Pines, Florida for US\$185,000. Part of the purchase price was remitted by HCU and the purchase was not approved by the HCU BOD.

K22 On 17 February 2005 the then General Manager of HCU USA stated that the company was to cease operations on 1 March 2005. However, HCU

continued to account for regular payments to HCU USA General Manger up to June 2008 and in 2006 a BOD resolution approved an allowance of \$60,000 per month to Mr Harnarine partly for the performance of his duties as chairman of HCU USA.

K23 There were also money transfers from HCU USA accounts of US\$10,000 to a relative of Mr Harnarine on 28 May 2004 and of \$242,000 on 23 July 2004 for neither of which were there properly documented approvals or explanations.

K24 Such assets of HCU USA as existed at closure have not been returned to HCU or indeed traced. It is said that only the shareholders could mount a claim to recover them.

K25 Accordingly, HCU USA proved to be a futile operation which involved HCU in losses which would otherwise have been avoided. In setting up the company in the first place and in its subsequent operation the senior management of HCU appears to have been floundering in an inadequately planned and mismanaged venture.

K26 Another loss-making venture by HCU involved World Select Gem Ltd which was formed pursuant to an agreement on 22 January 2005 between HCU and Chaguanas Administrative Complex Ltd ("CACL"), its purpose being to hold title to a property called Twin Towers, an office complex which HCU purchased from CACL for \$16.9 million. However, in the event, HCU was only a 50 per cent shareholder in World Select Gem, the other 50 per cent being held by Appleby Holdings. By September 2008 the building had still not been completed and had therefore failed to produce any rental income.

The net asset value of World Select as at 31 July 2008 was \$29.3 million, HCU's share being \$14.6 million. But by that time HCU's investment (initial equity investment, subsequent further equity investment and loans) totalled \$20 million which therefore exceeded HCU's share of the net asset value by \$5.4 million.

K27 The generally poor level of corporate governance at HCU was a major contributor to its failure. This is exemplified not only by the forgoing ventures and transactions but by HCU's operations with regard to property construction and improvements.

K28 Thus, between 2002 and 2008 HCU's expenditure on construction contracts awarded to no more than three contractors was in excess of \$110 million. There was no evidence that tender documents were prepared or used. Indeed, there does not appear to have been any system of inviting tenders. Nor do quantity surveyors appear to have been employed or their reports issued for payment in respect of completed work. Approval of works for payment appears most often to have been carried out by Mr Ramnath, company secretary of HCU.

K29 Of the total expenditure of \$110 million some \$75 million was spent on one contractor, a company incorporated by Mr Gordon James in 2002. In the incorporation documents, his occupation was given as HCU "Marketing Representative". However, his building skills being highly thought of by Mr Harnarine, his company soon became HCU's preferred contractor. The company was neither listed in the Trinidad telephone directory nor registered with the Trinidad and Tobago Contractors Association. However, in respect



of all these contractors there were projects where there were no tender documents; no quantity surveyors' reports were attached to cheque payment vouchers to provide some independent quantification of the work performed and there were no details of the work carried out to which invoices related. The invoices did not refer to any VAT registration number and did not include any VAT charged.

K30 There is evidence that HCU wasted money on construction projects. In 2005 HCU, admitting that it had a cash flow problem, paid two of its contractors with fixed deposits which it issued. On some occasions payment was made by the sale to the contractor of properties below the market price. For example, in 2006 HCU sold a property to one of its contractors for \$35,000 which it had purchased in 2003 for \$1.1 million. For work at Jovi's Park the contract price for several projects was \$8 million. HCU paid \$5.9 million in cash and fixed deposits. The work was to involve construction of a swimming pool, a water park and cabanas and the contractors were to backfill all the land surrounding a lagoon. Although there were vouchers for cheques in HCU's possession, there were no quantity surveyors' reports or any documentation showing what work had been done. When EY visited the site in the course of their Section 4 Inquiry, they found an unfinished board walk with decking and one model cabana: but no swimming pool, no water park and the whole place "completely run-down" as Maria Daniel put it in her evidence. The Park was not further developed and was never operated.

K31 Poor corporate governance is further illustrated by the various related party transactions described earlier in this Report and by the extraordinarily

substantial amounts of cash provided to Mr Harnarine which have also already been described.

K32 Finally, the credit union's management of loans was seriously at fault because they were not properly administered and the loan portfolio was allowed to shrink between 2002 and 2007, to the effect that, whereas the loan to funds received ratio should have been maintained at 65 to 80 per cent, by September 2004 the ratio had dropped to 49 per cent and continued to decline until September 2007, by which time it had fallen to 35.7 per cent. Incoming funds by way of deposits were increasingly being used to pay for loans and investments in the subsidiaries with purchases of property. What ought to have been deployed into a relatively liquid and productive loan portfolio was being dissipated into illiquid and relatively unproductive assets.

K33 EY summarised in their evidence, which this Commission accepts, the main defects in loan issuance and management as follows:

“Management and issuance of loans were at times in contravention to HCU's bye laws and HCU policy:

- The lack of approval by the credit committee and/or the Board of Directors.
- The absence of approval from the Commissioner for mortgage loans and loans made to subsidiaries and non-members.
- The six month period that must elapse before a member can qualify for a loan was not always adhered to in the case of loans issued to the directors, staff and the President.
- The required documentation that should be kept on loan files was inconsistent. Additionally, appropriate approvals were missing for loans granted.

- There were missing application forms for amounts granted.
- Loans were granted to non-members, particularly so in the case of loans issued to subsidiaries.
- Loans were granted for terms not consistent with purpose and the following policy guidelines:
  - Personal loans should not have been extended for more than 60 months.
  - Commercial loans were to be at the discretion of senior management.
  - Mortgage loans should be no more than 20 to 25 years.
  - Unsecured loans were to be at the discretion of the credit committee and board of directors based on the member's credit history and ability to pay.

There was a significant amount of unsecured loans as well as loans where the value of collateral held was not updated. Additionally, loans were granted in amounts in excess of the stipulated restrictions given the member's shares in HCU. The loan policy required that unsecured loans should only be made up to \$5,000 above share value. There were loans with \$16.2m in principal which was \$13m more than the value of security held. The shares held by these members represented 4% of the principal amount. Moreover, unsecured loans carried a balance of \$7.7m in outstanding principal. With these loans documentation was not provided to confirm security by way of Instrument of Charge (IoC), Mortgage Bill of Sale or other pertinent legal documents. Where documents were present, they were not signed by HCU individuals, nor were they stamped and registered with the Registrar General. These loan accounts had a total value of \$297k in members shares associated with them (i.e. 4% of the principal balance).

### **Staff loans**

There were 127 staff loan accounts of which nine were zero interest rate loans, 101 loans with 1% interest rate, 5 with an interest rate of 1.5%, and 3 loans with 2% interest rate as at 31 May 2008. The remainder consisted of a small number of loans with rates falling within the ranges from 0% to 2%. Based on the loan trial balance at

May 2008, the outstanding principal for zero rate loans represented: \$1.4m (11.5%) granted to staff of which \$717k remained outstanding, \$838k (6.9%) (outstanding \$728k) granted to ex-staff, \$105k (8.6%) granted (outstanding balance \$45k) to directors, and the remainder granted to other members of HCU.

It was noted that there were a number of zero interest rate loans with no maturity dates in the system. Approximately \$5.2m in principal on the system had no maturity date. Another exception noted was with respect to the granting of a new loan. For example, a loan that was previously set for a maturity of 10 years was given a new term by system when the old /original loan was re-phased on the system to record the new loan granted.

The Bye-Laws of the credit union stated that loans should not be made to an officer in excess of the value of their holdings - shares, deposits and accumulated dividends and interest unless approved by 2/3 majority of the BOD, credit committee and supervisory committee all sitting together or made with consent of in writing of all members of the committees (Bye-Law 40 (f)). However the loan files revealed that a number of loans were made to staff (and directors) over and above their holdings and in most cases the correct approval was not seen. Of the 127 staff loans only 38 accounts had more holdings than outstanding loan balance.

There were apparently unsecured loans granted to staff as there was no evidence on file of collateral held. In some cases though a Form 2 was signed by the member; however, the form was not completed by HCU and registered.

### **Directors loans**

Loans were extended to directors in the first six months of 2008, even though depositors were unable to withdraw their funds.

There were a number of directors whose loans were in arrears at May 2008. At a time when HCU was in such a cashflow crisis, the directors should have ensured that their loans were up to date and no new loans granted to directors or staff. The total loans outstanding made to directors as at 30 May 2008 was \$6.0m; \$5.5m in principal; the balance in interest. There was \$4.1m of principal outstanding for loans carrying 1% interest, \$38k of principal outstanding for loans carrying at 2% interest and \$1.2m of principal outstanding on mortgages.

There were instances where further loans were granted to the directors who were in arrears.

The CCD's approval was not seen for land purchases made by some directors.

There were three mortgages made to the directors at different rates of interest ranging from 7.92% to 10.08% per annum for period of 120 to 180 months.

Three directors had 0% interest rate loans. The purpose of the zero rate loans to two of these directors was not known as there were no loan applications seen on file for the amounts granted in 2002; subsequent loan application mentioned the existence of these loans.

A delinquent director's loans (or credit committee member) that was outstanding for more than four months put the director in breach of the Bye-Laws of the Hindu Credit Union and can result in disqualification of the director (or credit committee member). There were seven directors (including the President) in arrears as at May 2008. There was one director 183 days in arrears.

### **President's loans**

A new loan was approved for \$900k for the incumbent President in February 2008 when deposits could not be withdrawn by members and numerous loans could not be disbursed, given the cash flow crisis of HCU. The new loan was disbursed even though his other loans were in arrears. The new loan was apparently for the purchase of a property and had a term of five years at 1% per month. The loan was booked as a Type 1 loan and not a Type 5 loan which is typically used for mortgages. No evidence was seen on file for a request for CCD approval for this loan. Moreover, the loan appeared to be unsecured as no mortgage documents were on file or mention of such in the IOC registered after the purchase. The loan officer and manager signatures on this loan application form were that of the same person. No request for approval from the Commissioner seen. There is no evidence on file of the location of the property. Moreover, the President's loan amount outstanding as at 30 May 2008 was \$3.13m (principal and interest at 1%) and was in arrears by 64 days as at 6 May 2008 and was still in arrears as at 8 July 2008 which is an additional 30 days. EYSL is not aware of any payments made after 8 July 2008.

The last Form 2 on file (completed and registered) at a value of \$1.2m was dated 22 April 2008. Form 2s showed collateral held on

loans. The collateral as per this form consisted of two cars – one owned by the President and the other by a related party as well as the President's shares in HCU, which are approximately \$20k. No property was included in Form 2 even though it was registered after the loan to buy property was taken (in February 2008). There was another (older) Form 2 on file for \$1.5m, register on 19 August 2003 for a property at Macaya Trace for which monies were borrowed to make the purchase.

There were a number of other exceptions (or breaches) noted from a review of the President's loan file:

- Loan of \$800k issued in July 2006 for investment purposes for a term of 60 months; was signed by the credit manager; the amounts were paid out to various persons including \$757k to a related party's fixed deposit account. There was credit committee approval but no supervisory committee or Board sign off; no evidence of the type/nature of investment was seen.
- Loan of \$100k issued in July 2007 for personal expenses for a term of 20 years, four times longer than the five year period for similar loans. This was not approved by the committees or the Board.
- Loan for \$50k on 8 March 2008 to reduce a related party loan had no loan application, only a memo was included on file addressed to the credit manager with instructions as to how to rectify a \$150k loan posted to the related party's loan account that should have been \$100k. The difference in the amount was debited to the President's loan account.
- The President had signed numerous authorities to hold funds, which allowed HCU to offset his holdings/deposits at HCU against his loans.
- It was also seen that interest on the President's fixed deposits were used to clear arrears on loans to related parties. As per the memo to the file dated 28 June 2008 a total of \$106k was paid towards principal and \$72.1k toward related party loans”.

K34 This Commission accepts as accurate the findings set out above made by EY.

K35 The foregoing reasons for the collapse of HCU are all intrinsic to the operation and management of the credit union as procured by Mr Harnarine and the small group of senior management individuals who were closest to him and gave effect to his decisions. These were Mr Ramnath, the Corporate Secretary, Mr Lalchan, director, Mr Jameel Ali, the in-house financial advisor and Mr Bachan, Chief Executive Officer. Whereas the members of the BOD must bear some responsibility for allowing those policies and operations which brought about the collapse, their contribution was minor compared with that of those individuals. It was minor because, as this Commission finds, the BOD was as a matter of policy provided with materially limited information. For example, repeated requests for the provision of financial statements at board meetings were often fruitless or were met by statements that the statements were not quite ready and would be presented at the next meeting but frequently were not. On other occasions the BOD was simply invited to approve decisions which had already been put into effect.

K36 There are, however, other matters which contributed to the collapse of HCU which are external to its management.

K37 The main external cause of HCU's collapse was the defective supervisory regime as operated by the CCD. The details of the relationship between HCU and the CCD are set out in Section J of this Report. That was characterised by two material factors:

- (i) The lack of human and financial resources of the CCD department;
- (ii) The reluctance of at least one long-standing CCD – Keith Maharaj – to impose on HCU more effective supervisory control (a) by punishing breaches of the requirements of the CS Act 1971, the Regulations thereunder and the HCU Bye-Laws and (b) by insisting on a Section 4 Inquiry at an earlier stage than he eventually did.

K38 As to the lack of human and financial resources of the CCD department, there are two features of the internal operations of that department which, in the view of this Commission, seriously impeded the proper exercise of control over HCU. Firstly, the statutory requirement for the CCD personally to hear and determine disputes between the members of a credit union and its members imposed on successive CCDs, an extremely burdensome requirement which became more demanding in the period 2004 to 2008 as the number of claims by the members particularly of HCU increased with their inability to withdraw funds from the credit union. It was the practice of HCU to attend a large proportion of these hearings accompanied by its legal advisers and not infrequently by Mr Harnarine himself. The particular burden that rested on the CCD was to ensure that the rights of claimants, who were often unrepresented, were fairly protected. This Commission has not conducted an investigation into and analysed the total number of such claims and hearings which had to be conducted. Those emanating from members of HCU were only part of the picture. There were at least two other very substantial credit unions which were involved in disputes with members during the same period, particularly during the first half of 2006 when Mr Diram Maharaj had taken over as CCD from Mr Keith Maharaj. CCD's resources had to be stretched beyond the limit to cope not only with



problems relating to the bigger credit unions but also to the many other smaller unions. Indeed, CCD officials were largely very conscientious and dedicated.

K39 The main consequence of the requirement for the exercise of this dispute jurisdiction was that Mr Maharaj in particular was diverted by the work load from directing his attention to the reasons for the developing malaise of HCU. The most material effect of this was the continued giving of permission to HCU to invest in new companies or to buy others and thereby to end up with the deployment of the members' funds in no less than 28 subsidiaries pursuing different businesses wholly unrelated to the core activities of a credit union. This Commission finds that the giving of permission to invest up to \$250,000 in each new venture occurred in many cases without consideration of any or any adequately designed business plan or, in the case of the acquisition of existing companies, the carrying out of any or any effective due diligence. Consequently, the CCD was not providing an effective filter system for these investments.

K40 Further, although initial permission for these investments was given, often retrospectively, the CCD adopted a policy of ignoring the financial performance of individual subsidiaries, once they had begun to trade. There was no statutory duty to do more than monitor the financial welfare of the credit union in isolation. The subsidiaries were not obliged to produce audited accounts or other financial statements and there was no investigative mechanism for the CCD to derive any real appreciation of the financial viability of the ever-increasing variety of subsidiary businesses. Without a statutory inspection or a Section 4 Inquiry it would only be possible

to detect serious financial problems with subsidiaries by inference from the frequency of HCU's regular injections of additional loan funding into these businesses. The CCD department did employ a number of accountants on its staff but it appears likely that there were too few to cope with the complexities of financial groups such as HCU or they were not called upon to do so. The CCD himself, in particular, Mr Maharaj, would not have had time personally to embark single-handed on the kind of regular analytical exercise required. In order to obtain a meaningful assessment of the financial viability of HCU he was almost exclusively reliant on what was provided each year by its external auditor.

- K41 In these circumstances, it was his duty to devise a regular monitoring system as from 2002 at the latest which tested the viability of HCU by reference to the PEARLS parameters and took into account as far as possible the increasing drain on financial resources of the subsidiaries.
- K42 The overall effect of there being no effective monitoring of the financial condition of particular subsidiaries was that information derived from HCU's financial statements was rendered misleading: for example, identification as an asset of a loan to a subsidiary which was unable to service interest payments and which therefore would be incapable of repaying the loan.
- K43 As regards the insufficiency of financial resources, this led to a situation where, as appears from Section J of this Report, the CCD, having decided, in reliance on the findings and recommendation of the 2004-5 inspection by the CCD team under Mr Hyder Ali, the Deputy CCD, and on the 2004 financial statements audited by Chanka Seeterram, that a Section 4 Inquiry

must be pursued, was forced in October 2005 to ask the Minister of Labour for the necessary funding to appoint an outside firm of accountants. There is a question as to whether the CCD could have funded a Section 4 Inquiry out of the CCD liquidation fund. However, this Commission considers that Mr Maharaj was entitled in any particular case to take the view that, this fund, having been ear-marked for the specific purpose of supporting the exercise of the CCD's statutory powers to put a credit union into liquidation, he was entitled to treat it as necessarily inviolable, although there is evidence that the CCD had in the past applied moneys from that fund to pay for a Section 4 Inquiry. That left him unable to appoint an outside firm of accountants to conduct what was likely to be an expensive investigation unless he could obtain funding from the MOL. That put the CCD in the position where his independent judgment could be obstructed by a political decision to withhold money.

K44 As appears from Section J of this Report, this is exactly what happened in October 2005 when Mr Montano, then Minister of Labour, declined to fund the appointment of a Section 4 Inquiry regarded as necessary by the CCD. That decision had the effect of delaying the appointment of an Inquiry at a time when its report under Section 4 might have curtailed the continued trading operations of HCU notwithstanding that it was already on the brink of insolvency. The Minister was in effect substituting his own judgement for that of the CCD by attaching greater weight to avoiding the risk of a run on HCU with the possible impact on other credit unions than to an Inquiry directed to the protection of the members of and depositors in HCU.

K45 The judgment necessary to weigh in the balance those considerations was exclusively that of the CCD who necessarily had access to more detailed information and had far more knowledge of the viability of other large credit unions and more particular experience of the credit union industry than the Minister.

K46 In the case of HCU, the Minister's direction to Mr Maharaj that the CCD should exercise tighter control over the conduct of the business of HCU instead of appointing a Section 4 Inquiry did not take sufficiently into account the limited human resources available to the CCD which were scarcely adequate to provide sufficiently close and regular monitoring of HCU alongside the need to monitor other credit unions nor the general unco-operative attitude of the management of HCU towards the officials of the CCD department. These were matters particularly within the knowledge of the CCD whose judgment should have been relied upon as conclusive in accordance with the CS Act 1971.

K47 Nonetheless, the failure of the CCD, particularly Mr Keith Maharaj, to enforce upon HCU the requirements of the CS Act 1971 the Regulations and the HCU Bye-Laws must be accounted a further substantial contributory cause of the collapse of the credit union. Particularly, from 2002 to 2007. As the primary regulator of credit unions his powers included.

- (i) Supervision of the affairs of registered societies, including HCU, including holding an inquiry into its constitution, operations and financial condition;
- (ii) Permitting or refusing of investment or deposit of its funds;
- (iii) Approval or refusal of its level of Maximum Liability.

K48 From a very early stage in the period of Mr Harnarine's Presidency of HCU in 1998 it became evident to the CCD that HCU was going to be extremely difficult to control. The conduct of HCU in refusing to comply with a direction by Mr Maharaj by letter dated 11 November 1998 to cancel the proposed AGM given pursuant to the CCD's powers under Section 3 of the CS Act 1971 was, as Mr Maharaj accepted in his evidence before this Commission, seen by him as a clear sign that HCU was prepared to behave unlawfully. That should have engendered particular vigilance by the CCD with regard to the credit union's conduct. Holding an AGM without audited financial statements and contrary to an express direction by the CCD was a very serious indication that HCU, and more particularly its President, saw itself as above the regulatory regime which it was the CCD's duty to operate. These matters are related in greater detail in Section J of this Report. They should have alerted the CCD to the need to deal strictly with HCU and to insist in future on strict compliance with the requirements of the CS Act 1971, the Regulations and HCU's Bye-Laws.

K49 This approach was not followed by the CCD. There is no evidence that CCD took any particular steps to ensure that HCU gave effect to the recommendations for improvement in its corporate governance made by Mr Joel Edwards in May 1999 in the course of his Section 4 Inquiry, particularly with regard to the operations of the BOD and the administration of loans. Indeed, there was thereafter a continuing failure by the CCD to monitor and investigate HCU's corporate governance and whether it complied with the CS Act 1971, the Regulations and the HCU Bye-Laws. This was particularly so with regard to the operation of the Supervisory

Committee and the Credit Committee. The defects in corporate governance identified in the report in November 2001 following an inspection by Mr Diaram Maharaj do not appear to have been the subject of any intervention by the CCD to persuade the credit union to improve its credit operations. Nor is there any evidence that within the CCD there was set up any system for monitoring HCU's loan operations. Such an enhanced system was clearly called for in spite of the limited staff available to the CCD.

K50 It was in the course of 2001-2002 that HCU began its investment in subsidiaries. By September 2001 there were six subsidiaries and by September 2002 there were another five. This involved obtaining the prior permission of the CCD both to set up these companies and to make investments in them. However, with a few exceptions these companies were set up without prior permission. HCU would normally apply for permission retrospectively. Similarly, investments in these new companies, in order to provide start-up capital, were normally made without prior permission and the application for that permission was also made retrospectively. It was invariably granted by the CCD with a reminder that prior permission should in future be obtained.

K51 The important matter of principle to which the setting up and financing of these subsidiaries and those set up in future years give rise is whether it was justifiable to deploy a significant proportion of the members' and depositors' deposits and shares in the businesses of corporate entities which were outside the ambit of the supervisory powers of the CCD. This notwithstanding, the CCD repeatedly permitted this vast off-shoot corporate structure to be erected and invested in without any evidence of due diligence

or a business plan or any or any sufficient investigation of the need for continued funding or the compatibility of the new business with the core business of a credit union or of the ability of the existing management of HCU or of the BOD to oversee the operations of such companies.

K52 In the light of the matters with regard to liquidity raised in the financial report of CUSU in 2001 and described in Section E of this Report, it was particularly important that the CCD should be closely monitoring the dissipation of liquid assets in acquisition of subsidiaries.

K53 Alongside what might be described as the *fait accompli* tactic of HCU with regard to the formation and funding of subsidiaries was a similar tactic with regard to permissions for increases in the Maximum Liability. These permissions were also required to be obtained prior to the previously imposed Maximum Liability being exceeded. The Liability in question was substantially made up of indebtedness incurred by the credit union in respect of its liability to satisfy withdrawals from deposits and other funds paid to it by way of investment and its liability for its borrowings, including interest, to other financial institutions. The investment of start-up capital in the subsidiaries followed by the need to provide operating capital by way of loans to those subsidiaries caused HCU to strive for ever increasing deposits and to raise substantial loans from its bankers. However, during the period from 2001 when investment in subsidiaries began and subsequently increased at a significant rate, there appears to have been no real attempt by the CCD to evaluate the need for the repeated requests for permission to increase Maximum Liability. As time went on and the Maximum Liability increased, particularly for 2004, deposits and borrowings greatly increased,

whereas loans to subsidiaries increased and loans to members diminished. This trend, together with increasing investments in land and buildings, gave rise to a diminishing liquidity margin.

K54 Because the CCD did not attempt to develop an overall view of the financial condition of HCU, in conjunction with his response to requests for increases on Maximum Liability, it was not until March 2005, when it received Mr Ramnarine's audit report for the year to 30 September 2004, that it was brought home to the CCD that HCU had been managed in such a way that its investments in and loans to the subsidiaries and its substantial investments in real estate had unbalanced the credit union's financial structure to a dangerous extent by diminishing its liquidity margin, thus rendering it unacceptably vulnerable to fluctuations in demand for withdrawals by depositors.

K55 The CCD does not appear to have seen the need to evaluate what effect repeated requests for increases in Maximum Liability might have on the credit union's liquidity margin. When he was CCD Mr Keith Maharaj did not take any enforcement action against HCU in respect of unauthorised investments in any of the subsidiaries, nor for unauthorised excess of the Maximum Liability. Nor did he take any steps in the light of complaints from members and depositors as to the conduct of HCU's business, including allegations of corruption, and in the light of defaults in repayment to depositors and the incidence of bounced cheques, of which Mr Maharaj was well aware, to set up a Section 4 Inquiry in 2004 or in early 2005. When he did eventually set up the PKF Section 4 Inquiry in 2005 he failed to press forward with it independently of political influence by acceding to a request



by HCU that it should be postponed until the new MOL, Mr Montano, had expressed his views on it.

K56 Indeed, Mr Maharaj is to be criticised generally for not being strict enough with HCU. Although he could have taken enforcement procedures for breaches of the Bye-Laws and the CS Act 1971 by HCU with regard to unauthorised formation of subsidiaries, unauthorised investments, unauthorised excess of the Maximum Liability, until his attempt to appoint PKF to conduct a Section 4 Inquiry in 2005, he demonstrated an unduly benevolent attitude to the high-handed manner in which HCU disregarded its duties under the Bye-Laws, the regulations and the CS Act 1971. It is deeply regrettable that on the one occasion when he showed determination to prosecute a Section 4 Inquiry his efforts were obstructed by ministerial intervention.

K57 This Report does not attempt to answer the question whether, had the CCD taken particular steps which it ought to have taken at any particular time, the consequence would have been to cause HCU to change its ways to the extent that it would have saved itself from insolvency. Only the setting up of a Section 4 Inquiry at the latest in the year 2005 might have caused HCU to take steps to dispose as early as possible of most of its illiquid assets so as to bring its liquidity margin within the PEARLS parameters, whether it could have been persuaded to do so is open to question. That would have depended on Mr Harnarine and the evidence, particularly his conduct in 2006-2007, strongly suggests that it might have been difficult to persuade him that the entire business structure of HCU would have to be changed and most of the subsidiaries (except Bankers' Insurance) disposed of before the

credit union's survival could be assured. That course would have involved his agreement that his "vision" of turning HCU into a multi-facet investment vehicle had irretrievably failed. Alternatively the CCD would have had to exercise its limited statutory powers of management control.

K58 The fact remains, however, that the benevolent and inactive approach of the CCD to non-compliance by HCU with the CS Act 1971, the Regulations and its Bye-Laws simply went to encourage Mr Harnarine and HCU's upper management to believe that the credit union's financial structure would be strong enough to survive. That none of those in upper management apparently recognised by the beginning of 2006 that, unless radical steps were quickly taken, HCU would collapse, is simply evidence of their collective commercial ineptitude. Firmer action by CCD however might just have changed this attitude.

K59 Finally, a contributory cause of the HCU collapse was the unsatisfactory nature of the statutory enforcement machinery provided by the CS Act 1971 and the failure to introduce an enhanced enforcement regime. This has already been discussed in Section J above. The main defect in the enforcement regime under the CS Act 1971 was that in cases of serious mismanagement, where a credit union was not yet insolvent, the CCD had first to appoint a Section 4 Inquiry and then, upon receiving its report and forming the opinion that the board had mismanaged its affairs or otherwise improperly performed its duties, give notice under Section 4(2) calling upon the credit union "to remedy the situation" within three months. If the credit union failed so to remedy the situation, the CCD had first to give the board the opportunity to be heard in general meeting, after which the CCD could

order the board to be dissolved and replaced by managers to be appointed by him for a maximum of two years. If, however, the credit union had been shown by the report of a Section 4 Inquiry to be insolvent, the CCD could exercise his power under Section 58 to make an order winding up the credit union and appoint a liquidator.

K60 The lack of any other remedy which would enable the CCD to assume emergency management control over a credit union such as that of the CBTT subsequently provided for by Section 44D(1) of the Central Bank (Amendment) Act left the CCD with a highly unsatisfactory means of regulatory control. He either had to go through the cumbersome and time-consuming procedures under Section 4(2) or wait for the credit union to become insolvent for the purposes of Section 58. As appears from Section L of this Report, the defective nature of these provisions had been well recognised from 1992, yet all statements in Parliament up to 2008 that the regulatory powers were to be improved had come to nothing. The credit union lobby appears to have persuaded successive governments not to amend the law so as to treat credit unions with the same stringency as other financial institutions.

K61 Eventually it was only in February 2009 by means of the Central Bank (Amendment) Act that the CBTT was given special powers of investigation and control over credit unions but only if it was of the opinion that the financial system of Trinidad and Tobago was “in danger of disruption, substantial damage, injury or impairment” as a result of the circumstances listed in this section. These provisions did not replace the Section 4 and Section 58 regime of the CS Act 1971. They have been brought into the law

in parallel with the 1971 Act. Accordingly, two separate regulatory bodies are given powers of control over the credit union depending upon whether the CBTT forms the opinion identified in Sub-section (3) of Section 44D(1) of the Central Bank Act. This is an extremely cumbersome regulatory regime which could only work if there were a high degree of co-operation between the CCD and the CBTT.

K62 Had the CCD been given powers similar to those given to the CBTT under Section 44D(1), he might have been able to take control over HCU early enough to prevent its collapse. As it is, the indecision of successive governments had left in place a seriously flawed regulatory enforcement system under which emergency action could not be taken unless the credit union had been found to be insolvent. Whether, had there been available to the CCD powers similar to those under Section 44D(1), he would have used them early enough to prevent HCU's total collapse must be open to doubt. Mr Maharaj's reluctance to deal strictly with HCU might have led him to take no control until it was too late. However, the lack of any effective means of doing so after he retired in 2006 must be considered a material contributory cause of the credit union's collapse.

## **Section L: Attempts to Reform Regulation of Credit Unions**

L1 This Report has already referred in Section E entitled “The Functions of the Commissioner for Co-operative Development (“CCD”) and of the Ministry of Finance Credit Union Supervisory Unit” to the fact that it was recognised as early as 1992 that the operating practices of many of the credit unions were far from satisfactory and needed to be changed in the interests of members and depositors. It was further recognised that the system of regulatory control of credit unions embodied in the Co-operative Societies Act 1971 (“the CS Act 1971”) would need to be fundamentally re-constructed to provide an enhanced regulatory regime.

L2 Under that Act the sole repository of regulatory control was the Commissioner and his Department (collectively “the CCD”). His powers, as set out in the CS Act 1971, included the following:-

3. There shall be a Commissioner for Co-operative Development hereinafter called “the Commissioner”, who shall, have general powers of supervision of the affairs of societies and shall perform the duties of registrar of societies.

4. (1) In the exercise of his powers of supervision referred to in Section 3 the Commissioner may -

- (a) On his own motion;
- (b) On the application of a creditor of a society;
- (c) In accordance with regulations made in that behalf, on the requisition of a society in respect of one of its members being itself a society; or
- (d) On the application of a majority of members of the board of management or one-third of the members of a society,

hold an inquiry into the constitution, operations and financial position of that society and in the course of such inquiry shall inspect the books, accounts and other records of the society.

(2) Where having held an inquiry under this section the Commissioner is of the opinion that the board has mismanaged the affairs of the society or otherwise performed its duties improperly; he may by notice to the society call upon it to remedy the situation within three months from the date of such notice.

(3) Where a society fails to comply with the notice referred to in Sub-section (2), the Commissioner may, after giving the board an opportunity to be heard in general meeting called by him for the purpose, order the dissolution of the board and direct that the affairs of the society be managed by such persons as he may appoint for a period not exceeding two years.

(4) Persons appointed by the Commissioner under this section shall exercise all the powers and perform all the functions as a duly constituted board and in particular shall make arrangements prior to the end of their term of management for the election of a new board in accordance with the Bye-Laws of the society.

(5) The Commissioner may determine the remuneration and expenses to be paid to the persons appointed under this section and any moneys required for this purpose shall be payable from the funds of the society.

(6) Nothing in this section shall derogate from the power of the Commissioner to cancel the registration of any society should he think fit.

18. (1) Subject to this section, the Commissioner may, if he thinks fit, at any time cancel the registration of a society and

where such registration is cancelled the society shall be deemed to have been dissolved from the date on which its affairs are wound up.

(3) Any officer or member of a society who is aggrieved by a decision of the Commissioner to cancel the registration of the society, may within three months of the publication of the notice in the *Gazette* pursuant to Sub-section (2)(b), appeal from there within the periods and in the manner specified in Section 74.

21. A society may at any time amend its Bye-Laws by resolution passed at a general meeting called for the purpose but no such amendment shall be of any effect until approved by the Commissioner, for which purpose three copies of the amendment shall be forwarded to him and should the Commissioner approve the amendment one copy indicating his approval shall be returned to the society.

28. (1) A society may make advances by way of loan to its members in accordance with its Bye-Laws.

(2) Notwithstanding anything to the contrary contained in the Banking Act and the Local Savings Banks Act a society shall not be deemed to be engaged in any business in the nature of banking so as to be obliged to obtain a licence under either of those Acts.

(3) A society shall not be required to obtain a licence under the Moneylenders Act in order to carry on the business of moneylending.

43. (1) A society may not, save with the consent of the Commissioner, make a loan to any person other than a member.

(2) A society may not, save with the consent in writing of the Commissioner lend its money on mortgage of real property.

(3) No loan shall be made to an officer of a credit union of a sum in excess of the value of his shares and deposits and accumulated dividends and interests thereon unless such loan is approved by the vote of a two-thirds majority at a meeting of the other members of the board, the credit committee and the supervisory committee all sitting together or is made with the consent in writing of all the members, other than the borrowing officer, constituting the board, the credit committee and the supervisory committee.

45. A society may invest or deposit its funds-

- (a) In any bank approved by the Commissioner;
- (b) In any securities issued or guaranteed by the Government;
- (c) In the shares or on the security of any other society, provided that no such investment shall be made in the shares of any society other than one with limited liability; or
- (d) In any other manner permitted by the Commissioner.

51. (1) Every society shall have its accounts audited annually by the Commissioner or some other person authorised by him or, in accordance with regulations made by the Minister in that behalf, by an auditor selected by the society and approved by the Commissioner.

58. If the Commissioner, after an inquiry has been held under Section 4, is of the opinion that the society ought to be wound up, he may make an order directing it to be wound up and may appoint a liquidator for the purpose and fix his remuneration which shall be paid out of the funds of the society. Where no liquidator is appointed the assets and liabilities of the society shall vest in the Commissioner.

65. (1) Where, in the course of the winding up of a society, it appears that any person who has taken part in the organisation



or management of such society or any past or present officer of such society has misapplied or retained or become liable or accountable for any money or property of such society or has been guilty of misfeasance or breach of trust in relation to such society the Commissioner may, on the application of the liquidator or of any creditor or contributory, inquire into the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Commissioner thinks just or to contribute such sum to the assets of such society by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust as the Commissioner thinks just.

(2) This section shall apply notwithstanding that the Act is one for which the offender may be criminally liable.

67. (1) If any dispute touching the business of a society arises –

(a) Among members, past members and persons claiming through members, past members and deceased members;

(b) Between a member, past member, or person claiming through a member, past member or deceased member, and the society, its board, or any officer of the society;

(c) Between a member and the society arising out of or under any Bye-Law or Bye-Laws relating to the disposal of the produce of agriculture or animal husbandry, or under any contract, made under Section 27;

(d) Between the society or its board and any officer of the society;

(e) Between the society and any other society; or

(f) Between the society and any of its creditors,

The dispute shall be referred to the Commissioner for decision.

(2) The Commissioner may, before proceeding to hear or determine a dispute, make or cause to be made a preliminary investigation into the dispute with the object of ascertaining the facts, defining the issues and endeavouring to bring about a voluntary settlement between the parties to the dispute.

(3) The Commissioner may, on a dispute being referred to him under Sub-section (1)-

- (a) Decide the dispute himself; or
- (b) With the consent of the parties refer the dispute to arbitration.

(4) The settlement of any dispute by an arbitration award shall be final and shall not be called in question in any Court of law.

L3 By 1996, shortly after GORTT had entered into the agreement with Inter-American Development Bank ("IADB"), referred to and described in Section E of this Report, it was accepted by the credit union industry, in particular CCULTT, that the CS Act 1971 needed to be amended and proposals had been put forward to the MOF with the object of introducing legislation which would strengthen the management and operations of credit unions so as to improve the safety of the credit union movement and its funds. When this was raised in the House of Representatives on 17 December 1996, the Minister, Mr H. Partap, announced that there was "impending revision" of the CS Act 1971 to make it more relevant to the needs of the movement as well as the strengthening of the Co-operative Department (CCD) "to allow for the development and supervision of credit unions". A committee was said to be currently meeting at the level of the

Ministry and the latter was working to achieve closer co-operation between the credit unions and other co-operative societies in the financial sector. Mr Partap did not expect that “to happen overnight”. Indeed, he stated that it would “take some time”. This Commission confirms the accuracy of his expectation.

L4 Nearly five years later, on 14 September 2001, Senator The Hon. G. Yetming, the then Minister of Finance, speaking in the House of Representatives, while applauding the quality and soundness of the banking sector in Trinidad and Tobago, referred to the intention of GORTT to apply prudent regulations established by the Basle Committee on Banking Supervision to the financial sector as a whole. For this purpose Canadian consultants had been engaged to advise on the establishment of one regulatory agency to regulate and supervise the entire financial system and to assist CBTT in formulating an effective integrated supervisory regime. The first phase applicable to insurance companies and pension plans was expected to be completed in 15 months after which the consultants would embark upon the second phase in which a study would be carried out “to determine the feasibility and mechanisms for bringing other non-bank financial institutions, including credit unions, under the supervision of the single regulatory authority”. Mr Yetming concluded by stating:

“Based on the advice of the consultants, the Ministry of Finance is currently drafting legislation for regulating and supervising the financial activities of credit unions, including provisions for the guarantee of members’ savings similar to what exist under the Deposit Insurance Corporation. [Desk thumping] Mr. Deputy Speaker, it will be irresponsible of me to allow credit unions as a whole to expand the range of their services until I am satisfied with

their financial condition and that the appropriate regulatory and supervisory regime is in place”.

L5 Meanwhile, from 2001, as noted in Section E of this Report, CUSU, which had been set up under the Credit Union Strengthening Project resulting from the Agreement between GORTT and IADB, had put forward draft legislation designed to establish a regulatory regime for credit unions. Further, although Cabinet Minutes of 9 February 2000 had indicated that the MOF Bank Inspection Department should supervise all credit unions, a Minute of 19 July 2000 had re-instated the MOL as the Ministry responsible for enforcement, accountability and governance, except that for the duration of the Strengthening Project the MOF would be responsible for enforcement, accountability and intervention in matters relating to financial operations of credit unions.

L6 On 12 December 2002 there took place a meeting between senior officials in the MOF and CBTT to discuss a draft Credit Union Supervision Act which had been produced by a consultant, Mr Guy David. The stated purpose of the draft Act was “To provide a framework for the supervision and regulation of the financial operations of credit unions so as to maintain public confidence in the financial system and the protection of the savings of credit union members and depositors”. CUSU was to be established as a body corporate under the MOF and the Director of CUSU was to be responsible for the general administration of the Act and was to be answerable to the Minister of Finance but also to the Permanent Secretary of the MOF. The meeting agreed that, although it would be necessary to decide what role and function should be that of the CCD, there should be inserted in the draft a

clause “withdrawing/rescinding the powers of the Commissioner as regulator for credit unions”.

L7 On 13 December 2002, The Hon. K. Valley stated in the House of Representatives that the project for the institutional strengthening of the credit union sector was “close to completion”. A draft Bill would be “prepared shortly” for circulation to stakeholders. That measure was expected to mobilise savings in the credit union sector and it would improve the regulatory, monitoring and supervisory systems within the sector “in order to protect members’ savings by reducing risks caused by unsafe and unsound practices”.

L8 On 13 March 2003 there took place a meeting between representatives of MOF, headed by Ms Sonia Noel, Permanent Secretary, and including Mr Anthony Pierre, Mr Hyder Ali representing the MOL and CCD, the CBTT and CCULTT. Its purpose was to discuss the first draft of the Credit Union Supervision Act recently received from the Consultant, Mr Guy David. Whereas Ms Noel expressed the view that the draft was, in her view, reasonably satisfactory, it was agreed that the draft would be circulated for comments to the bodies represented by those attending the meeting. A series of meetings was planned in April 2003 between the consultant and the Minister of Finance and the Governor of the Central Bank and others, including CCULTT.

L9 On 1 April 2003, Senator The Hon. Conrad Enill, Minister in the MOF, wrote to Ms Noel asking for a timetable for the completion of the draft legislation and a strategy for acceptance by all the stakeholders.

L10 On 21 May 2003 Mr Valley introduced a green paper in the House of Representatives entitled “A Report on the Review of the Financial System in Trinidad and Tobago”. That Report records that in 2000 no less than 126 credit unions actively conducted business. Of those, at December 2000 six credit unions owned approximately 50 per cent of all credit union assets. The following passages are pertinent to this Report.

#### “2.6.2 Performance of the Credit Union Sector.

Credit Unions have also sought to improve their operational efficiencies through the adoption of the PEARLS system. At least 60 per cent of the members of the Credit Union League have computerized their operations and have accepted the standards for financial management of the PEARLS system. The levels of liquidity and delinquency have remained issues that warrant greater monitoring and action by Credit Unions.

#### 2.6.3 Financial Architecture of the Credit Union Sector

The Cooperative Societies Act of 1971 is currently being reviewed, since most credit union practitioners believe that it needs a complete overhaul. In many ways, the progress of the credit union sector is being retarded by the extant legislation. Further, provisions concerning delinquent loans, the registration of societies, financial reporting and the election of officers need to be revisited or included.

The Department for Cooperative Development is unable to discharge its functions effectively because of limitations imposed by scarce human resources, and inadequate technical and administrative systems.

#### 2.6.4 Major weaknesses of the Credit Union Sector

##### *Weak Management and Operating Systems*

In general, the credit union sector suffers from a lack of a skilled cadre of professional managers. Traditionally, the CU sector relied,

generally, upon voluntary professional managers. Recently, though, some credit unions have begun to employ staff with professional qualifications in management positions. However, the practice is still not sufficiently pervasive to provide the foundation for the development of a cadre of professional managers. The performance of the sector in the future will depend to a large extent upon how fast its managerial echelons are upgraded.

#### *Poor Asset Quality*

Loans are the major assets of credit unions, comprising about 75 per cent of total assets. However, in many institutions the quality of this asset is affected by delinquency rates estimated to be as high as 20 per cent in some instances. This situation has arisen and has been compounded by the lack of reliable mechanisms for assessing credit worthiness and risks, as well as the absence of a strong supervisory authority.

#### *Inadequate Record Keeping and Data Management*

The approach to record keeping and, by extension, data management has been influenced by the informal nature of these organizations at inception, and by the fact that they are not required to publicly report statistical and financial information. Some types of information are therefore just not available for the sector. However, in the modern financial environment data and information are critical, both in fostering competitiveness and as a management tool. The credit union sector must therefore enhance its data and information management capabilities.

### 2.6.5 Challenges and Opportunities for the Credit Union Sector

*Non-core Activities* – Many credit unions engage in non-core activities which are generally unprofitable. In most cases these activities are subsidised by income derived from lending activities. Continued engagement in activities that have to be supported from operational earnings could compromise the profitability and effectiveness of the credit union movement.

- L11 It is to be observed that in the passage quoted above from Paragraph 2.6.3 of the Report lack of financial resources is not included amongst the reasons for which the CCD Department was unable to discharge its functions. It is also to be noted particularly that in 2003 their Green Paper brought to the attention of GORTT and all members of Parliament concerns as to the operation of credit unions which identified practically every factor which ultimately caused the collapse of HCU five years later.
- L12 On 6 October 2003 Mr P. Manning, in the House of Representatives, having referred to that Report, went on to state that amendments to legislation, including the CS Act 1971, integrating the Supervisory authority for the insurance, pension and banking institutions under the CBTT, would be “presented to Parliament before the end of this calendar year”.
- L13 On 21 October 2003 Senator Enill told the Senate that comments on the Green Paper would inform a White Paper which was then being drafted and would be brought to Parliament before the end of the year. Amendments to provide for enhanced prudential and supervisory practices would be made to, amongst other legislation, the Co-operative Societies Act 1971.
- L14 On 7 January 2004, in an article appearing in the Business Express, the Governor of CBTT, when asked about updated legislation for credit unions, spoke about one in particular (identifiable as HCU) of which he wrote that it had been able to mobilise large amounts of revenue and that his only observation was that their scale was so large, that “in the absence of strict regulation, potentially there are a lot of risks”.



L15 On 8 January 2004 the Cabinet considered and decided to approve, subject to a minor amendment, a draft Credit Union Supervision Act which had been prepared by the legal consultant. That draft provided for the establishment and operation of a Credit Union Supervision Authority as a statutory body. It was to be managed by a Board of Management of seven persons including the Head of the Authority (the Supervisor), the Permanent Secretary of the Ministry of Finance, the Governor of the CBTT, the Commissioner (CCD) and appointees of the Minister of Finance. Paragraphs 8, 10, 12 and 13 of the Note to Cabinet conveniently summarise the main powers of the Authority:

“8. This Authority would have the right to inspect credit unions, to adopt standards relating to prudential norms, sound business practices and risk management, to monitor compliance with the legislation and regulations and to implement measures designed to avoid credit unions being used as a vehicle for fraud, theft or money laundering. In addition, at Section 10(2), provision is made for the accounts of the Authority to be audited annually by an auditor appointed by the Board and approved by the Minister or Auditor General, as determined by the Minister. Further, at Section 11, the Authority is required to submit an annual report to the Minister. The report would be presented to Parliament.

10. Prior to commencing business, new credit unions registered under the *Co-operative Societies Act* would be required to obtain an Operating Certificate under the proposed legislation. Before granting an Operating Certificate, the Authority must be satisfied, among other things, that the directors and officers of the credit union are fit and proper persons for their positions, that the business plan of the credit union is viable and that the credit union would contribute to the

economic welfare of its members in accordance with co-operative principles.

12. The Supervisor would also be granted powers similar to those of other regulators, in accordance with international best practices. These included the power to issue compliance orders with respect to the legislation, regulations and standards, remove Directors of credit unions who fail to meet the criteria of fit and proper persons for their offices or otherwise, contribute to a contravention of the legislation and place a failing credit union under Administration whereby the powers of the board and committees of the credit union are exercised by the Administrator.

13. Provision is also made for the inspection of every credit union by the Supervisor and his staff at least once every 18 months. For purposes of such inspection, the Supervisor is granted liberal access to the credit union and the right to obtain all necessary information from its directors, officers, employees and auditors. Any person who hinders the Supervisor in the inspection of a credit union commits an offence under the proposed legislation.”

L16 It is to be observed that the draft Act provided that the Supervisor was to be appointed by the President on the recommendation of the Minister of Finance and was to hold office during good behaviour for a term of not less than three years or more than five years. Further, the financial support for the Supervision Authority was to be derived from sources specified in Section 9(1) as follows:

(1) Revenues.

The funds and resources of the Authority shall consist of –

(a) Such sums as may be provided by Parliament for the Authority in the Estimates of Revenue and Expenditure;

- (b) Revenues from late filing Charges imposed by the Authority pursuant to Section 37;
- (c) Revenues from fees charged by the Authority as provided in this Act or the regulations;
- (d) Such sums as may be allocated from time to time to the Authority from loan funds of the Government;
- (e) All other sums or property which may in any manner become payable to or vested in the Authority in respect of any matter incidental to its powers and duties”.

Outside these specified sources of revenue there was no financial provision which could provide the Supervision Authority with substantial additional funding to cover exceptional expenditure on hiring outside forensic accountancy services.

L17 The Cabinet Minute of 8 January 2004 noted that the Attorney General should cause the necessary legislation to be prepared. This Commission has no evidence as to what steps the Attorney General then took.

L18 On 16 April 2004, in response to concerns expressed by the Opposition that the Government was failing to get on with regulatory reform in relation to the financial sector, Senator Enill stated in the House of Representatives:-

“Government has also recognized the significant role of credit unions in the financial sector and will implement measures to ensure that this area is adequately supervised. Legislation governing credit unions is being upgraded. Supervision of this segment of the financial services industry will be transferred to the Ministry of Finance and prudential standards for the operation of credit unions including corporate governance rules are also being formulated. A draft Bill is currently with the Attorney General's office, so that we can in fact bring something to Parliament. The existing Bill, as we have

proposed it, does not add to the powers of the Minister to take action. The Bill recognises that the new regulatory authority would be the Central Bank”.

L19 However, the Final Evaluation Report for the Institutional Strengthening Project under the Agreement between GORTT and the IADB, the first draft of which was prepared in April 2004, explained in part the legislative inertia which apparently prevailed with regard to the passing of the Credit Union Supervision Act in these words:-

“A Credit Union Supervision Act and regulations was drafted, prudential norms were defined, and CUSU was established as planned. However, the passage of the Act faced enormous opposition from the CUs and the Government never approved it. Credit union leaders expressed considerable discontent, not only with the draft law itself but also with the way that the political aspects of drafting, consultation and presentation had been handled. The concept of CUs being supervised by the Ministry of Finance did not receive much support either. Furthermore, in the case of Trinidad and Tobago where some estimates of the percentage of the population that is involved with CUs run as high as 40 percent, it is difficult to initiate reforms that are not particularly popular within the sector, especially when the electoral margins between the two leading political parties have been so thin in recent years.

There are essentially two major issues with the draft Credit Union Supervision Act and Regulations that are not only seen as problematic in the present evaluation but that have clearly been troublesome for the leaders of the credit union movement. Under the Regulation Section (32, Sub-sections d, e and f) of the Act, the Finance Minister is given extensive powers over the types of activities that may be undertaken by credit unions, as well as funding arrangements and transactions involving potential conflicts of interest (related parties). The Finance Minister can also intervene in the

management and governance of credit unions (Sub-section k) with respect to directors, board committees, credit committees, supervisory committees, and even the role of loan officers as well as other matters. On the other hand, the activities that may be permitted to credit unions can be troublesome. Specifically, many of these activities are non-financial and should not be permitted to credit unions given the highly negative experience worldwide with multi-purpose cooperatives that include both financial and non-financial services. In addition, the classes of businesses open to credit unions under Section 14 of the Act and the “Second Schedule” include complex financial services that require levels of skills and risk management capabilities far beyond those of most credit unions in Trinidad and Tobago or elsewhere. Similar weaknesses can be found in Part V of the Regulations, in particular those dealing with “Substantial Investments”.

L20 The White Paper on Reform of the Financial System was published in June 2004. Among the General Recommendations were the following:

*Legislative Framework:* The legislative framework should be upgraded to ensure a sound legal basis for all areas of financial sector activity. This framework should encompass rules - that are in conformity with international best practice - for information disclosure, prudential requirements, mergers and acquisitions, electronic finance and standards for corporate governance, as well as rules to safeguard against money laundering and financing of terrorism. The legislative framework should also make provisions for the adoption of International Financial Reporting Standards (IFRS) after consultation with the Institute of Chartered Accountants of Trinidad and Tobago (ICATT).

*Financial Reporting Standards:* All companies that are engaged in the provision of financial products and services should be required to adopt the IFRS.

*Regulatory and Supervisory Systems:* The regulatory and supervisory systems for the various segments of the financial sector should be upgraded to provide for the integrated regulation of the sector. In order to give effect to the integrated regulation and supervision of the financial sector, a single Regulatory Authority with the necessary powers and authority should be established. As the financial reforms are gradually introduced, it may be necessary, in the interim, to establish a Regulatory Council as a first step towards the establishment of the single Regulatory Authority.

L21 Among the specific Policy Recommendations for the Credit Union Sector were the following:-

1. Upgrade the legislation that governs the activities of credit unions so as to more effectively take account of international best practice in the sector as well as legislative changes in the broader financial system.
3. Accelerate the development and implementation of relevant criteria based on appropriate prudential (such as the PEARLS ratios) and disclosure requirements, and introduce systems for the continuous monitoring of credit unions. The ability of the Regulator to take decisive and appropriate action against problem institutions should also form part of this framework.
4. Improve the standard of corporate governance in the credit union sector. The process for electing officials should be addressed and fit and proper standards should be set for credit union boards, committee members and managers.
6. Supervision of the Credit Union Sector should be brought under the umbrella of the Ministry of Finance and the Central Bank.
7. Give active consideration to the graduation of the very large credit unions and credit unions that are engaging in non-core activities of a financial nature to the same standard of

supervision provided for other financial institutions. Institutions to be graduated should be given a transition period to adjust to the new standards.

L22 It thus appears that the carefully drafted supervisory regime for credit unions set out in the draft Credit Union Supervision Act, involving the establishment, as a separate body corporate subject to the MOF, of the Credit Union Supervision Authority had in the space of two months been abandoned in favour of integrated regulation by means of a Single Regulatory Authority covering all financial services. This change of policy is explained in a Note to the Finance and General Purposes Committee of the Cabinet prepared by MOF:-

- “9. Recent developments in the sector have caused the Minister of Finance to revisit the policy articulated in the said Cabinet Minute No. 59. Credit unions have flourished within the last five years and, given their rapidly expanding asset base and the quantum of funds now under the control of these institutions, it is clear that difficulties in this sector could result in systemic risk. The Consultant's report indicated that developments in the domestic sector were mimicking those in more sophisticated markets to adjust to the new standards.
10. Along with changes in the scale of operations, there has also been ongoing innovation in the range and complexity of products and services offered. The more advanced credit unions in the sector are moving towards offering a full suite of financial services to their members. There are also concerns that some credit unions have engaged in speculative investments or non-financial business such as real estate. The World Council of Credit Unions, Inc. is of the view that such activities will generally reduce liquidity and earnings.

11. While the phenomenal growth in the sector is to be commended and encouraged, it has become apparent that the regulatory apparatus must be enhanced to secure member's interests”.

L23 In paragraph 5.3 of the White Paper there is set out an Implementation Schedule which includes the Credit Union Sector. That Schedule included the following:

Transfer Supervisory Authority to MOF/CBTT	January 2005
Develop Prudential Standards for CUs	June 2005
Improve Standards of Corporate Governance	June 2005
Upgrade Legislation Governing CUs	October 2005

These targets were to be implemented by the MOF. It might therefore have been expected that, given the importance ostensibly attached to enhancement of the regulatory apparatus “to secure members’ interests”, a bill would have been placed before Parliament in late 2004. That was not to happen.

L24 On 8 October 2004 the Hon. P. Manning told the House of Representatives that:

“The legislative agenda for the financial system in fiscal 2005 will include the amendment of the Financial Institutions Act and the Insurance Act, as well as the modernisation of legislation relating to the credit unions and private pensions funds. We are also examining a proposal whereby credit unions with an asset base of \$100 million and higher, as well as those undertaking business of a banking nature will be brought under the supervision of the Central Bank.”

L25 By a Cabinet Minute dated 9 December 2004 it was agreed to bring credit unions with an asset base of \$100 million and higher, as well as those undertaking business of a banking nature under the supervision of CBTT.



L26 To put these decisions into context, by March 2005 HCU's external auditor, Mr Ramnarine had completed his Audit Report, which is fully described in Section H of this Report, and had sent his disclaimer opinion to the Acting CCD, Mr Hyder Ali, and the latter had recommended to the Permanent Secretary at the MOL that an Inquiry into HCU should be conducted by an external firm of accountants with a focus on determining whether any fraud had been committed. Further, HCU was by this time in an extremely serious financial condition and, but for the bail-out agreement with CLICO, the so-called "strategic alliance", would almost certainly have become insolvent and collapsed within a few months in the absence of an alternative source of bail-out funds.

L27 The seriousness of HCU's financial condition coupled with its defective corporate governance had been well known to Mr E. George, the Permanent Secretary at the MOL, from about 9 March 2005 at the latest, the date of the Acting CCD's damning exposé to him in the letter of that date. Indeed, by that time there was every indication that HCU was almost totally out of regulatory control. Moreover, on 21 April 2005 the Acting CCD informed the Permanent Secretary MOL that Pannell Kerr Forster had been appointed to conduct an Inquiry under Section 4 of the CS Act 1971. By 6 May, the then Minister of Labour, Mr Anthony Roberts, had become personally involved in the progress of that Inquiry and, it is to be inferred, had been briefed by his officials on the reported condition of HCU. He on that day attended a meeting with the Secretary of HCU, Mr Ramnath, and the CCD, Mr Keith Maharaj, at which Mr Ramnath requested and Mr Roberts refused the reversal of the decision to commence a Section 4 Inquiry.

L28 It is therefore beyond question that by May 2005 the Government had plain knowledge that HCU, as the largest credit union, represented a grave risk not only to its many members and depositors but also to the stability of the entire credit union sector. Indeed, anybody who had read the Final Evaluation Report of the Institutional Strengthening Project and who was aware of the condition of HCU as reported to the MOL would at once have recognised that HCU exemplified the description in that Report quoted in Section J of this Report as “potentially dangerous” due to “a combination of factors (which) could easily be a prelude to a financial crisis, at least for the CU sector” and, having done so, ought therefore to have appreciated that the need substantially to improve and enhance the regulatory regime for credit unions was particularly urgent.

L29 On 30 June 2005, the Cabinet had before it a Note for Cabinet prepared by the MOF. The note recommended that CBTT should be made responsible for the supervision of all financial affairs of credit unions and the CCD would supervise “all other aspects of credit union strengthening, including development and governance”. That would involve integration of regulation of the financial activities of credit unions with regulation of those financial institutions licensed under the Financial Institutions Act 1993, insurance companies and pension plans under the aegis of CBTT. The CS Act 1971 should therefore be amended to remove supervision of financial affairs of credit unions from the CCD. The regime provided for in the draft Credit Union Supervision Act should thus be abandoned. The Cabinet referred the Note to the Finance and General Purposes Committee.

L30 On 14 July 2005 the Cabinet agreed to the proposed integration of supervision of the financial activities of all credit unions under the control of CBTT.

L31 On 28 September 2005 The Hon. P. Manning told the House of Representatives that work was advanced on legislation which would bring credit unions under the regulation of the CBTT and that such legislation was expected to be presented to Parliament before the end of 2006.

L32 On 14 July 2006, in answer to criticism of the Financial Institutions Act, then under consideration in the House of Representatives, on the grounds that it did not deal with the issue of supervision of the credit union sector, Senator The Hon. C. Enill said this:

“Let us just say, to report, that the credit union legislation is well on the way, right now there is a discussion going on between the credit union sector and the Central Bank and that is in fact well on the way”.

L33 It is to be observed that exactly one year had passed since the Cabinet had decided that the supervision of the financial affairs of all credit unions was to be placed under the control of the CBTT.

L34 Almost one year later – on 6 June 2007 – Senator Enill said this in the House of Representatives:

“The Government’s plan is to leverage this success to make Trinidad and Tobago a true pan-Caribbean financial centre; a platform for which domestic and international banks can service not only the Caribbean, but further afield in Central and South America. We have the advantage of location, and we are working to improve our physical and technological infrastructure, and, of course, the quality

of our human resources. We are putting particular focus, also on the upgrading of our regulatory and supervisory regime, in line with international standards.

Work is also almost completed on the new credit union legislation, which will bring the credit union movement under the aegis of the Central Bank, while recognising the role that they must play in the creation of new small enterprises”.

Legislating for the policy objective of “upgrading of (the) regulatory and supervisory regime” with the purpose of creating in Trinidad & Tobago “a true pan-Caribbean financial centre” and a platform for domestic and international banks had clearly been given priority over the introduction of a new regulatory regime for credit unions.

L35 On 21 August 2007 Senator Dr Gopeesingh asked Senator Enill for an assurance that the regulatory and supervisory functions that would be looking after Central Bank and credit unions business would not be left to decay and that urgent steps were being taken because “we are hearing through the grapevine there are some credit unions that are sitting on the brink of disaster, and therefore, millions of dollars of people’s money are involved and you may find that scores of people or hundreds of people in Trinidad and Tobago may find themselves losing money by deposits”.

This Commission has no evidence that any such assurance was given. By the date of this debate, as appears from the findings in Section F of this Report, HCU had been insolvent for at least ten months and probably for 18 months.

L36 On 9 October 2008 the CCD ordered HCU to be wound up and appointed a liquidator on the following day. Even by that date there was no further legislation providing for the supervision of the financial affairs of credit unions.

L37 Indeed, it was only in February 2009 that there was enacted the Central Bank (Amendment) Act. This applied to all financial institutions within the meaning of the repealed Financial Institution (Non-Banking) Act, which included credit unions. By Section 44D(1) very wide powers of investigation of and control over such institutions were conferred on the CBTT in the event of its being of the opinion:

- (a) "That the interests of depositors or creditors of an institution are threatened;
- (b) That an institution is likely to become unable to meet its obligations or is about to suspend or has suspended payment; or
- (c) That an institution is not maintaining high standards of financial probity or sound business practices".

However, those wide powers were subject to an important limitation imposed by Sub-section (2) by which it was provided:-

- (2) The powers of the Bank under Sub-section (1) shall not be exercised unless the Bank is also of the opinion that the financial system of Trinidad and Tobago is in danger of disruption, substantial damage, injury or impairment as a result of the circumstances giving rise to the exercise of such powers".

Those wide powers, which included assuming control of and carrying on the affairs of the institution and, if necessary, taking over its property and undertaking, taking all such steps as it considered necessary to protect the

interests of depositors and creditors and providing such financial assistance as it considered necessary to prevent the collapse of the institution, were thus predicated upon the need to exercise them in the national interest. Although they took account of what CBTT considered necessary for the protection of depositors and creditors, that consideration referred to the scope of such powers and did not in itself trigger the Bank's decision to exercise them. It is nonetheless fair to say that, if this legislation had been enacted earlier, CBTT might well have stepped in to control HCU long before the CCD ordered it to be wound-up. Whether, having stepped in, CBTT would have found that there was any appropriate remedy other than liquidation, given the extremely decayed financial condition of HCU, is, however, very doubtful. Unless its intervention had been before the end of 2005 and had been accompanied by the complete replacement of the existing officers and BOD, it would probably have been too late to salvage the credit union.

L38 In the course of January-July 2009, there was set up a Working Committee under the aegis of the MOF for the purpose of laying the ground for detailed drafting of an Act specifically applicable to regulation of credit unions. CBTT and the credit unions through CCULTT were represented. Proposals for the new Act were put out for public consultation in September 2009. Resulting from these processes a new Credit Union Act was drafted by CBTT's expert and in consultation with the office of the Chief Parliamentary Counsel.

L39 The new proposed Credit Union Act was based upon the separation of regulatory responsibilities and powers between CBTT, which was to supervise all financial matters, and CCD which was to supervise all other

credit union matters, such as registrations, de-registrations, membership issues, Bye-Laws and governance, which functions were to be covered by an amended CS Act.

L40 The proposed legislation included provisions:

- (a) Setting out the minimum prudential criteria in respect of institutional capital, borrowings and liquidity, equity investments real estate non-financial activities and credit exposure ratio;
- (b) On minimum governance standards;
- (c) Mandating that all credit unions be part of an insurance protection fund.

L41 The draft Credit Union Act was submitted for Cabinet approval in April 2010. The legislative regime thus contemplated was therefore quite different from the idea of integrated regulatory supervision of financial institutions which had previously prevailed. The proposal for a separate Credit Union Act and for there to be two separate Acts relating to credit unions was explained in a Policy Proposal Document approved by the Cabinet in November 2009 thus:

“Given the co-operative nature and democratic systems of governance of credit unions, it would be inappropriate to seek to regulate them under legislation intended for commercial banks or other types of financial institutions. Rather, the requirement is for specific legislation that recognises the special characteristics of credit unions.

This Policy Proposal document forms an important part of the groundwork for the creation of such legislation”.

L42 It might have been thought that, given what was known in 2010 to have happened to HCU, the enactment of the Credit Union Act and the proposed amendments to the CS Act 1971 would have been given immediate priority.

This, however, was not so. According to the evidence of Mr Karyl Adams, given to this Enquiry on 17 May 2012 – over two years after the draft legislation was put before the Cabinet – he, as CCD, was “currently engaged in an on-going discussion process which (was) reviewing those bills”.

L43 Having regard to the fact that no less than ten years had passed since it had been clearly recognised that there was an urgent need to introduce a more effective regulatory regime applicable to credit unions, it has to be said that the failure to pass into law any such new system of tighter controls can only be regarded as due to a really serious lack of focused leadership by successive governments. Given the number of depositors, the majority of them of very limited means, who were known for many years to have been exposed to the serious risk of financial ruin by reason of the defects in regulatory control of credit unions, it is impossible to exempt from a significant measure of blame for the HCU disaster those who have held legislative power since 2003. That has to include the failure to develop bipartisan parliamentary support for reforms.

L44 This Commission finds that governmental efforts to introduce a stricter regulatory regime for credit unions were sometimes unfavourably regarded by the credit unions’ representatives whom the government quite properly consulted from time to time. There can be no doubt that reluctance to agree to proposed reforms sprang from a very deeply embedded belief in the industry that credit unions were essentially voluntary organisations run by elected representatives of the members for the mutual well-being and social advancement of the membership through the discipline of thrift, education and the availability of the financial means of purchasing property. Whereas



it was accepted that some measure of supervision by the CCD was essential in order to protect members of credit unions against failure of management to comply with the requirements of the CS Act 1971, the Regulations and the Bye-Laws, there was a firm belief that the CCD should retain a large measure of control and that such control ought to be exercised with a light touch.

L45 That this idealistic perception of the purpose and regulation of credit unions extended in some degree to those officials of the CCD Department who had long experience of working with credit unions was demonstrated in particular by the evidence of Mr Diaram Maharaj who succeeded Mr Keith Maharaj as Commissioner in January 2006 and retired in September 2006, having worked as a CCD official for 35 years. In his witness statement he identified the properly idealistic perception of the credit union movement:

“Financial business of a credit union is not an end in itself but a means to an end. The end is the upliftment of the socio/economic and cultural aspects of the lives of human beings. The economic benefits can be easily quantified and measured but the social benefits cannot”.

He further stated that the members of credit unions owned the union assets and that meant a lot to people for it taught people how to earn a living and how to live and thereby contributed to the national welfare.

L46 At the time of preparation of this Report there are in being two Parliamentary Bills which this Commission understands to be even now subject to consultation. These are the 2013 versions of the Credit Union Bill and the Co-operative Societies Act (Amendment) Bill.

L47 The proposed regulatory regime which would result from the enactment of these Bills in their present form appears to be intended to reflect the belief, already referred to in this section, that, where a credit union is essentially providing financial services, it ought to be regulated by the Inspector of Financial Institutions appointed under Section 7 of the Financial Institutions Act together with the CBTT, except with regard to non-financial features of regulation. Thus the Inspector and the CBTT are given very wide powers of regulation. The CBTT is to be under the general duty to determine the financial soundness of a credit union, unless it is what is termed “a non-financial co-operative society”, that is to say “a society which provides goods and services to its members and other persons as its main object and which may provide a source of credit to its members only” (emphasis added). HCU would clearly have fallen outside this definition and so would have been subject to regulation by the CBTT and the Inspector.

L48 Thus the CBTT would be given powers in relation to credit unions other than non-financial co-operative societies, which under the proposed Section 5(2) of the Credit Union Bill would include the power to issue, vary, restrict or revoke operating certificates, to establish prudential criteria to be met by credit unions, to perform assessments of the risk profile, safety and soundness of credit unions, to conduct on-site examinations, to conduct continuous off-site assessments of the financial condition of credit unions, to approve recommendations as to regulation from the Inspector and to direct the Inspector to take corrective and remedial action. Under the proposed Section 6 of the Bill the CBTT would be given wide powers to require the provision of information not only from the credit union itself but also from any

subsidiary or company, unincorporated body or society that was a related party or from any present or former director, officer or auditor or from any present or former director, officer, auditor or controlling shareholder or significant shareholder of a subsidiary or related body.

L49 Further, the Inspector would be given those same powers in relation to any person elected to be a member of the BOD or appointed as an officer of a credit union to determine whether such person was a fit and proper person to occupy that particular position in accordance with criteria set out in the proposed Schedule 2 of the Bill. That Schedule would provide *inter alia* by Paragraph 2:

“2. In determining whether an individual is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgment for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of members of the credit union are likely to be, in anyway, threatened by his holding that position.”

L50 The Inspector would be given wide powers of investigation under the proposed Section 10, including the power to examine all applications for approvals under the Act, to conduct an on-site examination or inquiry into the affairs or business of a credit union, to issue directions and to take corrective or remedial action to ensure compliance with the Act and make recommendations to the CBTT. Upon failure of any person to provide access to books, records, accounts, vouchers, minutes of meetings or to provide to the Inspector information required by him within the time that he might specify, it was open to the Inspector to apply to the High Court for an order requiring compliance with his requirements. The Inspector was also

given the express power to take steps or proceedings for the winding up of a credit union subject to the direction of the CBTT.

L51 A particularly important power open to the Inspector and the CBTT would be that identified in the proposed Section 11 under which, if an on-site or off-site monitoring of a credit union revealed that the credit union was “conducting its business in an unlawful, unsafe or unsound manner or (was) otherwise in an unsound condition”, the Inspector might direct the credit union to engage an independent accountant to perform or conduct a review of its financial statements and accounting records and advise the CBTT and credit union of its true financial condition and the Inspector might take all such other measures as he might consider necessary in accordance with the proposed Section 36. The section would provide:

“36. The Bank or the Inspector may take corrective action, as contained in Schedule 6, in order to-

- (a) Ensure the financial safety and soundness of a credit union;
- (b) To protect the depositors of a credit union;
- (c) To protect the creditors of a credit union;
- (d) To protect the financial system of Trinidad and Tobago; or
- (e) To bring about compliance with the Act.”

And Schedule 6 would provide:

“In pursuance of Section 36, the Bank or Inspector may take the following forms of corrective action:-

- (a) Issue directions to a credit union, officer, employee or agent of a credit union;

- (b) Issue compliance directions;
- (c) Direct a credit union to engage an independent accountant to perform or conduct a review of its financial statements and accounting records;
- (d) Disclose information pertaining to a credit union in the Gazette and at least two daily papers in circulation in Trinidad and Tobago or by electronic or any other appropriate means;
- (e) Require the credit union to provide information;
- (f) Inquire into and examine the affairs of an entity, credit union or other co-operative society;
- (g) Revoke the operating certificate of a credit union;
- (h) Restrict the operating certificate of a credit union;
- (i) Vary the restriction on the operating certificate of a credit union;
- (j) Disqualify a person from being a member of the board of a credit union;
- (k) Require the credit union to remedy any breach of prudential criteria as prescribed in the Regulations;
- (l) Require a board of a credit union to take action to comply with a direction;
- (m) Apply to the High Court for-
  - (i) An order to require a person to comply with a direction, restriction or measure imposed;
  - (ii) A restraining order or other injunctive or equitable relief or any other remedy which may be provided by law; or
  - (iii) An order for judicial management;
- (n) Suspend the operations of credit union;

- (o) Refuse to grant approval of an operating certificate **for** reconstruction of a credit union;
- (p) Issue an order to wind-up a credit union;
- (q) Petition the High Court for the winding up of a credit union;
- (r) Issue a notice offering a person the opportunity to discharge any liability to conviction in respect of an offence by payment of an administrative fine; or
- (s) Take any other corrective and remedial action and decision that the Central Bank or Inspector considers appropriate to ensure compliance with the Act”.

L52 The CBTT would also be given power to take corrective action where a credit union did not meet the 100 per cent solvency ratio test prescribed by Schedule or met that test but was unable to meet its obligations as they became due or had ceased paying its current obligations in the ordinary course of business or its property was insufficient to pay all its obligations.

L53 Particularly significantly, the proposed Section 57 would provide that a credit union must maintain such minimum level of liquid assets in relation to its current liabilities as might be prescribed. Further, by the proposed Section 58 the Inspector might direct a credit union to increase its capital in excess of the minimum required under the Regulations or increase its level of liquidity.

L54 Finally, the proposed Section 68 of the Bill would introduce an important additional enforcement facility, namely the power of the CBTT, on the advice of the Inspector, to apply to the High Court for the appointment of a judicial manager if the Inspector was satisfied that there existed a ground for

revocation of the credit union's operating certificate or that the credit union had failed to submit financial statements and returns so that the true financial position of the credit union was uncertain. Amongst the powers of the judicial manager would be that of suspending or retaining the services of any or all the officers and employees. The staff retained would conduct the affairs of the credit union subject to any directions of the judicial manager and would be obliged to give him every assistance. He would act under the control of the High Court but would provide monthly reports to the CBTT. Within a year he would be required to report to the High Court which of the following courses was the most advantageous to members:

- (a) The transfer of the business of the credit union to some other credit union;
- (b) The carrying on of its business by the credit union;
- (c) The winding up of the credit union or of any part of its business;  
or
- (d) The dealing with part of the business of the credit union in one manner and with another part in another manner.

L55 The effect of the proposed Credit Union Bill and the Co-operative Societies Act (Amendment) Bill would be to leave the CCD in place but to remove from him all powers of financial regulation and rest them, as greatly enhanced, in the CBTT and the Inspector of Financial Institutions. This would leave to the CCD regulatory matters relating to registration, constitutional matters and membership issues. Constitutional matters would include approval of Bye-Laws, breach of Bye-Laws, BOD elections, elections of a supervisory committee and of a credit committee and the conduct of AGMs and SGMs.

L56 The proposed legislation would provide the combination of the CBTT and the Inspector of Financial Institutions with regulatory powers going far beyond those limited powers of intervention given to the CBTT under the Central Bank Amendment Act, already described in this section. Indeed, there can be little doubt, in the view of this Commission, that had such legislation been in force from 2004 onwards, the Inspector would have been in a position to control the management of HCU and to prevent its collapse. That is because, armed with the proposed regulatory powers in the Credit Union Bill, the Inspector would have become aware of the crippling effect on liquidity of the investments in and loans to the subsidiaries as well as improvident investments in real estate and would have been able to take steps to correct that fundamental defect in the management of HCU.

L57 It has to be said, however, that such extensive powers of monitoring and control would only be effective if the Inspector and the CBTT had sufficient financial and professional resources to operate them. For this purpose it would be essential for decisions by the CBTT and the Inspector to be independent of budgetary control by GORTT and to be provided with sufficient trained personnel to carry out the necessary monitoring and enforcement. In this connection it is important that the CBTT should be able to act as its own prosecuting authority, should it be necessary to take enforcement or punitive proceedings in the High Court or the criminal courts. An enforcement system which relied to any material extent on investigation and/or preparation for Court by the police or the DPP would not be effective: neither would have adequately qualified personnel to carry out that function.



L58 Further, in order for the dual regulatory regime to work smoothly, it would clearly be desirable for there to be provision for an inter-departmental body to be set up to ensure that regulatory action and, particularly enforcement measures , as between the CCD and the Inspector did not conflict.

**Section M: Recommendations to the Director of Public Prosecutions, under Paragraph 2(i) of the Terms of Reference**

M1 Mr Harnarine

The conduct of Mr Harry Harnarine was such that the Director of Public Prosecutions (“DPP”) should take immediate steps to test the sustainability of criminal proceedings against him. The following aspects of his conduct could be found upon further investigation to give rise to or evidence criminal liability in respect of the following criminal offences.

M1 (a.) Conspiring during the period from 1 January 2002 to 23 July 2008 with the principal officers and members of the BOD and/or the managers of HCU, namely Gayndlal Ramnath, Yadwanath Lalchan, Jameel Ali, and Ravindra Bachan (referred to collectively as “the Co-conspirators”) to defraud members of HCU and their depositors in HCU by agreeing dishonestly to put at risk the value and recoverability of the members’ investments and/or deposits by members and others as evidenced by some or all of the following conduct more fully described in Section F of this Report.

- (i) The commercial relationship between Mr Harnarine and the Co-conspirators, which was dominated by Mr Harnarine, supported particularly by Mr Ramnath.
- (ii) Recklessly pursuing an improvident investment policy by causing HCU to purchase tangible assets at an over-value, without the prior approval of the BOD and without the prior valuation of such property by independent valuers and without obtaining prior adequate advice on title, for example causing HCU USA to purchase in 2003-4 the Miramar Property in Florida, the property of Seepersad Harnarine in Pembroke Pines, Florida, and the property at Macaya Trace, Florida.

- (iii) Recklessly causing HCU to form and/or acquire subsidiaries and to manage them without prior permission from the CCD and without exercising prior due diligence and without any or sufficient business plan, which subsidiaries were incapable of producing sufficient revenue to finance their day to day operations and which could only survive with loans from HCU and recklessly failing to procure adequate monitoring of the deteriorating financial condition of those subsidiaries.
- (iv) Knowingly or recklessly causing HCU to solicit deposits at a time (2005-2008) when it could not meet its immediate liabilities.
- (v) Causing HCU's reckless and excessive expenditure on items which were not in the interests of HCU or its members, specifically payments for personal purposes to Mr Harnarine (amounting, according to the Liquidator to \$5,994,953) and to HCU's directors and managers and to related parties.
- (vi) Knowingly or recklessly causing HCU to use moneys derived by HCU from members' deposits or other payments to support, by means of loans the operating expenses of loss-making subsidiaries.
- (vii) Knowingly or recklessly causing the misappropriation of HCU funds deposited by members and others for the personal benefit of other directors and managers, in particular the purchase of property later transferred to directors and related persons, for example the Macaya Trace transaction more fully described in Sections F and G of this report.
- (viii) Recklessly causing HCU to diminish liquidity without regard to the risk of the repayment requirements of depositors and in particular to solicit funds from members in order to pay moneys due from HCU to other members.

- (ix) Knowingly or recklessly causing HCU to make loans to non-members, such as subsidiaries in breach of the CS Act 1971 and in breach of HCU's Bye-Laws.
- (x) Knowingly or recklessly causing HCU to make loans to members of the BOD and senior management in excessive amounts and without security or the completion of the normally required application forms and even when the borrower was already in default on previous loans in respect of repayment of the principal due or the payment of accrued interest.
- (xi) Knowingly or recklessly causing HCU to fail to acquire and maintain sufficient liquid assets to enable it to meet its liabilities to its members.
- (xii) Knowingly or recklessly causing HCU and its subsidiaries and the subsidiaries of HCU Financial to trade while insolvent.
- (xiii) Knowingly causing HCU to fail to comply with its statutory duties to provide accurate financial statements to the CCD.
- (xiv) Knowingly or recklessly causing inaccurate and misleading financial statements to be issued to members of HCU.
- (xv) Knowingly or recklessly inducing members of HCU to retain deposits in HCU by issuing to them misleading letters of comfort and assurances that HCU was solvent.
- (xvi) Knowingly or recklessly causing HCU to acquire illiquid assets without regard to the risk of the repayment requirements of HCU members and other depositors.
- (xvii) Knowingly or recklessly causing HCU to make imprudent loans to subsidiaries which were unlawful and irrecoverable, those loans having been made without the prior consent of the CCD to non-members of the credit union.
- (xviii) Recklessly causing HCU to diminish its liquidity without regard to the risk of the repayment requirements of depositors by

failing to make any or any sufficient provision for defaults on unsecured loans.

- M1(b) Contrary to Section 34 of the Larceny Act causing HCU to obtain deposits of money from members and others by falsely representing that HCU was solvent by misrepresenting in management financial statements the value of assets and other accounting information.
- M1(c) Contrary to Section 34(2)(b) of the Larceny Act causing HCU to cause or induce by false pretences other persons to accept a valuable security by knowingly or recklessly drawing or causing to be drawn cheques in settlement of depositors' withdrawal claims.
- M1(d) Contrary to Section 3 of the Larceny Act causing HCU to transfer property (vehicle PBN 2827) to Mr Harnarine's wife.
- M1(e) Contrary to Section 3 of the Larceny Act causing HCU to make payments to Mr Harnarine in 2003, 2004 and 2005 in response to his claims for foreign travel expenses which were not established by vouchers or other contemporary or other evidence to have been incurred for the purposes of HCU.
- M2 There were also facts which would have justified further investigation by the DPP into the possibility of the commission of numerous summary offences had it not been for the fact that such offences are now all time-barred. These offences are as follows:
- (i) Causing HCU to be in breach of Regulation 14 by its failure to obtain prior consent of the CCD for increases in its Maximum Liability.
  - (ii) Causing HCU to obstruct inspection by the CCD as explained in the evidence of Mr Maharaj.
  - (iii) Causing HCU to fail to provide timely financial statements to the CCD.
  - (iv) Causing HCU to make investments in and from subsidiary companies without the prior approval of the CCD.

- (v) Causing HCU to make loans to non-members without the prior approval of the CCD.
- (vi) Causing HCU to make *ultra vires* payments of fees and stipends to directors.

M3 Mr Ramnath

The conduct of Gayndlal Ramnath was such that the DPP should take immediate steps to test the sustainability of criminal proceedings against him. The following aspects of his conduct could be found upon further investigation to give rise to or evidence criminal liability in respect of the following offences.

M3(a) Conspiring during the period from 1 January 2002 to 23 July 2008 with the principal officers and members of the BOD and/or senior managers, namely Harry Harnarine, Yadwanath Lalchan, Jameel Ali and Ravindra Bachan to defraud members of HCU and other depositors by agreeing dishonestly to put at risk the value and recoverability of members' investments and/or deposits by members and others as evidenced by some or all of the following conduct more fully described in Sections F and G of this Report.

- (i) The commercial relationship between Mr Ramnath as Corporate Secretary and the other Co-conspirators and Mr Harnarine as President whose right hand man Mr Ramnath had become.
- (ii) Furthering or encouraging or acquiescing in the reckless pursuit by HCU of an improvident investment policy pursuant to which in 2003-4 HCU purchased tangible assets at an over-value and without the prior valuation of such property by independent valuers and without obtaining prior adequate advice on title, for example by purchasing in Florida the Miramar Property, and the property of Seepersad Harnarine in Pembroke Pines and the property at Macaya Trace.

- (iii) Furthering or encouraging or acquiescing in the reckless formation and/or acquisition of and/or investment by HCU in subsidiary companies and without the prior permission of the CCD and in its management of such companies without any or any sufficient prior due diligence or any business plan, which subsidiaries were incapable of producing sufficient revenue to finance their day to day operation and which could only survive with loans from HCU and recklessly failing to procure adequate monitoring of the deteriorating financial condition of such subsidiaries.
- (iv) Furthering or encouraging or acquiescing in causing HCU to solicit deposits at a time (2005-2008) when it could not meet its immediate liabilities.
- (v) Furthering or encouraging or acquiescing in HCU's reckless and excessive expenditure on items which were not in the interests of HCU, specifically payments for personal purposes, particularly to Mr Harnarine and to HCU's directors and managers and related parties.
- (vi) Furthering or encouraging or acquiescing in the use by HCU of deposits or other payments to support by means of loans the operating expenses of loss-making subsidiaries.
- (vii) Furthering or encouraging or acquiescing in the misappropriation of HCU funds for the personal benefit of directors and managers, in particular the purchase of property later transferred to directors and related parties, for example the Macaya Trace transaction more fully described in Sections F and G of this Report.
- (viii) Furthering or encouraging or acquiescing in HCU's reduction in its liquidity without regard to the risk of the repayment requirements of depositors and in particular its soliciting of funds from members in order to pay moneys due from HCU to other members.

- (ix) Furthering or encouraging or acquiescing in the making of loans by HCU to non-members, such as subsidiaries, in breach of the CS Act 1971 and in breach of HCU's Bye-Laws.
- (x) Furthering or encouraging or acquiescing in the making of loans by HCU to members of the BOD, including the President, and senior management in excessive amounts and without security or the completion of the normally required application forms and even when the borrower was already in default on previous loans in respect of repayment of the principal due or the payment of accrued interest.
- (xi) Furthering or encouraging or acquiescing in causing HCU to fail to acquire and maintain sufficient liquid assets to enable it to meet its liabilities.
- (xii) Furthering or encouraging or acquiescing in HCU and its subsidiaries and the subsidiaries of HCU Financial to trade while insolvent.
- (xiii) Knowingly causing HCU to fail to comply with its statutory duties to provide accurate financial statements to the CCD.
- (xiv) Knowingly or recklessly causing inaccurate and misleading financial statements to be issued to members of HCU.
- (xv) Furthering or encouraging or acquiescing in HCU recklessly inducing its members to retain deposits in HCU by issuing to them misleading letters of comfort and assurances that HCU was solvent.
- (xvi) Furthering or encouraging or acquiescing in HCU acquiring illiquid assets without regard to the risk of the repayment requirements of HCU members and other depositors.
- (xvii) Furthering or encouraging or acquiescing in HCU making imprudent loans to subsidiaries which were unlawful and unrecoverable, these loans having been made without the prior consent of the CCD to non-members of the credit union.



(xviii) Furthering or encouraging or acquiescing in HCU diminishing its liquidity without regard to the risk of the repayment requirements of depositors by failing to make any or any sufficient provision for defaults on unsecured loans.

M3(b) Contrary to Section 34 of the Larceny Act Mr Ramnath participated and/or acquiesced in obtaining deposits of money in HCU by falsely representing that HCU was solvent by deliberately misrepresenting in management financial statements the value of assets and other accounting information, for example by his conduct in the course of the AGM on 30 September 2006.

M3(c) Contrary to Section 34(2)(b) of the Larceny Act Mr Ramnath in November 2004 and January 2005 and as indicated in Mr Adams's report in March 2007, participated and/or acquiesced in causing or inducing by false pretences another person or persons to accept a valuable security by recklessly drawing or permitting or acquiescing in the drawing of cheques in settlement of depositors' withdrawal claims which cheques would to his knowledge be or be likely to be dishonoured.

M3(d) Contrary to Section 9 of the Larceny Act, Mr Ramnath dishonestly obtained title to the land at Macaya Trace, as more fully described in Sections F and G of this Report.

M4 There were also facts which would have justified further investigation by the DPP into the possibility of the commission of numerous summary offences had it not been for the fact that all such offences under the CS Act 1971 by way of breach of the Bye-Laws and/or Regulations are now time-bared. Those summary offences are in substance the same as those set out above with regard to Mr Harnarine.

**M5**     Mr Lalchan

The conduct of Mr Yadwanath Lalchan was such that the DPP should take immediate steps to test the sustainability of criminal proceedings against him. The following aspects of his conduct could be found upon further investigation to give rise to or evidence criminal liability in respect of the following offences.

M5 (a) Conspiring during the period from 1 January 2002 to 23 July 2008 with the principal officers and members of the BOD and/or senior managers, namely Harry Harnarine, Gayndlal Ramnath, Jameel Ali and Ravindra Bachan to defraud members of HCU and other depositors by agreeing dishonestly to put at risk the value and recoverability of members' investments and/or deposits by members and others as evidenced by some or all of the following conduct, more fully described in Sections F and G of this Report.

- (i) The commercial relationship between Mr Lalchan, as a director of HCU from November 1998 to October 2008, and the other Co-conspirators and Mr Harnarine, as President.
- (ii) Encouraging and/or acquiescing in the purchase in 2004 by HCU and others in the name of HCU USA of the house at Miramar Florida and of the property of Seepersad Harnarine in Pembroke Pines, Florida; thereby causing the expenditure by HCU on tangible assets at an over-value and without prior valuation and without prior advice on title.
- (iii) Furthering and/or encouraging and/or acquiescing in HCU recklessly forming and/or investing in subsidiary companies without the prior permission of the CCD and in its management of such without any or any sufficient prior due diligence or any or any adequate business plan which subsidiaries were incapable of producing sufficient revenue to finance their day to day operations and which could only survive with loans of HCU

and recklessly allowing such subsidiaries to go on trading without any paper monitoring of their deteriorating financial condition.

- (iv) Encouraging and/or acquiescing in causing HCU to solicit deposits at a time (2005-2008) when it could not meet its immediate liabilities.
- (v) Furthering or encouraging or acquiescing in HCU's reckless and excessive expenditure on items which were not in the interests of HCU or its members, specifically payments for personal purposes to Mr Lalchan, Mr Harnarine and others of HCU's directors and managers and related parties, specifically, for example, as at 29 July 2006 Mr Lalchan's outstanding indebtedness to HCU under a mortgage was \$720,884.21 on which Mr Lalchan was paying interest at the abnormally low rate of 8 per cent per annum. However, on 4 May 2005 a journal credit of \$550,000 was shown apparently the proceeds of a sale of property by Mr Lalchan to a contractor. The sale agreement for that transaction showed a price of only \$400,000 and there was no evidence from what source the balance of the funding (\$150,000) came. Mr Lalchan also acquired a one third share in HCU USA which was paid for by HCU but Mr Lalchan, although claiming that he and two other directors of HCU were intended to hold the company on trust for HCU, was unable to produce in evidence any trust deed.
- (vi) Furthering or encouraging or acquiescing in the use by HCU of deposits or other payments to support by means of loans the operating expenses of loss-making subsidiaries.
- (vii) Furthering or encouraging or acquiescing in the misappropriation of HCU for the personal benefit of directors and managers, specifically, for example, the Macaya Trace transaction and the payments from 2003 of a total of \$1.011 million to Mr Harnarine's sister in respect of expenses

allegedly incurred by her on behalf of HCU and/or HCU USA, more fully described in Sections F and G of this Report.

- (viii) Furthering or encouraging or acquiescing in causing HCU recklessly to diminish its liquidity without regard to the risk of the repayment and withdrawal requirements of depositors and in particular to solicit funds from members in order to pay moneys due from HCU to other members.
- (ix) Furthering or encouraging or acquiescing in causing HCU to grant loans without any or any adequate security.
- (x) Furthering or encouraging or acquiescing in knowingly causing HCU and its subsidiaries, including subsidiaries of HCU Financial, to trade while insolvent.
- (xi) Furthering or encouraging or acquiescing in causing HCU to fail to comply with its obligations to provide accurate financial statements to the CCD.
- (xii) Furthering or encouraging or acquiescing in causing HCU to issue inaccurate and misleading financial statements to its members by reason of the continuing inadequacy of the members and ability of the accounting staff for the purposes of ledger maintenance, financial record-keeping and the accurate presentation of HCU's financial statements.
- (xiii) Furthering or encouraging or acquiescing in causing HCU recklessly to diminish its liquidity by making imprudent loans to its subsidiaries which, being made without the CCD's permission to non-members, were unlawful and irrecoverable.
- (xiv) Furthering or encouraging or acquiescing in causing HCU to make unsecured loans without proper due diligence and loans at nil interest.
- (xv) Furthering or encouraging or acquiescing in causing HCU recklessly to fail to make provision for defaults on unsecured loans and thereby to diminish liquidity.

M6 There were also facts which would have justified further investigation of several summary offences under the CS Act 1971, Section 71 had it not been for the fact that all such offences are now time-barred. These summary offences are as follows.

- (i) Causing HCU to fail to provide financial statements to the CCD.
- (ii) Causing HCU to make investments in and from subsidiary companies without approval of the CCD.
- (iii) Causing HCU to make loans to subsidiary companies and others without approval of the CCD.
- (iv) Causing HCU to make *ultra vires* payments of fees and stipends to directors.

M7 Mr Keith Maharaj

The conduct of Mr Keith Maharaj was such that the DPP should take immediate steps to test the sustainability of criminal proceedings against him. The following aspects of his conduct could be found upon further investigation to give rise to or evidence criminal liability in respect of the offence of misfeasance in a public office at common law contrary to Section 2 of the Criminal Offences Act by reasons of his acting or failing to act contrary to his public duty as CCD while being aware of that duty or being subjectively reckless as to the existence of his duty and knowing, or being subjectively reckless as to whether, he was acting or failing to act contrary to such public duty.

- (i) Failing in 1999 to act on the advice of Mr Joel Edwards by directing and monitoring steps to improve corporate governance with regard particularly to the operations of the BOD and the credit control.

- (ii) From 2000 onwards taking no or no sufficient steps to evaluate the justification of HCU's application for increases in Maximum Liability.
- (ii) Failing to investigate and monitor HCU's corporate governance to ascertain whether it complied with the requirements under the CS Act 1971, the Statutory Regulations and the Bye-Laws specifically with regard to the functions of the Supervisory Committee and the Credit Committee.
- (iv) Failing to introduce any or any effective system within the CCD Division for monitoring and enforcing compliance by HCU with the CS Act 1971, the Statutory Regulations and the Bye-Laws with regard to making loans, taking deposits and making investments and its adherence to the PEARLS standards.
- (v) Failing in November 2001 to follow the recommendations of one of your officials, Mr Diaram Maharaj, in his report on HCU.
- (vi) Failing in early 2002 to cause to be investigated breaches by HCU of the Maximum Liability limit reported by a CCD Accountant, reports by an anonymous whistle-blower of falsified valuation reports and by members of the public to MOF with regard to financial impropriety by HCU.
- (vii) Failing, before giving retrospective permission for investments in subsidiaries in June 2002 to evaluate the financial viability and propriety of investments in new companies with regard to HCU's ability to protect its liquidity margin in the context of its business as a whole.
- (viii) Failing after 2002 to insist that no investments should be made in newly-formed companies or subsidiaries without first drawing up a business plan, making adequate provision for management and funding and obtaining prior approval from the CCD for such matters.
- (ix) Failing to evaluate the impact of the granting of permission to increase HCU's Maximum Liability on its liquidity margin.

- (x) Failing, after receiving the external auditor's report on HCU's year to 30 September 2002 and the report of Mr Hyder Ali to the Permanent Secretary of the MOL of 9 March 2005, to take enforcement action against HCU on the grounds of its having made unauthorised investments.
- (xi) Failing up to January 2003 to take any sufficient steps for the inspection of HCU's financial operations.
- (xii) Failing in April 2003 to deploy the CCD's in-house accountants to analyse and advise upon HCU's submitted business plans for Bankers Insurance and HCU Foods Corporation.
- (xiii) Repeatedly abdicating decision-taking as to HCU's affairs in favour of the DCCD.
- (xiv) In July 2003 recommending by way of misrepresentation to CBTT that HCU was suitable to open and operate a bureau de change.
- (xv) Failing in November 2004 to set up an inspection or an inquiry under Section 4 of the CS Act 1971.
- (xvi) Failing in December 2004 to take enforcement action in respect of unauthorised loans and mortgage on seven properties set up in breach of Section 43(2) of the CS Act 1971.
- (xvii) Failing in March 2005, after receipt of CCD's in-house accountant's report on HCU and on the external auditor's disclaimer letter, to take immediate steps to set up an inquiry under Section 4 of the CS Act 1971.
- (xviii) In May 2005 acceding to HCU's request to postpone commencement of the PKF Section 4 Inquiry until the new minister of Labour (Mr Montano) had expressed his view.
- (xix) Failing to exercise the independent power of his office by refusing to agree to Mr Montano's view that a Section 4 Inquiry should not be set and by failing to take his refusal to provide fuming to the Prime Minister.

(xx) Failing upon his retirement in January 2006 to brief his successor, Mr Diaram Maharaj, on issues and problems relating to HCU.

M8 The conduct of other members of the management and Board of Directors of HCU as to which insufficient oral and documentary evidence was available to the Commission at the conclusion of the hearings of the Enquiry may well have been such that the DPP should take immediate steps to test the sustainability of criminal proceedings against them. This Report does not name those individuals or identify their conduct for to do so would be inappropriate having regard to the fact that they were not made parties to the Enquiry and did not voluntarily tender evidence or otherwise participate, although all of them were given ample opportunity to do.



**Section N: Recommendations to the Attorney General under Paragraph 2(i) of the Terms of Reference**

N1 Civil remedies that upon further investigations may be available to the Attorney General, as follows:-

N2 Those depositors who are owners of investment deposits in HCU and who have been determined to be eligible to receive grant relief up to \$75,000 from GORTT under the Grant Relief Payment Scheme are to assign or have already assigned to GORTT all benefits, entitlements, interests in and under their respective investment deposits. Those benefits, entitlements and interests include the right to apply to the CCD under Section 65 of the CS Act 1971 to inquire into the conduct of any director and officer of HCU and whose conduct may, upon investigation, involve that he or she has misapplied or retained or became liable or accountable for money or property of HCU or may involve that the he or she has misapplied or retained or become liable or accountable for money or property of HCU or may render him or her guilty of misfeasance or breach of trust in relation to HCU. That right to apply to the CCD has been assigned to GORTT and is exercisable by the Attorney General on its behalf. If the CCD decides to accede to any such application, he may make an order requiring that person to repay or restore such money or property with interest to the assets of HCU or to contribute to assets of HCU by way of compensation in regard to any such misapplication, retainer, dishonesty or breach of trust as the CCD may find to be established such sum as the CCD thinks just.

**Section O: Recommendations under Paragraph 2(iii) and (iv) with regard to  
Auditors and the Conduct of Audits arising out of this Enquiry**

Recommendations under Paragraph 2(iii) and (iv) with regard to Auditors and the Conduct of Audits arising out of this Enquiry will be provided in conjunction with that part of the Report which relates to CLICO and associated companies.

A handwritten signature in black ink, appearing to read "Anthony Colman", is written over a diagonal line that extends from the bottom left towards the middle right of the page.

The Hon Sir Anthony Colman

Commissioner

Dated: 16 July 2014