



**PARLIAMENT**  
**REPUBLIC OF TRINIDAD AND TOBAGO**  
**(ELEVENTH PARLIAMENT- SECOND SESSION 2016/2017)**

**REPORT**  
**OF THE**  
**JOINT SELECT COMMITTEE**  
**ON**  
**THE TAX INFORMATION EXCHANGE**  
**AGREEMENTS BILL, 2016**

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# *THE COMMITTEE*

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## *APPOINTMENT*

1.1 Pursuant to resolutions of the House of Representatives on January 6, 2017 and of the Senate on January 11, 2017, a Joint Select Committee was established to consider and report on the Tax Information Exchange Agreements Bill, 2016 by February 3, 2017.

1.2 The Committee's First Report was presented to the House of Representatives and Senate on February 3, 2017 and February 7, 2017 respectively. At a sitting of the House of Representatives held on February 13, 2017, the House agreed to the following resolution:

**"Be it Resolved:**

that this House adopt the Report of the Joint Select Committee appointed to consider and report on the Tax Information Exchange Agreements Bill, 2016 as an Interim Report and the time be extended for the Joint Select Committee to complete its work and report to the House by Thursday February 23, 2017."

## *MEMBERSHIP*

1.2 The following persons were appointed to serve on the Committee:

- Mr. Colm Imbert, MP
- Mr. Faris Al-Rawi, MP
- Mr. Stuart Young, MP
- Ms. Marlene McDonald, MP
- Dr. Tim Gopeesingh, MP
- Dr. Bhoendradatt Tewarie, MP
- Mrs. Paula Gopee-Scoon
- Mr. Clarence Rambharat
- Mr. Michael Coppin



- Mr. Gerald Ramdeen
- Mr. H.R. Ian Roach
- Mr. Taurel Shrikissoon

### *SECRETARIAT*

1.3 The following persons provided Procedural and Legal support to the Committee:

- Ms. Keiba Jacob - Secretary
- Mrs. Angelique Massiah - Assistant Secretary
- Ms. Simone Yallery - Legal Officer
- 

### *CHAIRMANSHIP*

1.4 At its First Meeting held on Friday January 13, 2017 Mr. Colm Imbert was elected to serve as Chairman in accordance with Standing Order 97(3) and 87(3) of the House of Representatives and Senate respectively.

### *MEETINGS*

1.5 The Committee held six meetings on the following dates:

1. Friday January 13, 2017;
2. Tuesday January 17, 2017;
3. Friday January 20, 2017;
4. Friday January 27, 2017;
5. Wednesday February 1, 2017; and
6. Friday February 17, 2017.

1.6 At its Sixth Meeting, the Committee agreed that the Draft Report and Minutes of the Sixth Meeting would be circulated for round-robin agreement.

1.7 The Minutes of the meetings are attached at **Appendix 3** and the Verbatim Notes are attached at **Appendix 4**.

## ***CONSIDERATION OF THE BILL***

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### ***PRELIMINARY CONSIDERATIONS***

2.1 The Committee obtained technical assistance from the Legislative Drafting Team during the deliberations on the Bill. The persons comprising the Technical Team are at **Appendix 5**.

2.2 At the Second Meeting, Mr. Gerald Ramdeen gave the assurance to submit the Opposition's comments on the Bill in the form of a note by midday on Wednesday January 18, 2017. Mr. Ramdeen also agreed to prepare a list of inconsistencies discovered between the Schedules and Clauses of the Bill (or any domestic law). The submission is at **Appendix 6**.

2.3 At the Second Meeting, the Committee also requested from the Chief Parliamentary Counsel, a comparative brief on the various approaches used for the implementation of the Tax Information Exchange Agreements in other countries and reasons for approach used in the current Bill. The submission from the Chief Parliamentary Counsel is at **Appendix 7**.

2.4 At the third meeting, the Committee requested the following from the Chief Parliamentary Counsel:

- a brief on the intended changes to the Central Bank Act, Chap. 79:02 and the Securities Act Chap. 83:02;

- a brief on the proportionality of the suggestion to increase the fine in clause 8 to two hundred and fifty thousand dollars (\$250,000) and five (5) years imprisonment;
- an examination of Clause 10 to determine whether there are any typos;
- an examination of the effect of Clauses 10-12;
- a brief to distinguish information that will be automatically transmitted versus information that will require consent by an individual;
- A brief to consider the effect of Guidelines being approved by negative resolution in Clause 24; and
- An examination of the effect of a negative resolution procedure for Clause 27 as modified and its annexes.

The submission from the Chief Parliamentary Counsel is at **Appendix 8**.

## ***WITNESSES***

2.5 At its Third Meeting, the Committee agreed to invite the following key stakeholders to share their main comments on the Bill:

- Board of Inland Revenue;
- Bankers Association of Trinidad and Tobago;
- Co-operative Credit Union League of Trinidad and Tobago;
- Central Bank of Trinidad and Tobago; and
- Trinidad and Tobago Securities and Exchange Commission.

2.6 By letters dated January 23, 2017, these stakeholders were invited to attend the Fourth Meeting of the Committee which was held on January 27, 2017. In preparation for the meeting, the stakeholders were invited to make a written submission which included general comments on the Bill as well as responses to specific questions submitted by

Members of the Committee. The questions sent to stakeholders is at **Appendix 9**. The correspondence sent to and received from the stakeholders is attached at **Appendix 10**.

2.7 At the Fourth Meeting held on Friday January 27, 2017, the Committee met with the stakeholders. The oral submissions of the stakeholders can be found in the Verbatim Notes of the Fourth Meeting in **Appendix 4**.

### ***WRITTEN SUBMISSIONS***

2.8 At its Third Meeting, the Committee agreed to request written comments on the Bill from the following:

- Trinidad and Tobago Chamber of Industry and Commerce;
- Law Association of Trinidad and Tobago;
- American Chamber of Commerce Trinidad and Tobago; and
- Faculty of Law, University of the West Indies, St. Augustine.

2.9 By letters dated January 25 and 26, 2017 written comments were requested from the:

- Law Association of Trinidad and Tobago;
- American Chamber of Commerce Trinidad and Tobago;
- Trinidad and Tobago Chamber of Industry and Commerce; and
- Faculty of Law, University of the West Indies, St. Augustine.

2.12 At its Fifth Meeting, the Committee agreed to request written comments on the Bill from the following:

- ANSA Merchant Bank Limited;
- Unit Trust Corporation of Trinidad and Tobago; and
- Association of Trinidad and Tobago Insurance Companies (ATTIC).

The correspondence sent to and received from the stakeholders is attached at **Appendix 11**.

### ***PUBLIC SUBMISSIONS***

2.13 At its Fifth Meeting, the Committee agreed to invite public comments on the Bill with a deadline of ten (10) days from February 1, 2017. The call for public comments on the Bill was published as follows:

- Parliament’s website and social media platforms February 1 - February 10, 2017;
- Trinidad and Tobago Newsday - February 2, 2017;
- Sunday Express - February 5, 2017; and
- Trinidad and Tobago Guardian - February 7, 2017.

The deadline for submissions was Friday February 10, 2017.

### ***CLAUSE BY CLAUSE EXAMINATION OF THE BILL***

2.14 At its third, fifth and sixth meetings, the Committee conducted a detailed clause by clause examination of the Bill. In conducting this examination the committee considered written submissions, oral evidence and advice from the technical team.

## ***REPORT***

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3.1 In accordance with Standing Orders 114(1) and 104(1) of the House of Representatives and the Senate respectively, the Committee wishes to report that it has completed its mandate.

3.2 Consequent on the submissions received by the Committee and the discussions with the technical team, the Committee identified areas of the Bill which needed to be addressed and amended.

# *RECOMMENDATIONS*

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4.1 The Committee respectfully submits for the consideration and adoption of the Parliament, the list of amendments to the Tax Information Exchange Agreements Bill, 2016, as attached at **Appendix 1**.

4.2 For ease of consideration a version of the Tax Information Exchange Agreements Bill, 2016 inclusive of the recommended amendments is attached at **Appendix 2**.

Respectfully submitted,

SGD  
Mr. Colm Imbert, MP  
Chairman

February 23, 2017

**LIST OF  
RECOMMENDED  
AMENDMENTS**

**LIST OF RECOMMENDED AMENDMENTS TO THE  
TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2016**

<b>First Column Clause</b>	<b>Second Column Extent of Amendment</b>
Long title	<p>A. Delete the words “new”</p> <p>B. Delete the words “other States” and replace with the words “United States of America”.</p>
Preamble	<p>Delete the Preamble and replace with the following:</p> <p>“Whereas Trinidad and Tobago entered into a Tax Information Exchange Agreement with the United States of America on 11<sup>th</sup> January, 1989 (“the 1989 TIEA”):</p> <p style="padding-left: 40px;">And whereas the Tax Information Exchange Agreements Act (“the Act”) was enacted in 1989 for the implementation of agreements between Trinidad and Tobago and other States providing for the exchange of information for purposes of taxation including the 1989 TIEA:</p> <p style="padding-left: 40px;">And whereas the Act provides for the sharing of personal information of identifiable individuals without first obtaining consent for such sharing:</p> <p style="padding-left: 40px;">And whereas the sharing of personal information of identifiable individuals without first obtaining consent for such sharing amounts to a breach of that person’s right to his family and private life as guaranteed by section 4 of the Republican Constitution:</p> <p style="padding-left: 40px;">And whereas the Republican Constitution by section 5 provides that no law may abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement of any of the rights contained in section 4 of the Republican Constitution:</p> <p style="padding-left: 40px;">And whereas section 13 requires any Act which seeks to abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement may have effect even though inconsistent with the Constitution if the Bill relative to the Act expressly states that it is inconsistent with sections 4 and 5 of the</p>



Constitution and is passed by both Houses of Parliament with a vote of not less than three-fifths of all the members of Parliament:

And whereas the Act was passed in both Houses of Parliament with a simple majority and did not expressly state that it was inconsistent with sections 4 and 5 of the Constitution:

And whereas personal information in the possession of the Board of Inland Revenue has been shared with the Secretary to the Treasury under the 1989 TIEA without the consent of the person to whom the information relates:

And whereas it has become necessary to validate the actions of the Board of Inland Revenue in this regard:

And whereas the Inter-Governmental Agreement ("IGA") is a response to the enactment by the United States of America of an Act commonly known as "the Foreign Account Tax Compliance Act" (FATCA) which introduced a reporting regime for financial institutions with respect to certain accounts held by such financial institutions:

And whereas the Government of Trinidad and Tobago now intends to give effect to its obligations under the IGA:

And whereas the IGA provides for the sharing of personal information from an identifiable person without first obtaining consent which may amount to a breach of a person's right to his family and private life as guaranteed by section 4 of the Republican Constitution:

And whereas it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even through inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been

	<p>supported by the vote of not less than three-fifths of all members of that House:</p> <p style="text-align: center;">And whereas it is necessary and expedient that the provisions of the Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:"</p>
Short title	Insert after the word "Agreements" the words "(United States of America)".
Insert new clause 2	<p>Insert after clause 1 the following new clause:</p> <p style="text-align: center;">"Commencement                      2. This Act comes into operation on such date as is fixed by the President by Proclamation."</p>
Renumber existing clauses 2 and 3	Renumber existing clauses 2 and 3 as clauses 3 and 4.
Clause 3 as renumbered	Insert after the word "Act" the words, "shall have effect even though it".
Clause 4 as renumbered	<p>A. Renumber clause 4 (1) as 4.</p> <ul style="list-style-type: none"> <li>(i) delete definition of "competent authority" and "Contracting State";</li> <li>(ii) delete the definition of "declared agreement" and replace with the following new definition: " "declared agreement" means the 1989 TIEA as defined in section 5 and the IGA as defined in section 9;"</li> <li>(iii) in the definition of "former Act" - <ul style="list-style-type: none"> <li>(aa) insert after the word "Tax" the word "Information";</li> <li>(ab) delete the words "76:61"; and</li> </ul> </li> <li>(iv) in the definition of "Minister", delete the words "member of Parliament" and replace with the word "Minister";</li> <li>(v) delete the definition of "tax information exchange agreement"; and</li> </ul>

	<p>(vi) delete the definition of Board.</p> <p>B. Delete subclause (2).</p>
<b>Original clause 4</b>	Delete.
<b>PART II</b>	Delete Heading "Part II Tax Information Exchange Agreements".
<b>Clauses 5, 6, 7 and 8</b>	Delete.
<b>PART III</b>	Delete heading title "Part III" and replace with the following new title Heading "Part II".
<b>Clauses 9-11</b>	Renumber clauses 9 to 11 as clauses 5 to 7.
Clause 5 as renumbered	<p>A. In the marginal note delete the word "III" and replace with the word "II";</p> <p>B. Delete the definition of "competent authority" and replace with the following:  "competent authority" means the Board of Inland Revenue established by section 3 of the Income Tax Act;";</p> <p>C. In the definition of "financial institution", insert after the words "assigned to it by", the words "section 2 of";</p> <p>D. Delete the definition of "national";</p> <p>E. Inserting after the definition of "financial institution", the following new definition:  "Secretary of the Treasury" means the Secretary of the Treasury or the delegate of the United States Treasury Department; and"</p> <p>F. In the definition of "tax" delete the word "10" and replace with the word "6".</p>
Clause 6 as renumbered	<p>A. In subclause (1), in the chapeau -</p> <p>(i) delete the word "The" and replace with the words "This Part applies to the"; and</p> <p>(ii) delete the words "apply to this Part".</p>

	<p>B. In subclause (2) -</p> <ul style="list-style-type: none"> <li>(i) delete the word "The" and replace with the word "This";</li> <li>(ii) insert after the words "similar tax" the words "to the taxes"; and</li> <li>(iii) insert after the words "subsection (1)" the words "and which are"; and</li> </ul> <p>C. In subclause (3), delete the word "The" and replace with the word "This".</p>
<p>Clause 7 as renumbered</p>	<p>A. Delete the word "Board" wherever it occurs and replace with the words "competent authority";</p> <p>B. Delete the words "Secretary to the Treasury" wherever it occurs and replace with the words "Secretary of the Treasury";</p> <p>C. In subclause (1) delete the word "10" and replace with the word "6";</p> <p>D. In subclause (2) -</p> <ul style="list-style-type: none"> <li>(i) delete the words "the delegate" and replace with the word "his delegate";</li> <li>(ii) delete the words "Treasury Department" in the second and third place they occur and replace with the words "Secretary of the Treasury";</li> </ul> <p>E. In subclause (3) -</p> <ul style="list-style-type: none"> <li>(i) delete the words "(1)" and replace with the words "(2)"; and</li> <li>(ii) delete the words "Treasury Department" and replace with the words "Secretary of the Treasury";</li> </ul> <p>F. Delete subclause (5) and replace with the following clause:  “(5) Where the Secretary of the Treasury requests information, the competent authority shall provide the information in the form and manner that the Secretary of the Treasury requested the information to be provided.”;</p> <p>G. In subclause (6) delete the word "taxation";</p>

	<p>H. In subclause (7) -</p> <ul style="list-style-type: none"> <li>(i) delete the chapeau and substitute the following: “ (7) Nothing in this section authorizes the competent authority to - ”; and</li> <li>(ii) delete paragraph (b) and replace with the following: “(b) supply particular information which is not obtainable under the laws of Trinidad and Tobago;”.</li> </ul>
<p>New <b>clause 8</b> inserted</p>	<p>Insert after renumbered clause 7 a new clause 8 as follows:</p> <p>“ Disclosure under this Part Chap. 22:04 Chap. 75:01 Chap. 79:09</p> <p>8. (1) Nothing in -</p> <ul style="list-style-type: none"> <li>(a) sections 6, 30, 31, 38, 40, 41, 46 and 69 of the Data Protection Act;</li> <li>(b) section 4 of the Income Tax Act;</li> <li>(c) section 55 of the Financial Institutions Act; or</li> <li>(d) any other law that restricts the sharing of personal information, prevents the disclosure of information by the competent authority or a financial institution, where that disclosure is in accordance with, and for the purpose of giving effect to this Part or the 1989 TIEA.</li> </ul> <p>(2) Where information has been obtained or received under this Part or the 1989 TIEA, a person who uses or discloses the information other than for the purposes for which it was obtained or received commits an offence and is liable-</p> <ul style="list-style-type: none"> <li>(a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years; and</li> <li>(b) on conviction on indictment to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.</li> </ul>

<b>PART IV</b>	Delete heading title "Part IV 2016 IGA" and replace with the following new title Heading "Part III Inter-Governmental Agreement".
<b>Renumber clauses 12 to 25</b>	Renumber sections 12 to 25 as sections 9 to 22.
Clause 9 as renumbered	<p>A. In the Marginal Note delete the word "IV" and substitute the word "III";</p> <p>B. In subsection (1)-</p> <ul style="list-style-type: none"> <li>(i) in the chapeau, delete the words "and unless the context otherwise requires";</li> <li>(ii) in the definition "cash value insurance contract" delete the word "that" in the second place it occurs and replace with the word "than";</li> <li>(iii) delete the definition of "Competent Authority" and replace with the following definition:  "competent authority" means the Board of Inland Revenue established by section 3 of the Income Tax Act;";</li> <li>(iv) in the definition of "controlling person" in paragraph (b) by inserting after the word "equivalent" the word "or";</li> <li>(v) in the definition of "financial account" delete the words "Schedule 3" and replace with the words "Schedule 2";</li> <li>(vi) in the definition of "Non-participating Financial Institution" delete the words "Schedule 3" and replace with the words "Schedule 2";</li> <li>(vii) in the definition of "Non-reporting Financial Institution" delete the words "Schedule 3" and replace with the words "Schedule 2";</li> <li>(viii) in the definition of "sensitive personal information" insert after the word "means" the words ", subset to subsection (4)"; and</li> </ul> <p>C. Delete subsection (4) and replace with the following:  "(4) For the purposes of this Part, the definition of "sensitive personal information" in respect of</p>

	<p>sensitive personal information to be obtained and or exchanged -</p> <ul style="list-style-type: none"> <li>(a) for the year 2014, is the information described in paragraphs (a) to (e) of the definition of “sensitive personal information” set out in subsection (1);</li> <li>(b) for the year 2015, is the information described in the definition of “sensitive personal information” set out in subsection (1), except for gross proceeds described in subparagraph (f)(ii) of that definition; and</li> <li>(c) for the year 2016 and subsequent years, is the information described in the definition of “sensitive personal information” set out in subsection (1).”.</li> </ul>
Clause <b>11</b> as renumbered	<p>In subclause (1) -</p> <ul style="list-style-type: none"> <li>(i) insert after the word “receive”, the words “from a financial institution”; and</li> <li>(ii) delete the words “in the possession”.</li> </ul>
Clause <b>12</b> as renumbered	<p>Delete subclause 12(1) and replace with the following:</p> <p>“(1) Notwithstanding section 46 of the Data Protection Act, sensitive personal information received by the competent authority under this Part in respect of a reportable account may be disclosed to the Secretary of the United States Treasury in accordance with this Act even if the individual to whom the information relates has not consented to the disclosing of his information or the United States of America does not have comparable safeguards as required by the Data Protection Act.”.</p>
Clause <b>13</b> as renumbered	<p>Delete the words “relative to” and replace with the word “of”.</p>
Clause <b>14</b> as renumbered	<p>Delete the words “the principles of”.</p>

<p>Clause 15 as renumbered</p>	<p>A. Delete the word "Sensitive" and replace with the words "A financial institution shall, when disclosing sensitive"; and</p> <p>B. Delete the word "shall"</p>
<p>Clauses 16, 17, 18 and 19 as renumbered</p>	<p>Delete the word "15" wherever it occurs and replace with the word "12".</p>
<p>Clause 17 as renumbered</p>	<p>A. Renumber as subclause (1); and</p> <p>B. Insert the following new subclause (2):  " (2) Where the reporting period occurs prior to the commencement of this Act, a reporting financial institution shall forward the sensitive personal information on the 30<sup>th</sup> April after the obligation of the competent authority under the IGA takes effect."</p>
<p>Clause 18 as renumbered</p>	<p>A. Renumber clause 18 as 18(1).</p> <p>B. In clause 18(1) delete the words "a Memorandum of Understanding" and replace with the words "an Agreement."</p> <p>C. Insert after clause 18(1) the following new subclause:  " (2) Where an Agreement under subsection (1) provides for its publication, it shall be laid in Parliament within two months after the date of signature of the Agreement by both parties."</p>
<p>Clause 21 as renumbered</p>	<p>Delete the word "21" and replace with the word "18".</p>
<p>New clauses 22 and 23 inserted</p>	<p>Insert after clause 21 as renumbered the following new clauses:</p> <p>"Disclosure under Chap. 75:01, Chap. 79:09 and other enactments</p> <p>22. Nothing in -</p> <p>(a) section 4 of the Income Tax Act;</p> <p>(b) section 55 of the Financial Institutions Act; or</p> <p>(c) any other law that restricts the sharing of personal information,</p>



	<p>prevents the disclosure of information by the competent authority or a financial institution, where that disclosure is in accordance with, and for the purpose of giving effect to this Part or the IGA.</p> <p>Penalty for disclosure under this Part</p> <p>23. Where information has been obtained or received under this Part, a person who uses or discloses the information other than for the purposes for which it was obtained or received commits an offence and is liable -</p> <ul style="list-style-type: none"> <li>(a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years; and</li> <li>(b) on conviction on indictment to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.”.</li> </ul>
Original clause 25	Delete.
New heading inserted	Insert after new clause 23 the following: <p style="text-align: center;">“PART IV RELATED AMENDMENTS”.</p>
Insert new clause <b>24</b>	Insert after new heading the following new clause:  <p>“Chap. 75:01 amended</p> <p>24. The Income Tax Act is amended by -</p> <ul style="list-style-type: none"> <li>(a) deleting section 117(6); and</li> <li>(b) inserting after section 117 the following new section:</li> </ul> <p>“Tax Information Exchange Agreements</p> <p>117A. (1) The Board is authorized to require-</p> <ul style="list-style-type: none"> <li>(a) any financial information and other information; and</li> <li>(b) any financial institution or any officer of the financial institution to</li> </ul>

	<p>appear before it to give evidence or be examined under oath or otherwise;</p> <p>(c) any supporting documentation in respect of paragraph (a) or (b),</p> <p>for the purpose of the Tax Information Exchange Agreements (United States of America) Act, 2016 and other enactments for a similar purpose.</p> <p>(2) A financial institution which fails or whose officer fails to comply with a requirement under subsection (1) commits an offence.”.</p>
<p>Insert new clause <b>25</b></p>	<p>Insert after the new clause 24 the following:</p> <p>“Chap. 25. The Central Bank Act is amended-</p> <p>79:02 (a) in section 2, by inserting after the amended definition of “corporation” the following definition:</p> <p>“ “declared agreement” means the 1989 TIEA as defined in section 5 of the Tax Information Exchange Agreements (United States of America) Act, 2016 and the IGA as defined in section 9 of the Tax Information Exchange Agreements (United States of America) Act, 2016;</p> <p>(b) in section 36-</p> <p>(a) in paragraph (bb), by deleting the word “and”;</p> <p>(b) in paragraph (cc), by deleting the word “.” and</p>

	<p>substituting the words “; and”; and</p> <p>(e) by inserting after paragraph (cc) the following new paragraph:</p> <p>“(dd) supervise financial institutions and insurance companies on the implementation of declared agreements.”.</p>
<p>Clause 26</p>	<p>Delete clause 26 and replace with the following:</p> <p>“Chap. 26. The Financial Institutions Act is amended – 79:09 amended</p> <p>(a) in section 2, by inserting in the appropriate alphabetical sequence the following new definitions:</p> <p>“ “Board of Inland Revenue” means the Board of Inland Revenue</p> <p>Chap. established by 75:01 section 3 of the Income Tax Act;</p> <p>“declared agreement” means the 1989 TIEA as defined in section 5 of the Tax Information Exchange Agreements (United States of America) Act, 2016 and the IGA as defined in section 9 of the Tax Information Exchange Agreements (United States of America) Act, 2016;”;</p>

- (b) in section 8 -  
(a) by inserting after subsection (2) the following new subsections:

“(2A) The Central Bank may disclose information referred to in subsection (1) to the Board of Inland Revenue in order to give effect to the Tax Information Agreements (United States of America) Act, 2016.

(2B) The information referred to in subsection (1) may be utilized by the Central Bank as required to give effect to its powers under the Tax Information Exchange Agreements (United States of America) Act, 2016.”; and

- (ii) in subsection (5), by deleting the words “subsection (2), the Central Bank may enter into a Memorandum of Understanding with” and substituting the words “subsections (2A) and (2B), the Central Bank may enter into a Memorandum of Understanding with the Board of Inland Revenue,”;

- (c) in section 10, by -  
(i) renumbering section 10 as section 10(1);

	<p>(ii) in subsection (1) as renumbered by -</p> <ul style="list-style-type: none"> <li>(A) deleting the words “; and” at the end of paragraph (c) and substituting the word “;”;</li> <li>(B) deleting the word “.” at the end of paragraph (d) and substituting the words “; and”; and</li> <li>(C) inserting at the end of paragraph (d), the following new paragraph - <ul style="list-style-type: none"> <li>“(e) to give effect to a declared agreement.”; and</li> </ul> </li> </ul> <p>(iii) by inserting after subsection (1) as renumbered the following new subsection:</p> <p>“ (2) Guidelines made under subsection (1)(e) shall be subject to the approval of the Minister and laid in Parliament at the earliest opportunity.”; and</p> <p>(d) in section 86, by inserting after subsection (1) the following new subsection:</p> <p>“ (2) Notwithstanding any other action or remedy available under this Act, if the Board of Inland Revenue indicates to an Inspector, that -</p> <ul style="list-style-type: none"> <li>(a) a licensee or financial holding company;</li> <li>(b) a controlling shareholder or significant</li> </ul>
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	<p>shareholder of a licensee;</p> <p>(c) any director, officer, company, controlling shareholder or significant shareholder of a licensee,</p> <p>has failed to give effect to, or comply with a declared agreement, the Inspector may direct any person referred to in paragraph (a), (b) or (c) to give effect to, comply with or perform such acts as may be necessary for compliance with a declared agreement.”.</p>
<p>Clause 27</p>	<p>A. In paragraph (a) delete the definition of “declared agreement” and replace with the following definition:  “declared agreement” means the 1989 TIEA as defined in section 5 of the Tax Information Exchange Agreements (United States of America) Act, 2016 and the IGA as defined in section 9 of the Tax Information Exchange Agreements (United States of America) Act, 2016;”;</p> <p>B. Insert after paragraph (b) the following new paragraphs:  “(c) section 14(2)-  (i) subparagraph (b)(iii), by inserting after the words “Intelligence Unit”, the words “the competent authority in respect of a declared agreement,”; and  (ii) by deleting the words “or similar legislation of a foreign jurisdiction” and substituting the words “similar legislation of a foreign jurisdiction or a declared agreement”;</p> <p>(d) in section 19(1), by inserting after the words “Unit,” the words “the competent authority in respect of a declared agreement”;</p>

	<ul style="list-style-type: none"> <li>(e) in section 89(1)(a), by inserting after the words “this Act,” the words “a declared agreement,”;</li> <li>(f) in section 90(1)- <ul style="list-style-type: none"> <li>(i) in paragraph (c), by deleting the words “; and” and substituting the word “;”;</li> <li>(ii) in paragraph (d), by deleting the words “;” and substituting the words “; and”;</li> <li>(iii) by inserting after paragraph (d) the following new paragraph: <ul style="list-style-type: none"> <li>“(e) has breached any requirement or failed to comply with guidelines relating to a declared agreement,”;</li> <li>and</li> </ul> </li> </ul> </li> <li>(g) section 146- <ul style="list-style-type: none"> <li>(i) in subsection (1), by inserting after the words “compliance with”, the words “a declared agreement”;</li> <li>(ii) by inserting after subsection (2) the following new subsection: <ul style="list-style-type: none"> <li>“(2A) Guidelines issued in respect of declared agreements shall be subject to the approval of the Minister and laid in Parliament at the earliest opportunity.”.</li> </ul> </li> </ul> </li> </ul>
<p><b>Clause 28</b> as renumbered</p>	<p>Delete and replace with the following:</p> <p>“28. The Insurance Act is amended -</p> <ul style="list-style-type: none"> <li>(a) in section 3(1), by inserting after the definition “Board” the following new definition: <ul style="list-style-type: none"> <li>“ “Board of Inland Revenue” means the Board of Inland Revenue established by section 3 of the Income Tax Act;”;</li> </ul> </li> <li>(b) in section 6A - <ul style="list-style-type: none"> <li>(i) by renumbering section 6A as 6A(1); and</li> <li>(ii) by inserting after the renumbered subsection (1), the following subsection: <ul style="list-style-type: none"> <li>“(2) The Central Bank may disclose information referred to in subsection (1) to the Board of Inland Revenue in order to give effect to the Tax Information Exchange</li> </ul> </li> </ul> </li> </ul>

Agreements (United States of America) Act, 2016.

(3) The information ~~obtained by the Central Bank in accordance with~~ referred to in subsection (1) may be utilized by the Central Bank as required to give effect to its powers under the Tax Information Exchange Agreements (United States of America) Act, 2016.”;

(c) in section 65, by inserting after subsection (1) the following new subsection:

“ (2) Notwithstanding any other action or remedy available under this Act, if the Board of Inland Revenue indicates to an Inspector, that a registrant or an officer, other employee or agent of the registrant has breached any requirement or failed to comply with guidelines related to a declared agreement, the Inspector may direct the a registrant or an officer, other employee or agent of the registrant to give effect, comply with or perform such acts as may be necessary for compliance with a declared agreement.”;

(d) by inserting after section 214 the following new section:

“Central Bank to issue guidelines for declared agreements 215.(1) The Central Bank may issue guidelines on any matter it considers necessary to give effect to a declared agreement.

(2) Where guidelines are issued under subsection (1), a declared agreement shall have the meaning assigned to it under section 3 of the Tax Information Exchange Agreements (United States of America) Act, 2016.



	<p>(3) Where a person has failed to comply with guidelines issued by the Central Bank under subsection (1), <del>pursuant to the Foreign Account Tax Compliance Act of the United States of America</del>, the Central Bank shall direct that person to-</p> <ul style="list-style-type: none"> <li>(a) cease and or refrain from committing the act, pursuing the course of conduct, or committing a violation; or</li> <li>(b) perform such acts as in the opinion of the Central Bank are necessary to remedy the situation; and</li> <li>(c) perform such acts as are required to give effect to a declared agreement.</li> </ul> <p>(4) Guidelines made under this section shall be subject to the approval of the Minister and laid in Parliament at the earliest opportunity.”.</p>
New heading	<p>Insert after clause 28 the following new heading:</p> <p style="text-align: center;"><b>“PART V MISCELLANEOUS”</b></p>
New clause 29	<p>Insert after new heading the following new clause:</p> <p>“Minister to amend Schedules 29. (1) The Minister may by Order, where the parties modify -</p> <ul style="list-style-type: none"> <li>(a) the 1989 TIEA in Schedule 1; or</li> <li>(b) the IGA or its annexes in Schedule 2,</li> </ul>

	<p>amend the 1989 TIEA or the IGA or its annexes contained in Schedule 1 or Schedule 2, respectively.”.</p> <p>(2) An Order under subsection (1) shall be subject to negative resolution of Parliament.”.</p>
New clause 30	<p>Insert after clause 29 as renumbered the following new clause:</p> <p>“Immunity from suit 30. The competent authority or any person acting under its authority or direction who discloses confidential information in compliance with this Act shall not be taken as having committed an offence under the provisions of any written law relating to confidentiality by reason only of disclosure.”.</p>
New clause 31	<p>Insert new clause 31 as follows:</p> <p>“ Annual Report 31. The Minister shall cause to be laid in Parliament an annual report on the operations of the competent authority within three months after the date for the automatic transmission of information under the provisions of this Act or, if Parliament is not in session, within one month after the commencement of the next session.”.</p>
Renumber original clauses 29 and 30	<p>Renumber existing clauses 29 and 30 as clauses 32 and 33.</p>

**CONSOLIDATED  
VERSION OF  
TAX INFORMATION  
EXCHANGE  
AGREEMENTS  
BILL, 2016**

**Legend**  
**Insertions = bold type**  
**Deletions = strikethrough**  
**Red = insertions following 6<sup>th</sup> Meeting**

**A BILL**

AN ACT to repeal the Tax Information Exchange Agreements Act and replace it with a ~~new~~ Tax Information Exchange Agreements (**United States of America**) Act which would make provision for the implementation of agreements between Trinidad and Tobago and ~~other States~~ **the United States of America** providing for the exchange of information for the purposes of taxation, ~~to validate~~ **the validation of** the sharing of personal information held by the Board of Inland Revenue or ~~be~~ financial institutions and for related purposes

Preamble

~~And whereas~~ **Whereas** Trinidad and Tobago entered into a Tax Information Exchange Agreement with the United States of America on 11<sup>th</sup> January, 1989 (“the 1989 TIEA”) ~~on the basis of which an Order was made by the President declaring that agreement to be a declared agreement:~~

~~WHEREAS~~ **And whereas** the Tax Information Exchange Agreements Act (“the Act”) was enacted in 1989 ~~to all~~ for the implementation of agreements between Trinidad and Tobago and other States providing for the exchange of information for purposes of taxation **including the 1989 TIEA:**

~~And whereas Trinidad and Tobago entered into a Tax Information Exchange Agreement with the United States of America on 11<sup>th</sup> January, 1989 (“the 1989 TIEA”) on the basis of which an Order was made by the President declaring that agreement to be a declared agreement:~~

And whereas the Act provides for the sharing of personal information of identifiable individuals without first obtaining ~~their~~ consent for such sharing:

And whereas the sharing of personal information of identifiable individuals without first obtaining ~~their~~ consent for such sharing amounts to a breach of that person’s right to his family and private life as guaranteed by section 4 of the Republican Constitution:

And whereas the Republican Constitution by section 5 provides that no law may abrogate, abridge or infringe ~~it~~ **or** authorize the abrogation, abridgement or infringement of any of the rights contained in section 4 of the Republican Constitution:

And whereas section 13 requires any Act which seeks to abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement may have effect even though inconsistent with the Constitution ~~of~~ **if** the Bill relative to the Act expressly states that it is inconsistent with sections 4 and 5 of the Constitution and is passed by both Houses of Parliament with a vote of not less than three-fifths of all the members of Parliament:

And whereas the Act was passed in both Houses of Parliament with a simple majority and did not expressly state that it was inconsistent with sections 4 and 5 of the Constitution:

And whereas personal information in the possession of the Board of Inland Revenue has been shared with the Secretary of the Treasury under the 1989 ~~Agreement~~ **TIEA** without the consent of the person to whom the information relates:

And whereas it has become necessary to validate the actions of the Board of Inland Revenue in this regard ~~and to make amendments to the Act in order to give effect to different types of Tax Information Exchange Agreements:~~

And whereas ~~one such agreement~~ **the Inter-Governmental Agreement (“IGA”)** is a response to the enactment by the United States of America of an Act commonly known as “the Foreign Account Tax Compliance Act” (FATCA) which introduced a reporting regime for financial institutions with respect to certain accounts held by such financial institutions:

**And whereas the Government of Trinidad and Tobago now intends to give effect to its obligations under the IGA:**

**And whereas the IGA provides for the sharing of personal information from an identifiable person without first obtaining consent which may amount to a breach of a person’s right to his family and private life as guaranteed by section 4 of the Republican Constitution:**

~~And whereas financial institutions in Trinidad and Tobago holding subsidiaries in the United States of America are required to comply with the reporting regime:~~

~~And whereas the Government of the United States of America collected information regarding certain accounts maintained by financial~~

~~institutions held by residents of Trinidad and Tobago and has agreed to exchange that information with the Government of Trinidad and Tobago:~~

~~And whereas the Government of Trinidad and Tobago is supportive of the reciprocal exchange of this information and has entered into an a reciprocal exchange of information Agreement with the United States of America to improve international tax compliance and to implement FATCA:~~

~~And whereas Trinidad and Tobago may wish to enter into similar agreements with other States:~~

~~— And whereas the implementation of these agreements may affect the right to family and private life of individuals in Trinidad and Tobago guaranteed by section 4 of the Constitution:~~

And whereas it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even through inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the vote of not less than three-fifths of all members of that House:

And whereas it is necessary and expedient that the provisions of the Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

## PART I

### PRELIMINARY

Short title **1. This Act may be cited as the Tax Information Exchange Agreements (United States of America) Act, 2016.**

Commencement **2. This Act comes into operation on such date as is fixed by the President by Proclamation.**

Act inconsistent  
with Constitution

**3.** ~~2.~~This Act **shall have effect even though it** is inconsistent  
with sections 4 and 5 of the Constitution.

Interpretation

**4.** ~~3(1)~~ In this Act, unless the context otherwise requires –

~~“competent authority” in relation to a tax information  
exchange agreement –~~

~~(a) ——— means, in the case of Trinidad and  
Tobago, the Minister with responsibility  
for finance or such other person as  
authorized by him under section 4; and~~

~~(b) ——— in the case of another State, has the  
meaning ascribed in the relevant tax  
information agreement;~~

~~“Contracting States” in relation to a tax information  
exchange agreement, means Trinidad and Tobago  
and the other State on behalf of which the  
agreement is entered into;~~

~~“declared agreement” means **the 1989 TIEA as defined  
in section 5 and the IGA as defined in section 9;**  
a tax information exchange agreement –~~

~~(a) ——— set out in Schedules 1 and 2; or~~

~~(b) ——— declared by the President under  
section 4 to be a declared agreement for  
the purpose of this Act;~~

Schedules 1 and  
2

~~“former Act” means the Tax Exchange Agreements Act;  
**and Chap. 76:61;**~~

Chap. 76:51

~~“Minister” means the member of Parliament **Minister** to  
whom the responsibility for finance is assigned;~~

~~“tax information exchange agreement” means an agreement  
whereby the Government of Trinidad and Tobago  
and the Government of another State undertake,  
through their competent authorities, to provide each  
other either –~~

~~(a) upon request;~~

~~(b) simultaneously; or~~

~~(c) automatically;~~

~~with any financial and other information and  
supporting documentation accessible to, or  
provided to the competent authorities –~~

~~(d) ——— that is required by the competent  
authority of the requesting State;~~

- (e) ~~simultaneously where the declared agreement so provides; or~~
- (f) ~~automatically where the declared agreement so provides,~~

~~for the purpose of administering or enforcing a law relating to taxation of a kind specified in the agreement;~~

Chap. 75:01

~~“the Board” means the Board of Inland Revenue established by section 3 of the Income Tax Act.~~

~~(2) An agreement is not precluded from being a tax information exchange agreement for the purposes of this Act by reason that it—~~

- ~~(a) includes provision for matters necessary for, or incidental to, the matters referred to in subsection (1);~~
- ~~(b) provides for a Contracting State to obtain and transmit to the other Contracting State any information that it considers may assist that other State to administer or enforce a law referred to in subsection (1); or~~
- ~~(c) provides for the implementation of programmes or measures to facilitate or improve the administration and enforcement of the laws referred to in subsection (1).~~

Minister to authorize a person to act

~~4. The Minister may authorize any person to act as the competent authority for Trinidad and Tobago for the purpose of any tax information exchange agreement.~~

## **PART II**

### **TAX INFORMATION EXCHANGE AGREEMENTS**

Declaration of agreements

~~5. The President may, by Order, declare a tax information exchange agreement specified in the Order to be a declared agreement for the purposes of this Act.~~

Implementation of agreements

~~6. (1) The Minister or any person authorized by him shall ensure that effect is given to every declared agreement.~~

~~(2) Where the Minister authorizes any person under subsection (1) he may give general directions to such person as to the performance of his functions under this Act, and such person shall comply with any directions given.~~



Powers of the  
Minister

~~7.—(1) The Minister or a person authorized by him has, for the purpose of giving effect to a declared agreement, all the powers that he would have if he were acting generally for the purpose of, or for any particular purpose specified in, any Act that confers powers on the person.~~

~~(2) — Any power under subsection (1) is exercisable notwithstanding that the circumstances, if any, necessary under that Act for the exercise of the power may not have arisen and, subject to subsection (1), the provisions of that Act shall apply to, and in relation to, the exercise of that power for the purpose of giving effect to a declared agreement as if the power was exercised for the purpose of that Act.~~

~~(3) The Minister or a person authorized by him may, in accordance with the declared agreement—~~

- ~~—(a) provide any information obtained by him under this or any other Act; and~~
- ~~(b) request and receive any information required by him for the purpose of any Act.~~

Disclosure under  
this Act  
Chap. 75:01  
Chap. 22:04

~~8.—(1) Nothing in—~~

- ~~a.— section 4 of the Income Tax Act;~~
- ~~b.— sections 6, 41, 42 and 46 of the Data Protection Act; or~~
- ~~c.— any other law of like effect,~~

~~prevents the disclosure of information, where that disclosure is in accordance with, and for the purpose of giving effect to, a declared agreement.~~

~~(2) Where information has been obtained or received under this Act or a declared agreement, a person who uses or discloses the information other than for the purposes for which it was obtained or received commits an offence and is on summary conviction to a fine of thirty thousand dollars and to imprisonment for two years.~~

## **PART II III**

### **1989 TIEA**

Interpretation of certain words and phrases in Part II

Schedule 1

Chap. 75:01

Chap. 79:09

Taxes covered by this Part

5. 9. For the purposes of this Part –  
“1989 TIEA” means the Tax Information Exchange Agreement entered into on 11<sup>th</sup> January, 1989 between the Government of the Republic of Trinidad and Tobago and the Government of the United States of America and which is more specifically set out in Schedule 1;

“Competent Authority” means the Board of Inland Revenue established by section 3 of the Income Tax Act as the authorized representative of the Minister;

“Financial Institution” has the meaning assigned to it by section 2 of the Financial Institutions Act;

“national” means—  
(a) any individual possessing the nationality in Trinidad and Tobago; or  
(b) any legal person, partnership or association deriving its status as such from the laws in force in Trinidad and Tobago; and

“Secretary of the Treasury” means the Secretary of the Treasury or the delegate of the United States Treasury Department; and

“tax” means any tax referred to in section 6 10.

6. 10. (1) ~~The~~ **This Part applies to the** following taxes imposed by, or on behalf of the United States of America; ~~apply to this Part –~~  
(a) Federal Income taxes;  
(b) Federal taxes on self-employment income;  
(c) Federal taxes on transfers to avoid income tax;  
(d) Federal estate and gift taxes; and  
(e) Federal excise taxes.

(2) ~~The~~ **This Part applies to any identical or substantially similar tax to the taxes** referred to in subsection (1) **and which are** imposed after 11<sup>th</sup> January, 1989 in addition to, or in place of the existing taxes.

Exchange of  
information

(3) ~~The~~ **This** Part shall not apply to taxes imposed by States, municipalities or other political subdivisions or possessions of the United States of America.

7. ~~11.~~ (1) The ~~Board~~ **competent authority** shall exchange information **with the Secretary of the Treasury in order** to administer and enforce any law concerning the taxes referred to in section ~~6 40~~.

(2) The ~~Board~~ **competent authority** shall, on receipt of a request for information from the Secretary of the Treasury, ~~or the delegate of the United States Treasury Department (hereinafter referred to as Treasury Department<sup>2</sup>)~~ provide the information so requested to the **Secretary of the Treasury Treasury Department**.

(3) Where the information in the possession of the Board is not sufficient to enable the ~~Board~~ **competent authority** to comply with ~~the a~~ request under subsection (2) ~~(1)~~, the ~~Board~~ **competent authority** shall take all relevant measures to provide the **Secretary of the Treasury Treasury Department** with the requested information.

(4) Where the ~~Board~~ **competent authority** believes that information requested under this section is in the possession of a financial institution, it may require the financial institution to provide the ~~Board~~ **competent authority** with that information and the financial institution shall ~~so~~ provide **the information in writing**.

~~(5) Where a request is made for information under this section, the Board shall provide the information in the same form and manner as it would have required it to have been provided had it made the request in respect of taxes under the laws of Trinidad and Tobago.~~

(5) Where the **Secretary of the Treasury** requests information, the ~~Board~~ **competent authority** shall provide the

**information in the form and manner that the Secretary of the Treasury requested the information to be provided.**

(6) Where ~~the Secretary of the Treasury requests under this section is made for~~ information in the form of a deposition of a witness, authenticated copies of unedited original documents, including books, papers, statements, records, accounts and writings, and other tangible property, the ~~Board~~ **competent authority** shall provide the information to the same extent as it can be provided under the ~~taxation~~ laws of Trinidad and Tobago.

(7) Nothing in ~~the~~ **this** section ~~requires~~ **authorizes** the ~~Board~~ **competent authority** to—

- (a) carry out administrative measures which conflict with the laws and administrative practices of Trinidad and Tobago;
- ~~(b) supply particular items of information which are not obtainable under the laws or in the normal course of the administration of Trinidad and Tobago; or~~
- (b) supply particular information which is not obtainable under the laws of Trinidad and Tobago; or**
- (c) supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process.

**Disclosure  
under this Part**

**Chap. 22:04**

**Chap. 75:01**

**Chap. 79:09**

**9. (1)~~12.~~ Nothing in –**

- (a) sections 6, 30, 31, 38, 40, 41, 46 and 69 of the Data Protection Act;**
- (b) section 4 of the Income Tax Act;**
- (c) section 55 of the Financial Institutions Act; or**

(d) any other law that restricts the sharing of personal information, prevents the disclosure of information by the competent authority or a financial institution, where that disclosure is in accordance with, and for the purpose of giving effect to this Part or the 1989 TIEA.

(2) Where information has been obtained or received under this Part or the 1989 TIEA, a person who uses or discloses the information other than for the purposes for which it was obtained or received commits an offence and is liable-

- (a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for three years; and
- (b) on conviction on indictment to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

**PART III IV**  
**INTER-GOVERNMENTAL AGREEMENT**

Interpretation of certain words and phrases in Part III IV

~~10. 13.~~ (1) For the purposes of this Part and unless the context otherwise requires –  
“account holder” means –

- (a) the person listed or identified as the holder of a financial account by the financial institution that maintains the account and does not include a person holding a financial account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor or intermediary; or
- (b) in the case of a ~~C~~cash ~~V~~value ~~I~~insurance contract or an ~~A~~annuity ~~C~~contract, any person entitled to access the cash value or change the beneficiary of the contract and where no person can access the cash value or change the beneficiary of the contract,

any person named as the owner in the contract and each person with a vested entitlement to payment under the terms of the contract;

“annuity contract” means a contract-

- (a) under which the issuer agrees to make payment for a period of time determined in whole or in part by reference to life-expectancy of one or more individuals; or
- (b) considered to be an annuity contract in accordance with the laws, regulations or practices of the jurisdiction in which the contract was issued and under which the issuer agrees to make payments for a term of years;

“cash value insurance contract” means an insurance contract, other than an indemnity reinsurance contract between two insurance companies, that has a cash value greater than fifty thousand dollars;

“cash value” means the greater of -

- (a) the amount that the policy holder is entitled to receive upon surrender or termination of the contract, determined without reduction for any surrender charge or policy loan; and
- (b) the amount the policy holder can borrow under or with regard to the contract,

but does not include an amount payable under an insurance contract as –

- (c) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- (d) a refund to the policy holder of a previously paid premium under an insurance contract, other than a life-insurance contract, due to policy cancellation or termination, decrease in risk exposure during the effective period of the insurance contract, or arising from a redetermination of the premium due to

correction of posting or other similar error;  
or

- (e) a policyholder dividend based upon the underwriting experience of the contract or group involved;

~~“Competent Authority” means the Board of Inland Revenue as the authorized representative of the Minister;~~

**“competent authority” means the Board of Inland Revenue established by section 3 of the Income Tax Act;**

Chap 75:01

“controlling person” means an individual who exercises control over an entity and in the case of –

- (a) a trust, means the settlor, the trustees, the protector, if any, the beneficiaries or class of beneficiaries and any other individual exercising ultimate effective control over the trust; and
- (b) a legal arrangement other than a trust, means persons in equivalent **or** similar positions;

~~“Custodial Account” means an account, other than an insurance contract or annuity contract, for the benefit of another person that holds any financial instrument or contract held for investment, including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a non-financial index, a notional principal contract, an insurance contract or annuity contract, and any option or other derivative instrument;~~

~~“Custodial Institution” means an entity that holds as a substantial portion of its business; or financial assets for the account of others;~~

~~“Depository Account” includes any commercial, checking, savings, time, or thrift account or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a financial institution in the ordinary course of a~~

banking or a similar business and also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon;

“~~D~~epository ~~I~~nstitution” means an entity that accepts deposits in the ordinary course of a banking or similar business;

“entity” means a legal person or legal arrangement such as a trust;

“~~F~~inancial ~~A~~ccount” means an account maintained by a financial institution and –

- (a) in the case of an entity that is a ~~F~~inancial ~~I~~nstitution solely because it is an investment entity, includes any equity or debt interest, other than interests that are regularly traded on an established securities market, in the ~~F~~inancial ~~I~~nstitution;
- (b) in the case of a ~~F~~inancial ~~I~~nstitution other than a ~~F~~inancial ~~I~~nstitution described in paragraph (a), any equity or debt interest in the ~~F~~inancial ~~I~~nstitution, other than interests that are regularly traded on an established securities market if –
  - (i) the value or the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to US Source Withholdable Payments; and
  - (ii) the class of interests was established with a purpose of avoiding reporting in accordance with the IGA;
- (c) any cash value insurance contract and any ~~A~~nnuity ~~C~~ontract issued or maintained by a ~~F~~inancial ~~I~~nstitution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded from the definition of ~~F~~inancial ~~A~~ccount under **Schedule 2 3**;



“~~F~~financial ~~I~~nstitution” means a custodial institution, a depository institution, an investment entity or a specified insurance company;

“IGA” means the Inter-Governmental Agreement signed between the Government of Trinidad and Tobago and the Government of the United States of America to improve international tax compliance and provide for the implementation of the Foreign Accounts Tax Compliance Act of the United States of America and set out specifically in Schedule 2;

“~~I~~nsurance ~~C~~ontract” means a contract, other than an annuity contract, under which the insurer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability or property risk;

“~~I~~nvestment ~~E~~ntity” means any entity that conducts as a business or is managed by an entity that conducts as a business, one or more of the following activities or operations for, or on behalf of a customer-

- (a) trading in money market investments such as cheques, bills, certificates of deposit and derivatives, foreign exchange, interest rates and instruments, transferable securities or commodity futures trading;
- (b) individual and collective portfolio management; or
- (c) otherwise investing, administering or managing funds or money on behalf of other persons;

“~~N~~on-participating ~~F~~financial ~~I~~nstitution” means any non-participating foreign ~~F~~financial ~~I~~nstitution or a financial institution deemed to be a non-participating ~~F~~financial ~~I~~nstitution under **Schedule 2 3**;

“~~N~~on-reporting ~~F~~financial ~~I~~nstitution” means a financial institution or other entity resident in Trinidad and Tobago, that is described in **Schedule 2 3** as a ~~N~~on-reporting ~~F~~financial ~~I~~nstitution or that otherwise qualifies as a deemed compliant foreign

~~F~~inancial ~~I~~nstitution or an exempted beneficial owner under relevant Regulations of the United States of America Treasury in effect on the date of signature of the IGA;

“~~N~~on-US ~~E~~ntity” means an entity that is not a United States of America person;

“~~R~~eportable ~~A~~ccount” means a ~~F~~inancial ~~A~~ccount maintained by a reporting ~~F~~inancial ~~I~~nstitution and held by one or more Specified United States person or by a ~~N~~on-US ~~E~~ntity with one or more controlling person that is a Specified United States Person but does not include an account which, after the due diligence procedures set out in Schedule 4 are applied is not identified as a ~~R~~eportable ~~A~~ccount;

“~~R~~eporting ~~F~~inancial ~~I~~nstitution” means any Trinidad and Tobago ~~F~~inancial ~~I~~nstitution that is not a ~~N~~on-~~R~~eporting ~~F~~inancial ~~I~~nstitution;

“sensitive personal information” means, **subject to subsection (4)-**

- (a) the name, address and USTIN of a specified United States Person that is an account holder;
- (b) the name, address and USTIN, if any, of a ~~N~~on-US ~~E~~ntity that ~~are~~ after the application of the due diligence procedures set out in Schedule 4 is identified as having one or more controlling persons that is a Specified United States Person and the name, address and USTIN of each United States Person;
- (c) the account number or functional equivalent in the absence of an account number;
- (d) the name and identifying number of the ~~R~~eporting ~~F~~inancial ~~I~~nstitution;
- (e) the account balance or value, including, in the case of a ~~C~~ash ~~V~~alue ~~I~~nsurance ~~C~~ontract or ~~A~~nnuity ~~C~~ontract, the cash value or surrender value as at the end of the relevant calendar year or the appropriate reporting period or, if the account was closed during that year, immediately before closure;
- (f) in the case of a custodial account-
  - (i) the total gross amount of interest, the total gross amount of dividends, and

- the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account, or with respect to the account, during the calendar year or other appropriate accounting period; and
- (ii) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period to which the Reporting Financial Institution acted as a custodian, broker, nominee or otherwise as an agent for the account holder;
- (g) in the case of a Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
- (h) in the case of any account not distributed in paragraph (f) or (g), the total gross amount paid or credited to the account holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligator or debtor including the aggregate amount of any redemption payment made to the account holder during the calendar year or other appropriate reporting period;

“Specified Insurance Company” means any entity that is an insurance company, or the holding company of an insurance company, that issues or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract;

“Specified United States Person” means a United States person other than-

- (a) a corporation, the stock of which is regularly traded on one or more established securities market;
- (b) any corporation that is a member of the same expanded affiliated group, as defined in section 147(e)(2) of the United States Internal

- Revenue Code, as a corporation described in paragraph (a);
- (c) the United States of America or any wholly owned agency or instrumentality thereof;
  - (d) any State of the United States of America and United States Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of anyone or more of the persons referred to in paragraphs (a) to (c);
  - (e) any organization exempt from taxation under section 501(a) of the United States Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the United States Internal Revenue Code;
  - (f) any bank as defined in section 581 of the United States Internal Revenue Code;
  - (g) any real estate investment trust as defined in section 856 of the United States Internal Revenue Code;
  - (h) any regulated investment company as defined by section 851 of the United States Internal Revenue Code or any entity registered with the United States Securities and Exchange Commission under the Investment Company Act, 1940 of the United States of America, 15USC80a-64;
  - (i) any common trust fund as defined in section 584(a) of the United States Internal Revenue Code;
  - (j) any trust that is exempt from tax under section 664(c) of the United States Internal Revenue Code or that is described in section 4947(a)(1) of the United States Internal Revenue Code;
  - (k) a dealer in securities, commodities or derivative financial instruments including national principal contracts, futures, forwards and options, that is registered as such under the laws of the United States of America or any State of the United States of America;
  - (l) a broker as defined in section 6045(c) of the United States Internal Revenue Code; or
  - (m) any tax-exempt trust under a plan that is described in section 403(b) or section

457(g) of the United States Internal Revenue Code;

“United States Person” means a citizen of the United States of America or resident individual, a partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof, a trust if-

- (a) a court within the United States of America would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust; and
- (b) one or more United States person has the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States of America;

“U.S. Source Withholdable Payment” means any payment of interest, including any original issue discount, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments and other fixed or determinable annual or periodical gains, profits and income, if such payment is from sources within the United States of America but does not include any payment that is not treated as a withholdable payment in the relevant United States Treasury Regulations; and

“USTIN” means a United States Federal taxpayer identifying number.

(2) For the purposes of the definition of “Custodian Institution”, an entity holds financial assets for the account of others as a substantial portion of its business if, the gross income of the entity is attributable to the holding of financial assets and related financial services equals or exceeds twenty per cent of the gross income during the shorter of –

- (a) the three-year period that ends on December 31, or the final day of a non-calendar year accounting period, prior to the year in which the determination is being made; or

(b) the period during which the entity has been in existence.

(3) For the purpose of the definition of “~~F~~financial ~~A~~account”-

- (a) interests are “regularly traded” if there is a meaningful volume of trading with respect to the interests on an ongoing basis;
- (b) “established securities market” means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange; and
- (c) an interest in a ~~F~~financial ~~I~~nstitution is not regularly traded and shall from January 1, 2016 be treated as ~~F~~financial ~~A~~account if the holder of the interest, other than a ~~F~~financial ~~I~~nstitution acting as an intermediary, is registered on the books of such ~~F~~financial ~~I~~nstitution after July 1, 2014.

(4) For the purposes of this Part, **the definition of “sensitive personal information”** in respect of ~~sensitive personal~~ information ~~to be~~ obtained ~~and~~ or exchanged –

- (a) for **the year 2014**, ~~it shall be that~~ **is the information** described in paragraphs (a) to ~~(d)~~ of the definition of “sensitive personal information” set out in subsection (1);
- (b) for **the year 2015**, ~~it shall be that~~ **is the information** described in the definition of “sensitive personal information” set out in subsection (1) ~~which~~, except for gross proceeds described in subparagraph ~~(e)~~ **(f)** (ii) of that definition; and
- (c) for **the year 2016** and subsequent years, ~~is the information shall be that~~ **is the information** described in the definition of “sensitive personal information” set out in subsection (1).

Processing of  
sensitive personal  
information

**10.14** Notwithstanding sections 6, 38 and 40 of the Data Protection Act, a ~~F~~financial ~~I~~nstitution may, for the purpose of the IGA, process sensitive personal information collected by it in the normal course of

business ~~in relation to an~~ **where the** account holder of a ~~R~~reportable ~~A~~account is a United States Person.

Receipt of  
information by  
the Competent  
Authority

**11. 15(1)** Notwithstanding sections 6, 30 and 31 of the Data Protection Act, the ~~C~~competent ~~A~~authority shall for the purposes of the IGA, receive **from a financial institution**, sensitive personal information on a United States Person ~~in the possession~~ in respect of ~~R~~reportable ~~A~~accounts.

(2) Where the ~~C~~competent ~~A~~authority receives sensitive personal information under subsection (1) in respect of a ~~R~~reportable ~~A~~account it shall keep such information confidential and unless the ~~C~~competent ~~A~~authority is permitted to disclose that information under this Act, it shall not disclose that information without the consent of the person to whom that information relates.

Disclosure of  
personal  
information to  
the United States  
Treasury

**12. (1) 16.** Notwithstanding section 46 of the Data Protection Act, sensitive personal information received by the ~~C~~competent ~~A~~authority under this Part in respect of a ~~R~~reportable ~~A~~account ~~shall~~ **may** be disclosed to the Secretary of the United States Treasury ~~Department in accordance with this Act~~ even if the individual to whom the information relates has not consented to the disclosing of his information or the United States of America does not have comparable safeguards as required by the Data Protection Act.

(2) The disclosure of sensitive personal information under this section shall be done annually on an automatic basis.

Financial  
Institutions to  
forward sensitive  
personal  
information  
~~Schedule 3~~

**13. 17.** Notwithstanding sections 6, 41 and 69 of the Data Protection Act, a financial institution may forward to the ~~C~~competent ~~A~~authority sensitive personal information ~~relative to~~ **of** an account holder in respect

of a reportable account held by a ~~the~~ financial institution for the purposes of the IGA, without the consent of the account holder.

Reporting  
Financial  
Institution to  
characterize  
payments

**14.** ~~18A~~ ~~R~~reporting ~~F~~financial ~~I~~institution shall determine the amount and characterisation of payments with respect to a United States ~~R~~reportable ~~A~~account on its records for the purposes of the exchange of sensitive personal information in accordance with ~~the principles of the tax laws of Trinidad and Tobago.~~

Reported  
currency required

**15.** ~~19.~~ **A financial institution shall when disclosing S**sensitive personal information ~~shall~~, for the purpose of this Part identify the currency in which each relevant amount is denominated.

USTIN  
information not  
required in  
certain  
circumstances

**16.** ~~20.~~ (1) Notwithstanding section ~~15–12~~ with respect to a ~~R~~reportable ~~A~~account that is maintained by a ~~R~~reporting ~~F~~financial ~~I~~institution, it is not necessary for a ~~R~~reporting ~~F~~financial ~~I~~institution to obtain and exchange the USTIN of an account holder if such information is not in the records of the ~~R~~reporting ~~F~~financial ~~I~~institution.

(2) Where a USTIN of an account holder is not in the records of a ~~R~~reporting ~~F~~financial ~~I~~institution in which the ~~R~~reportable ~~A~~account of the account holder is held, the ~~R~~reporting ~~F~~financial ~~I~~institution shall, where the date of birth of the account holder information is in its records, include it in the information to be exchanged.

Timeline for  
forwarding  
information

**17.** (1) ~~21~~ ~~A~~ ~~R~~reporting ~~F~~financial ~~I~~institution shall forward sensitive personal information on an account holder in respect of a ~~R~~reportable ~~A~~account to the ~~C~~ompetent ~~A~~authority within **[nine]** months after the end of the calendar year to which the sensitive personal information relates for onward transmission by the ~~C~~ompetent ~~A~~authority to the Secretary of the United States Treasury in accordance with section ~~15–12~~.



(2) Where the reporting period occurs prior to the commencement of this Act, a reporting financial institution shall forward the sensitive personal information on the 30<sup>th</sup> April after the obligation of the competent authority under the IGA takes effect.

Competent Authority and US Treasury Memoranda of Understanding

~~18. 22.~~ (1) The ~~C~~competent ~~A~~authority shall enter into a ~~Memorandum of Understanding~~ **an Agreement** with the Secretary of the United States Treasury –

- (a) for the establishment ~~of~~ procedures for the automatic exchange of sensitive personal information under section ~~15-12~~;
- (b) to set out rules and procedures as may be necessary for the collaboration on compliance with, and enforcement of matters arising under this Act; and
- (c) for the establishment, as necessary, of procedures for the exchange of the information provided to the ~~C~~competent ~~A~~authority on the name of each Non-reporting ~~F~~financial ~~I~~nstitution to which a ~~R~~eporting ~~F~~financial ~~I~~nstitution has made payment and the aggregate amount of such payments for the years 2015 and 2016.

**(2) Where an Agreement under subsection (1) provides for its publication, it shall be laid in Parliament within two months after the date of signature of the Agreement by both parties.**

Minor and administrative errors

~~19. 23~~Where the ~~C~~competent ~~A~~authority has reasons to believe that administrative or other minor errors may have-

- (a) led to incorrect or incomplete information being disclosed under section ~~15-12~~; or
- (b) resulted in other infringements to the IGA,

the ~~C~~competent ~~A~~authority shall notify the Secretary of the United States Treasury.

Significant non-compliance

**20.** ~~24~~The ~~C~~competent ~~A~~authority shall, where it has determined that there is significant non-compliance with the IGA by a United States ~~R~~reporting ~~F~~financial ~~I~~institution, notify the Secretary of the United States Treasury.

Mutual Agreement procedure and costs to apply

**21.** ~~25~~Subject to section ~~24-18~~, the provisions of Article 5 of the Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the United States of America for the Exchange of Information with respect to taxes, which provides for mutual agreement procedure and costs, apply to this Part.

Disclosure under Chap. 75:01, Chap. 79:09 and other enactments

~~22.(1)12.~~ **Nothing in –**

- (a) section 4 of the Income Tax Act;**
- (b) section 55 of the Financial Institutions Act; or**
- (c) any other law that restricts the sharing of personal information,**

**prevents the disclosure of information by the competent authority or a financial institution, where that disclosure is in accordance with, and for the purpose of giving effect to this Part or the IGA.**

Penalty for disclosure under this Part

**23. Where information has been obtained or received under this Part, a person who uses or discloses the information other than for the purposes for which it was obtained or received commits an offence and is liable –**

- (a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for three years; and**
- (b) on conviction on indictment to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.**

**PART IV**

**RELATED AMENDEMENTS**

Minister to  
amend

Schedule 2

~~22The Minister may by Order, where the parties modify the IGA or its annexes in Schedule 2, amend the IGA or its annexes contained in Schedule 2.~~

Chap. 75:01  
amended

**24. The Income Tax Act is amended by -**  
**(c) deleting section 117(6); and**  
**(d) inserting after section 117 the following new section:**

**“Tax  
Information  
Exchange  
Agreements**

**117A. (1) The Board is  
authorized to require-**

- (a) any financial information and other information; and**
- (b) any financial institution or any officer of the financial institution to appear before it to give evidence or be examined under oath or otherwise;**
- (c) any supporting documentation in respect of paragraph (a) or (b),**

**for the purpose of the Tax Information Exchange Agreements (United States of America) Act, 2016 and other enactments for a similar purpose.**

(2) A financial institution which fails or whose officer fails to comply with a requirement under subsection (1) commits an offence.”.

Chap 79:02  
amended

25. The Central Bank Act is amended-

(a) in section 2 by inserting after the definition of “corporation” the following definition:

“ “declared agreement” means the 1989 TIEA as defined in section 5 of the Tax Information Exchange Agreements (United States of America) Act, 2016 and the 2016 IGA as defined in section 9 of the Tax Information Exchange Agreements (United States of America) Act, 2016;

(b) in section 36-

~~(a)~~ (i) in paragraph (bb) by deleting the word “and”;

~~(b)~~ (ii) in paragraph (cc) by deleting the word “.” and substituting the word “; and”;  
and

~~(c)~~ (iii) by inserting after paragraph (cc) the following new paragraph:

“ (dd) supervise financial institutions and insurance companies on the

**implementation of declared agreements.”.**

Chap. 79:09  
amended

**26. The Financial Institutions Act is amended –**

(a) in section 2, by inserting after the definition of “credit facilities” the following definition **in the appropriate alphabetical sequence the following new definitions:**

~~“ “declared agreement” for the purposes of this Act, shall have the meaning assigned to it under section 3 of the Tax Information Exchange Agreements Act, 2016;”;~~

“ **“Board of Inland Revenue”**  
**means the Board of Inland Revenue established by section 3 of the Income Tax Act;**

Chap. 75:01

**“declared agreement” means the 1989 TIEA as defined in section 5 of the Tax Information Exchange Agreements (United States of America) Act, 2016 and the IGA as defined in section 9 of the Tax Information Exchange Agreements (United States of America) Act, 2016;”;**

**(b) in section 8 -**

**(i) by inserting after subsection (2) the following new subsections:**

**“ (2A) The Central Bank may disclose information referred to in subsection (1) to the Board of Inland Revenue in order to give effect to the Tax Information Agreements (United States of America) Act, 2016.**

**(2B) The information referred to in subsection (1) may be utilized by the Central Bank as required to give effect to its powers under the Tax Information Exchange Agreements (United States of America) Act, 2016.”; and**

**(ii) in subsection (5) by deleting the words “subsection (2), the Central Bank may enter into a Memorandum of Understanding with” and substituting the words “subsections (2A) and (2B), the Central Bank may enter into a Memorandum of Understanding with the Board of Inland Revenue.”;**

**(b) in section 10, by –**

**(i) renumbering section 10 as section 10 (1);**

**(ii) in subsection (1) as renumbered by -**

**(A) deleting the words “; and” at the end of paragraph (c) and substituting the word “;”;**

**(B) deleting the word “.” at the end of paragraph (d) and substituting the words “; and” ; and**

~~(C#)~~ inserting at the end of paragraph (d), the following new paragraph –

“(e) to give effect to a declared agreement.”; and

**(iii) by inserting after subsection (1) as renumbered the following new subsection:**

**“(2) Guidelines made under subsection (1)(e) shall be subject to the approval of the Minister and laid in Parliament at the earliest opportunity.”; and**

~~(ed) in section 86(1), by—~~

~~(i) deleting the words “; or” at the end of paragraph (e) and substituting the word “;”;~~

~~(ii) deleting the word “;” at the end of paragraph (d) and substituting the words “; or”; and~~

~~(iii) inserting at the end of paragraph (d), the following new paragraph:~~

~~“(e) — has breached any requirement or failed to comply with guidelines related to a declared agreement.”;~~

~~(iv) deleting the words “; or” at the end of subparagraph (i) and substituting the word “;”;~~

~~(v) deleting the word “;” at the end of subparagraph (ii) and substituting the words “; or”; and~~

~~(vi) inserting at the end of subparagraph (ii), the following new subparagraph:~~

~~“(iii) perform such acts as are required to give effect to a declared agreement.”.~~

(d) in section 86 by inserting after subsection (1) the following new subsection:

**“ (2) Notwithstanding any other action or remedy available under this Act, if the Board of Inland Revenue indicates to an Inspector, that –**

**(a) a licensee or financial holding company;**

**(b) a controlling shareholder or significant shareholder of a licensee; or**

**(c) any director, officer, company, controlling shareholder or significant shareholder of a licensee,**

**has failed to give effect to or comply with a declared agreement, the Inspector may direct any person referred to in paragraph (a), (b) or (c) to give effect to, comply with or perform such acts as may be necessary for compliance with a declared agreement.”.**

Chap. 83:02  
amended

**27.** The Securities Act is amended in-

(a) section 4, by inserting after the definition of “control” the following new definition:

~~“declared agreement” for the purposes of this Act, shall have the meaning assigned to it under section 3~~



~~of the Tax Information Exchange Agreements Act, 2016;”;~~ and

**“ “declared agreement” means the 1989 TIEA as defined in section 5 of the Tax Information Exchange Agreements (United States of America) Act, 2016 and the IGA as defined in section 9 of the Tax Information Exchange Agreements (United States of America) Act, 2016;”;**

(b) section 7, by inserting after paragraph (j) the following new paragraph:

“(ja) formulate, prepare and publish, guidelines in respect of declared agreements;”;

(c) section 14(2)-

(i) subparagraph (b) (iii), by inserting after the words **“Intelligence Unit”,** the words **“the competent authority in respect of a declared agreement,”;** and

(ii) by deleting the words **“or similar legislation of a foreign jurisdiction”** and substituting the words **“similar legislation of a foreign jurisdiction or a declared agreement”;**

(d) in section 19(1), by inserting after the words **“Unit,”** the words **“the competent authority in respect of a declared agreement”;**

(e) in section 89(1) (a), by inserting after the words **“this Act,”** the words **“a declared agreement,”;** and

**(f) in section 90(1)-**

- (i) in paragraph (c) by deleting the words “; and” and substituting the word “;”;**
- (ii) in paragraph (d) by deleting the words “;” and substituting the words “; and”; and**
- (iii) by inserting after paragraph (d) the following new paragraph:**

**“(e) has breached any requirement or failed to comply with guidelines relating to a declared agreement,”; and**

**(g) section 146-**

- (i) in subsection (1) by inserting after the words “compliance with”, the words “a declared agreement”; and**
- (ii) by inserting after subsection (2) the following new subsection:**
  - “(2A) Guidelines issued in respect of declared agreements shall be subject to the approval of the Minister and laid in Parliament at the earliest opportunity.”.**

Chap. 84:01  
amended

**28. The Insurance Act is amended –**

- (a) in section 3(1), by inserting after the definition of “Board” the following new definition:**
  - “ “Board of Inland Revenue” means the Board of Inland Revenue established by section 3 of the Income Tax Act;”;**
- (b) in section 6A -**
  - (i) by renumbering section 6A as 6A(1); and**

(ii) by inserting after ~~the renumbered~~ subsection (1) as renumbered, the following subsection:

**“ (2) The Central Bank may disclose information referred to in subsection (1) to the Board of Inland Revenue in order to give effect to the Tax Information Exchange Agreements (United States of America) Act, 2016.**

**(23) The ~~information obtained by the Central Bank in accordance with~~ referred to in subsection (1) may be utilized by the Central Bank as required to give effect to its powers under the Tax Information Exchange Agreements (United States of America) Act, 2016.”; and ~~Foreign Account Tax Compliance Act of the United States of America~~**

(c) in section 65, by inserting after subsection (1) the following new subsection:

**“ (2) Notwithstanding any other action or remedy available under this Act, if the Board of Inland Revenue indicates to an Inspector, that a registrant or an officer, other employee or agent of the registrant has breached any requirement or failed to comply with guidelines related to a declared agreement, the Inspector may direct the**

a registrant or an officer, other employee or agent of the registrant to give effect, comply with or perform such acts as may be necessary for compliance with a declared agreement.”;

(d) by inserting after section 214 the following new section:

“Central Bank to issue guidelines for declared agreements

“ ~~(4)~~ 215(1) The Central Bank may issue guidelines on any matter it considers necessary to give effect to a declared agreement.

~~(5)~~ (2) Where guidelines are issued under subsection ~~(4)~~ (1), a declared agreement shall have the meaning assigned to it under section 3 of the Tax Information Exchange Agreements (United States of America) Act, 2016.

~~(6)~~ (3) Where a person has failed to comply with guidelines issued by the Central Bank under subsection ~~(4)~~ (1), pursuant to the Foreign Account Tax Compliance Act of the United States of America, the Central Bank shall direct that person to-

(a) cease and or refrain from

committing the act, pursuing the course of conduct, or committing a violation; or

- (b) perform such acts as in the opinion of the Central Bank are necessary to remedy the situation; and
- (c) perform such acts as are required to give effect to a **declared agreement.**

(4) Guidelines made under this section shall be subject to the approval of the Minister **and laid in Parliament at the earliest opportunity**”.

## PART V

### MISCELLANEOUS

Minister to  
amend

- 29. (1) The Minister may by Order, where the parties modify –**
- (a) the 1989 TIEA in Schedule 1; or

(b) the IGA or its annexes in Schedule 2,  
amend the 1989 TIEA or the IGA or its annexes contained in  
Schedule 1 or Schedule 2, respectively.

**(2) An Order under subsection (1) shall be subject to  
negative resolution of Parliament.**

Immunity from  
suit

**30. The competent authority or any person acting under its  
authority or direction who discloses confidential information in  
compliance with this Act shall not be taken as having committed an  
offence under the provisions of any written law relating to  
confidentiality by reason only of that disclosure.**

Annual Report

**31. The Minister shall cause to be laid in Parliament an  
annual report on the operations of the competent authority within  
three months after the date for the automatic transmission of  
information under the provisions of this Act or, if Parliament is not  
in session, within one month after the commencement of the next  
session.**

Validation of  
actions of the  
Competent  
Authority

**312. 30** All acts or things purportedly done in good faith by the  
Board pursuant to the former Act prior to the coming into operation of this  
Act, shall be deemed to have been lawfully and validly done, to the extent  
it would have been lawfully and validly done if the Board had the power  
to so do under the former Act.

Chap. 76:51  
repealed

**323.** The former Act is repealed.

## SCHEDULE 1

(Sections ~~4 and~~ 5)

### **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES**

The Government of the Republic of Trinidad and Tobago and the Government of the United States of America, desiring to conclude an Agreement for the exchange of information with respect to taxes (hereinafter referred to as the “Agreement”), have agreed as follows:

#### **ARTICLE 1**

#### **OBJECT AND SCOPE OF THE AGREEMENT**

1. The Contracting States shall assist each other to assure the accurate assessment and collection of taxes, to prevent fiscal fraud and evasion, and to develop improved information sources for tax matters. The Contracting States shall provide assistance through exchange of information authorised pursuant to Article 4 and such related measures as may be agreed upon by the competent authorities pursuant to Article 5.
2. Information shall be exchanged to fulfil the purpose of this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Contracting State.

#### **ARTICLE 2**

#### **TAXES COVERED**

1. This Agreement shall apply to the following taxes imposed by or on behalf of a Contracting State:
  - (a) In the case of the United States of America—
    - (i) Federal income taxes
    - (ii) Federal taxes on self-employment income
    - (iii) Federal taxes on transfers to avoid income tax
    - (iv) Federal estate and gift taxes
    - (v) Federal excise taxes; and
  - (b) In the case of the Republic of Trinidad and Tobago—
    - (i) The Income Tax
    - (ii) The Corporation Tax
    - (iii) The Petroleum Profits Tax
    - (iv) The Unemployment Levy.
2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authority of each Contracting State shall notify the other of significant changes in laws which may affect the obligations of that State pursuant to this Agreement.
3. This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the applicant State’s statute of limitations.

4. This Agreement shall not apply to taxes imposed by States, municipalities or other political subdivisions, or possessions of a Contracting State.

### **ARTICLE 3 DEFINITIONS**

1. In this Agreement, unless otherwise defined—
  - (a) The term “competent authority” means:
    - (i) in the case of the United States of America, the Secretary of the Treasury or his delegate; and
    - (ii) in the case of the Republic of Trinidad and Tobago, the Minister to whom the responsibility for Finance is assigned or his authorised representative.
  - (b) The term “national” means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
  - (c) The term “person” comprises an individual, a corporation and any other body of individuals or persons.
  - (d) The term “tax” means any tax to which the Agreement applies.
  - (e) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “United States” means the States thereof, the District of Columbia and any United States possession or territory.
  - (f) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “Republic of Trinidad and Tobago” means the islands of Trinidad and Tobago.
2. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 5, shall have the meaning which it has under the laws of the Contracting State relating to the taxes which are the subject of this Agreement.

### **ARTICLE 4 EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange information to administer and enforce the domestic laws of the Contracting States concerning taxes covered by this Agreement.
2. The competent authority of the requested State shall endeavour to provide information upon request by the competent authority of the applicant State for the purposes referred to in paragraph 1 of this Article. If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, the State shall take all relevant measures to provide the applicant State with the information requested. The competent



authorities of the Contracting States have authority to obtain and shall provide information from financial institutions. Privileges under the laws or practices of the applicant State shall not apply in the execution of a request but shall be preserved for resolution by the applicant State.

3. If information is requested by a Contracting State pursuant to paragraph 2 of this Article, the requested State shall endeavour to obtain the information requested in the same manner, and provide it in the same form, as if the tax of the applicant State were the tax of the requested State and were being imposed by the requested State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavour to provide information under the Article in the form of depositions of witnesses, authenticated copies of unedited original documents (including books, papers, statements, records, accounts and writings) and other tangible property to the same extent such depositions, documents and property can be obtained under the laws and administrative practices of such other State with respect to its own taxes.
4. The provisions of the preceding paragraphs shall not be construed so as to impose on a Contracting State the obligation—
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that State or of the other Contracting State;
  - (b) to supply particular items of information which are not obtainable under the laws or in the normal course of the administration of that State or of the other Contracting State;
  - (c) to supply information which would disclose any trade, business, industrial,
  - (d) to supply information the disclosure of which would be contrary to public policy (order public);
  - (e) to supply information requested by the applicant State to administer or enforce a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested State if it is more burdensome with respect to a national of the requested State than with respect to a national of the applicant State in the same circumstances. For purposes of the preceding sentence, a national of the applicant State who is subject to tax on worldwide income is not in the same circumstances as a national of the requested State who is not subject to tax on worldwide income. The provisions of this subparagraph shall not be construed to prevent the exchange of information with respect to the taxes imposed by the United States or by the Republic of Trinidad and Tobago on branch profits (i.e., dividend equivalent and/or excess interest amounts) or on the premium income of non-resident insurers or foreign insurance companies.
5. Except as provided in paragraph 4 of this Article, the provisions of the preceding paragraphs shall be construed so as to impose on a Contracting State the obligation to use all legal means and its best efforts to execute a request. A Contracting State may, in its discretion, take measures to obtain and transmit to the other State information which, pursuant to paragraph 4 of this Article, it has no obligation to transmit.

6. The competent authority of the requested State shall allow representatives of the applicant State to enter the requested State to interview individuals and examine books and records with the consent of the individuals contacted.
7. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to individuals or authorities (including judicial and administrative bodies) involved in the determination, assessment, collection and administration of, the recovery and collection of claims derived from, the enforcement or prosecution in respect of, or the determination of appeals in respect of, the taxes which are the subject of this Agreement, or the oversight of the above. Such individuals or authorities shall use the information only for such purposes. These individuals or authorities may disclose the information in public Court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting State originally furnishing the information.

## **ARTICLE 5 MUTUAL AGREEMENT PROCEDURE AND COSTS**

1. The competent authorities of the Contracting States shall agree to implement a programme to carry out the purposes of this Agreement. This programme may include, in addition to exchanges specified in Article 4, other measures to improve tax compliance, such as exchanges of technical knowhow, development of new audit techniques, identification of new areas of noncompliance and joint studies of non-compliance areas.
2. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement and may communicate directly for this purpose. In particular, the competent authorities may agree to a common meaning of a term and may determine when costs are extraordinary for purposes of this Article.
3. The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement under this Article.
4. Unless the competent authorities of the Contracting States otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested State and extraordinary costs incurred in providing assistance shall be borne by the applicant State.

## **ARTICLE 6 OTHER APPLICATIONS OF AGREEMENT**

This Agreement is consistent with the standards for an exchange of information agreement described in section 274(h)(6)(C) of the United States Internal Revenue Code of 1986, as amended (the "Code") (relating to deductions for attendance at foreign conventions), and referred to by cross reference in section 927(e)(3)(A) of the Code (relating to foreign sales corporations) and section 936(d)(4) of the Code (relating to Puerto Rico and the possession tax credit).

## **ARTICLE 7**

## **IMPLEMENTATION**

A Contracting State shall enact such legislation as maybe necessary to effectuate this Agreement.

## **ARTICLE 8 ENTRY INTO FORCE**

This Agreement shall enter into force upon an exchange of notes by the duly authorised representatives of the Contracting States confirming their mutual agreement that both sides have met all constitutional and statutory requirements necessary to effectuate this Agreement.

## **ARTICLE 9 TERMINATION**

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement at any time after the Agreement enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels.

## **SCHEDULE 2**

*(Sections 4, 9 and 28)*

### **IGA AGREEMENT**

#### **Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA**

Whereas, the Government of the Republic of Trinidad and Tobago and the Government of the United States of America (each, a “Party,” and together, the “Parties”) desire to conclude an agreement to improve international tax compliance through mutual assistance in tax matters based on an effective infrastructure for the automatic exchange of information;

Whereas, Article 4 of the Agreement between the Government of the Republic of Trinidad and Tobago and the Government of the United States of America for the Exchange of Information with Respect to Taxes, done at Port of Spain on January 11, 1989 (the “TIEA”), authorizes the exchange of information for tax purposes, including on an automatic basis;

Whereas, the United States of America enacted provisions commonly known as the Foreign Account Tax Compliance Act (“FATCA”), which introduce a reporting regime for financial institutions with respect to certain accounts;

Whereas, the Government of the Republic of Trinidad and Tobago is supportive of the underlying policy goal of FATCA to improve tax compliance;

Whereas, FATCA has raised a number of issues, including that Trinidad and Tobago financial institutions may not be able to comply with certain aspects of FATCA due to domestic legal impediments;

Whereas, the Government of the United States of America collects information regarding certain accounts maintained by U.S. financial institutions held by residents of Trinidad and Tobago and is committed to exchanging such information with the Government of the Republic of Trinidad and Tobago and pursuing equivalent levels of exchange, provided that the appropriate safeguards and infrastructure for an effective exchange relationship are in place;

Whereas, an intergovernmental approach to FATCA implementation would address legal impediments and reduce burdens for Trinidad and Tobago financial institutions;

Whereas, the Parties desire to conclude an agreement to improve international tax compliance and provide for the implementation of FATCA based on domestic reporting and reciprocal automatic exchange pursuant to the TIEA, and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the TIEA;

Now, therefore, the Parties have agreed as follows:

## **Article 1**

### **Definitions**

1. For purposes of this agreement and any annexes thereto (the “Agreement”), the following terms shall have the meanings set forth below:

- a) The term “**United States**” means the United States of America, including the States thereof, but does not include the U.S. Territories. Any reference to a “**State**” of the United States includes the District of Columbia.
- b) The term “**U.S. Territory**” means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.
- c) The term “**IRS**” means the U.S. Internal Revenue Service.
- d) The term “**Trinidad and Tobago**” means the Republic of Trinidad and Tobago.
- e) The term “**Partner Jurisdiction**” means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.
- f) The term “**Competent Authority**” means:
  - (1) in the case of the United States, the Secretary of the Treasury or his delegate; and
  - (2) in the case of Trinidad and Tobago, the Minister to whom the responsibility for Finance is assigned or his authorized representative.
- g) The term “**Financial Institution**” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
- h) The term “**Custodial Institution**” means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity’s gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.
- i) The term “**Depository Institution**” means any Entity that accepts deposits in the ordinary course of a banking or similar business.

- j) The term “**Investment Entity**” means any Entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
- (1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
  - (2) individual and collective portfolio management; or
  - (3) otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(j) shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

- k) The term “**Specified Insurance Company**” means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.
- l) The term “**Trinidad and Tobago Financial Institution**” means (i) any Financial Institution resident in Trinidad and Tobago, but excluding any branch of such Financial Institution that is located outside Trinidad and Tobago, and (ii) any branch of a Financial Institution not resident in Trinidad and Tobago, if such branch is located in Trinidad and Tobago.
- m) The term “**Partner Jurisdiction Financial Institution**” means (i) any Financial Institution established in a Partner Jurisdiction, but excluding any branch of such Financial Institution that is located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not established in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.
- n) The term “**Reporting Financial Institution**” means a Reporting Trinidad and Tobago Financial Institution or a Reporting U.S. Financial Institution, as the context requires.
- o) The term “**Reporting Trinidad and Tobago Financial Institution**” means any Trinidad and Tobago Financial Institution that is not a Non-Reporting Trinidad and Tobago Financial Institution.
- p) The term “**Reporting U.S. Financial Institution**” means (i) any Financial Institution that is resident in the United States, but excluding any branch of such Financial Institution that is located outside the United States, and (ii) any branch of a Financial Institution not resident in the United States, if such branch is

located in the United States, provided that the Financial Institution or branch has control, receipt, or custody of income with respect to which information is required to be exchanged under subparagraph (2)(b) of Article 2 of this Agreement.

- q) The term “**Non-Reporting Trinidad and Tobago Financial Institution**” means any Trinidad and Tobago Financial Institution, or other Entity resident in Trinidad and Tobago, that is described in Annex II as a Non-Reporting Trinidad and Tobago Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations in effect on the date of signature of this Agreement.
- r) The term “**Nonparticipating Financial Institution**” means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution treated as a Nonparticipating Financial Institution pursuant to subparagraph 2(b) of Article 5 of this Agreement or the corresponding provision in an agreement between the United States and a Partner Jurisdiction.
- s) The term “**Financial Account**” means an account maintained by a Financial Institution, and includes:
  - (1) in the case of an Entity that is a Financial Institution solely because it is an Investment Entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the Financial Institution;
  - (2) in the case of a Financial Institution not described in subparagraph 1(s)(1) of this Article, any equity or debt interest in the Financial Institution (other than interests that are regularly traded on an established securities market), if (i) the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. Source Withholdable Payments, and (ii) the class of interests was established with a purpose of avoiding reporting in accordance with this Agreement; and
  - (3) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded from the definition of Financial Account in Annex II.

Notwithstanding the foregoing, the term “Financial Account” does not include any account that is excluded from the definition of Financial Account in Annex II. For purposes of this Agreement, interests are “regularly traded” if there is a meaningful volume of trading with respect to the interests on an ongoing basis,

and an “established securities market” means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange. For purposes of this subparagraph 1(s), an interest in a Financial Institution is not “regularly traded” and shall be treated as a Financial Account if the holder of the interest (other than a Financial Institution acting as an intermediary) is registered on the books of such Financial Institution. The preceding sentence will not apply to interests first registered on the books of such Financial Institution prior to July 1, 2014, and with respect to interests first registered on the books of such Financial Institution on or after July 1, 2014, a Financial Institution is not required to apply the preceding sentence prior to January 1, 2016.

- t) The term “**Depository Account**” includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.
- u) The term “**Custodial Account**” means an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment (including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract, an Insurance Contract or Annuity Contract, and any option or other derivative instrument).
- v) The term “**Equity Interest**” means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Specified U.S. Person shall be treated as being a beneficiary of a foreign trust if such Specified U.S. Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
- w) The term “**Insurance Contract**” means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
- x) The term “**Annuity Contract**” means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to



the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

- y) The term “**Cash Value Insurance Contract**” means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than \$50,000.
- z) The term “**Cash Value**” means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term “Cash Value” does not include an amount payable under an Insurance Contract as:
  - (1) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
  - (2) a refund to the policyholder of a previously paid premium under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
  - (3) a policyholder dividend based upon the underwriting experience of the contract or group involved.
- aa) The term “**Reportable Account**” means a U.S. Reportable Account or a Trinidad and Tobago Reportable Account, as the context requires.
- bb) The term “**Trinidad and Tobago Reportable Account**” means a Financial Account maintained by a Reporting U.S. Financial Institution if: (i) in the case of a Depository Account, the account is held by an individual resident in Trinidad and Tobago and more than \$10 of interest is paid to such account in any given calendar year; or (ii) in the case of a Financial Account other than a Depository Account, the Account Holder is a resident of Trinidad and Tobago, including an Entity that certifies that it is resident in Trinidad and Tobago for tax purposes, with respect to which U.S. source income that is subject to reporting under chapter 3 of subtitle A or chapter 61 of subtitle F of the U.S. Internal Revenue Code is paid or credited.
- cc) The term “**U.S. Reportable Account**” means a Financial Account maintained by a Reporting Trinidad and Tobago Financial Institution and held by one or more

Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable Account after application of the due diligence procedures in Annex I.

- dd) The term “**Account Holder**” means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Agreement, and such other person is treated as holding the account. For purposes of the immediately preceding sentence, the term “Financial Institution” does not include a Financial Institution organized or incorporated in a U.S. Territory. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
- ee) The term “**U.S. Person**” means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This subparagraph 1(ee) shall be interpreted in accordance with the U.S. Internal Revenue Code.
- ff) The term “**Specified U.S. Person**” means a U.S. Person, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i); (iii) the United States or any wholly owned agency or instrumentality thereof; (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (v) any organization exempt from taxation under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code; (vi) any bank as defined in section 581 of the U.S. Internal Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code; (viii) any regulated investment

company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code; (xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; (xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code; or (xiii) any tax-exempt trust under a plan that is described in section 403(b) or section 457(g) of the U.S. Internal Revenue Code.

- gg) The term “**Entity**” means a legal person or a legal arrangement such as a trust.
  - hh) The term “**Non-U.S. Entity**” means an Entity that is not a U.S. Person.
  - ii) The term “**U.S. Source Withholdable Payment**” means any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States. Notwithstanding the foregoing, a U.S. Source Withholdable Payment does not include any payment that is not treated as a withholdable payment in relevant U.S. Treasury Regulations.
  - jj) An Entity is a “**Related Entity**” of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, Trinidad and Tobago may treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 1471(e)(2) of the U.S. Internal Revenue Code.
  - kk) The term “**U.S. TIN**” means a U.S. federal taxpayer identifying number.
  - ll) The term “**Trinidad and Tobago TIN**” means a Trinidad and Tobago taxpayer identifying number.
  - mm) The term “**Controlling Persons**” means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations.
2. Any term not otherwise defined in this Agreement shall, unless the context otherwise

requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Party applying this Agreement, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 2**

### **Obligations to Obtain and Exchange Information with Respect to Reportable Accounts**

1. Subject to the provisions of Article 3 of this Agreement, each Party shall obtain the information specified in paragraph 2 of this Article with respect to all Reportable Accounts and shall annually exchange this information with the other Party on an automatic basis pursuant to the provisions of Article 4 of the TIEA.
2. The information to be obtained and exchanged is:
  - a) In the case of Trinidad and Tobago with respect to each U.S. Reportable Account of each Reporting Trinidad and Tobago Financial Institution:
    - (1) the name, address, and U.S. TIN of each Specified U.S. Person that is an Account Holder of such account and, in the case of a Non-U.S. Entity that, after application of the due diligence procedures set forth in Annex I, is identified as having one or more Controlling Persons that is a Specified U.S. Person, the name, address, and U.S. TIN (if any) of such entity and each such Specified U.S. Person;
    - (2) the account number (or functional equivalent in the absence of an account number);
    - (3) the name and identifying number of the Reporting Trinidad and Tobago Financial Institution;
    - (4) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year, immediately before closure;
    - (5) in the case of any Custodial Account:
      - (A) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

- (B) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Trinidad and Tobago Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
  - (6) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
  - (7) in the case of any account not described in subparagraph 2(a)(5) or 2(a)(6) of this Article, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Trinidad and Tobago Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.
- b) In the case of the United States, with respect to each Trinidad and Tobago Reportable Account of each Reporting U.S. Financial Institution:
- (1) the name, address, and Trinidad and Tobago TIN of any person that is a resident of Trinidad and Tobago and is an Account Holder of the account;
  - (2) the account number (or the functional equivalent in the absence of an account number);
  - (3) the name and identifying number of the Reporting U.S. Financial Institution;
  - (4) the gross amount of interest paid on a Depository Account;
  - (5) the gross amount of U.S. source dividends paid or credited to the account; and
  - (6) the gross amount of other U.S. source income paid or credited to the account, to the extent subject to reporting under chapter 3 of subtitle A or chapter 61 of subtitle F of the U.S. Internal Revenue Code.

### **Article 3**

#### **Time and Manner of Exchange of Information**

1. For purposes of the exchange obligation in Article 2 of this Agreement, the amount and characterization of payments made with respect to a U.S. Reportable Account may be determined in accordance with the principles of the tax laws of Trinidad and Tobago, and the amount and

characterization of payments made with respect to a Trinidad and Tobago Reportable Account may be determined in accordance with principles of U.S. federal income tax law.

2. For purposes of the exchange obligation in Article 2 of this Agreement, the information exchanged shall identify the currency in which each relevant amount is denominated.

3. With respect to paragraph 2 of Article 2 of this Agreement, information is to be obtained and exchanged with respect to 2014 and all subsequent years, except that:

a) In the case of Trinidad and Tobago:

(1) the information to be obtained and exchanged with respect to 2014 is only the information described in subparagraphs 2(a)(1) through 2(a)(4) of Article 2 of this Agreement;

(2) the information to be obtained and exchanged with respect to 2015 is the information described in subparagraphs 2(a)(1) through 2(a)(7) of Article 2 of this Agreement, except for gross proceeds described in subparagraph 2(a)(5)(B) of Article 2 of this Agreement; and

(3) the information to be obtained and exchanged with respect to 2016 and subsequent years is the information described in subparagraphs 2(a)(1) through 2(a)(7) of Article 2 of this Agreement;

b) In the case of the United States, the information to be obtained and exchanged with respect to 2014 and subsequent years is all of the information identified in subparagraph 2(b) of Article 2 of this Agreement.

4. Notwithstanding paragraph 3 of this Article, with respect to each Reportable Account that is maintained by a Reporting Financial Institution as of the Determination Date, and subject to paragraph 3 of Article 6 of this Agreement, the Parties are not required to obtain and include in the exchanged information the Trinidad and Tobago TIN or the U.S. TIN, as applicable, of any relevant person if such taxpayer identifying number is not in the records of the Reporting Financial Institution. In such a case, the Parties shall obtain and include in the exchanged information the date of birth of the relevant person, if the Reporting Financial Institution has such date of birth in its records.

5. Subject to paragraphs 3 and 4 of this Article, the information described in Article 2 of this Agreement shall be exchanged by the later of nine months after the end of the calendar year to which the information relates or the September 30th after the obligation of the Party to exchange information under Article 2 takes effect.

6. The Competent Authorities of Trinidad and Tobago and the United States shall enter into an agreement or arrangement under the mutual agreement procedure provided for in Article 5 of the TIEA, which shall:

- a) establish the procedures for the automatic exchange obligations described in Article 2 of this Agreement;
- b) prescribe rules and procedures as may be necessary to implement Article 5 of this Agreement; and
- c) establish as necessary procedures for the exchange of the information reported under subparagraph 1(b) of Article 4 of this Agreement.

7. All information exchanged shall be subject to the confidentiality and other protections provided for in the TIEA, including the provisions limiting the use of the information exchanged.

8. Following entry into force of this Agreement, each Competent Authority shall provide written notification to the other Competent Authority when it is satisfied that the jurisdiction of the other Competent Authority has in place (i) appropriate safeguards to ensure that the information received pursuant to this Agreement shall remain confidential and be used solely for tax purposes, and (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and demonstrated capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Article 5 of this Agreement). The Competent Authorities shall endeavor in good faith to meet to establish that each jurisdiction has such safeguards and infrastructure in place.

9. The obligations of the Parties to obtain and exchange information under Article 2 of this Agreement shall take effect on the date of the later of the written notifications described in paragraph 8 of this Article. Notwithstanding the foregoing, if the Trinidad and Tobago Competent Authority is satisfied that the United States has the safeguards and infrastructure described in paragraph 8 of this Article in place, but additional time is necessary for the U.S. Competent Authority to establish that Trinidad and Tobago has such safeguards and infrastructure in place, the obligation of Trinidad and Tobago to obtain and exchange information under Article 2 of this Agreement shall take effect on the date of the written notification provided by the Trinidad and Tobago Competent Authority to the U.S. Competent Authority pursuant to paragraph 8 of this Article.

10. This Agreement shall terminate 12 months following entry into force if Article 2 of this Agreement is not in effect for either Party pursuant to paragraph 9 of this Article by that date.

#### **Article 4**

#### **Application of FATCA to Trinidad and Tobago Financial Institutions**

1. **Treatment of Reporting Trinidad and Tobago Financial Institutions.** Each Reporting Trinidad and Tobago Financial Institution shall be treated as complying with, and not subject to withholding under, section 1471 of the U.S. Internal Revenue Code if Trinidad and Tobago complies with its obligations under Articles 2 and 3 of this Agreement with respect to such Reporting Trinidad and Tobago Financial Institution, and the Reporting Trinidad and Tobago Financial Institution:

- a) identifies U.S. Reportable Accounts and reports annually to the Trinidad and Tobago Competent Authority the information required to be reported in subparagraph 2(a) of Article 2 of this Agreement in the time and manner described in Article 3 of this Agreement;
- b) for each of 2015 and 2016, reports annually to the Trinidad and Tobago Competent Authority the name of each Nonparticipating Financial Institution to which it has made payments and the aggregate amount of such payments;
- c) complies with the applicable registration requirements on the IRS FATCA registration website;
- d) to the extent that a Reporting Trinidad and Tobago Financial Institution is (i) acting as a qualified intermediary (for purposes of section 1441 of the U.S. Internal Revenue Code) that has elected to assume primary withholding responsibility under chapter 3 of subtitle A of the U.S. Internal Revenue Code, (ii) a foreign partnership that has elected to act as a withholding foreign partnership (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), or (iii) a foreign trust that has elected to act as a withholding foreign trust (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), withholds 30 percent of any U.S. Source Withholdable Payment to any Nonparticipating Financial Institution; and
- e) in the case of a Reporting Trinidad and Tobago Financial Institution that is not described in subparagraph 1(d) of this Article and that makes a payment of, or acts as an intermediary with respect to, a U.S. Source Withholdable Payment to any Nonparticipating Financial Institution, the Reporting Trinidad and Tobago Financial Institution provides to any immediate payor of such U.S. Source Withholdable Payment the information required for withholding and reporting to occur with respect to such payment.

Notwithstanding the foregoing, a Reporting Trinidad and Tobago Financial Institution with respect to which the conditions of this paragraph 1 are not satisfied shall not be subject to withholding under section 1471 of the U.S. Internal Revenue Code unless such Reporting Trinidad and Tobago Financial Institution is treated by the IRS as a Nonparticipating Financial Institution pursuant to subparagraph 2(b) of Article 5 of this Agreement.

2. **Suspension of Rules Relating to Recalcitrant Accounts.** The United States shall not require a Reporting Trinidad and Tobago Financial Institution to withhold tax under section 1471 or 1472 of the U.S. Internal Revenue Code with respect to an account held by a recalcitrant account holder (as defined in section 1471(d)(6) of the U.S. Internal Revenue Code), or to close such account, if the U.S. Competent Authority receives the information set forth in subparagraph 2(a) of Article 2 of this Agreement, subject to the provisions of Article 3 of this Agreement, with respect to such account.



3. **Specific Treatment of Trinidad and Tobago Retirement Plans.** The United States shall treat as deemed-compliant FFIs or exempt beneficial owners, as appropriate, for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, Trinidad and Tobago retirement plans described in Annex II. For this purpose, a Trinidad and Tobago retirement plan includes an Entity established or located in, and regulated by, Trinidad and Tobago, or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of Trinidad and Tobago and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.

4. **Identification and Treatment of Other Deemed-Compliant FFIs and Exempt Beneficial Owners.** The United States shall treat each Non-Reporting Trinidad and Tobago Financial Institution as a deemed-compliant FFI or as an exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code.

5. **Special Rules Regarding Related Entities and Branches That Are Nonparticipating Financial Institutions.** If a Trinidad and Tobago Financial Institution, that otherwise meets the requirements described in paragraph 1 of this Article or is described in paragraph 3 or 4 of this Article, has a Related Entity or branch that operates in a jurisdiction that prevents such Related Entity or branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code or has a Related Entity or branch that is treated as a Nonparticipating Financial Institution solely due to the expiration of the transitional rule for limited FFIs and limited branches under relevant U.S. Treasury Regulations, such Trinidad and Tobago Financial Institution shall continue to be in compliance with the terms of this Agreement and shall continue to be treated as a deemed-compliant FFI or exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:

- a) the Trinidad and Tobago Financial Institution treats each such Related Entity or branch as a separate Nonparticipating Financial Institution for purposes of all the reporting and withholding requirements of this Agreement and each such Related Entity or branch identifies itself to withholding agents as a Nonparticipating Financial Institution;
- b) each such Related Entity or branch identifies its U.S. accounts and reports the information with respect to those accounts as required under section 1471 of the U.S. Internal Revenue Code to the extent permitted under the relevant laws pertaining to the Related Entity or branch; and
- c) such Related Entity or branch does not specifically solicit U.S. accounts held by persons that are not resident in the jurisdiction where such Related Entity or branch is located or accounts held by Nonparticipating Financial Institutions that are not established in the jurisdiction where such Related Entity or branch is located, and such Related Entity or branch is not used by the Trinidad and Tobago Financial Institution or any other Related Entity to circumvent the obligations under this Agreement or under section 1471 of the U.S. Internal Revenue Code, as appropriate.

6. **Coordination of Timing.** Notwithstanding paragraphs 3 and 5 of Article 3 of this Agreement:

- a) Trinidad and Tobago shall not be obligated to obtain and exchange information with respect to a calendar year that is prior to the calendar year with respect to which similar information is required to be reported to the IRS by participating FFIs pursuant to relevant U.S. Treasury Regulations;
- b) Trinidad and Tobago shall not be obligated to begin exchanging information prior to the date by which participating FFIs are required to report similar information to the IRS under relevant U.S. Treasury Regulations;
- c) the United States shall not be obligated to obtain and exchange information with respect to a calendar year that is prior to the first calendar year with respect to which Trinidad and Tobago is required to obtain and exchange information; and
- d) the United States shall not be obligated to begin exchanging information prior to the date by which Trinidad and Tobago is required to begin exchanging information.

7. **Coordination of Definitions with U.S. Treasury Regulations.** Notwithstanding Article 1 of this Agreement and the definitions provided in the Annexes to this Agreement, in implementing this Agreement, Trinidad and Tobago may use, and may permit Trinidad and Tobago Financial Institutions to use, a definition in relevant U.S. Treasury Regulations in lieu of a corresponding definition in this Agreement, provided that such application would not frustrate the purposes of this Agreement.

## **Article 5**

### **Collaboration on Compliance and Enforcement**

1. **Minor and Administrative Errors.** A Competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting or resulted in other infringements of this Agreement. The Competent Authority of such other Party shall apply its domestic law (including applicable penalties) to obtain corrected and/or complete information or to resolve other infringements of this Agreement.

2. **Significant Non-Compliance.**

- a) A Competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority has determined that there is significant non-compliance with the obligations under this Agreement with respect to a Reporting Financial Institution in the other jurisdiction. The

Competent Authority of such other Party shall apply its domestic law (including applicable penalties) to address the significant non-compliance described in the notice.

- b) If, in the case of a Reporting Trinidad and Tobago Financial Institution, such enforcement actions do not resolve the non-compliance within a period of 18 months after notification of significant non-compliance is first provided, the United States shall treat the Reporting Trinidad and Tobago Financial Institution as a Nonparticipating Financial Institution pursuant to this subparagraph 2(b).

3. **Reliance on Third Party Service Providers.** Each Party may allow Reporting Financial Institutions to use third party service providers to fulfill the obligations imposed on such Reporting Financial Institutions by a Party, as contemplated in this Agreement, but these obligations shall remain the responsibility of the Reporting Financial Institutions.

4. **Prevention of Avoidance.** The Parties shall implement as necessary requirements to prevent Financial Institutions from adopting practices intended to circumvent the reporting required under this Agreement.

## **Article 6**

### **Mutual Commitment to Continue to Enhance the Effectiveness of Information Exchange and Transparency**

1. **Reciprocity.** The Government of the United States acknowledges the need to achieve equivalent levels of reciprocal automatic information exchange with Trinidad and Tobago. The Government of the United States is committed to further improve transparency and enhance the exchange relationship with Trinidad and Tobago by pursuing the adoption of regulations and advocating and supporting relevant legislation to achieve such equivalent levels of reciprocal automatic information exchange.

2. **Treatment of Passthru Payments and Gross Proceeds.** The Parties are committed to work together, along with Partner Jurisdictions, to develop a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden.

3. **Documentation of Accounts Maintained as of the Determination Date.** With respect to Reportable Accounts maintained by a Reporting Financial Institution as of the Determination Date:

- a) The United States commits to establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting U.S. Financial Institutions to obtain and report the Trinidad and Tobago TIN of each Account Holder of a Trinidad and Tobago Reportable Account as required pursuant to subparagraph 2(b)(1) of Article 2 of this Agreement; and

- b) Trinidad and Tobago commits to establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting Trinidad and Tobago Financial Institutions to obtain the U.S. TIN of each Specified U.S. Person as required pursuant to subparagraph 2(a)(1) of Article 2 of this Agreement.

**Article 7**  
**Consistency in the Application of FATCA to Partner Jurisdictions**

1. Trinidad and Tobago shall be granted the benefit of any more favorable terms under Article 4 or Annex I of this Agreement relating to the application of FATCA to Trinidad and Tobago Financial Institutions afforded to another Partner Jurisdiction under a signed bilateral agreement pursuant to which the other Partner Jurisdiction commits to undertake the same obligations as Trinidad and Tobago described in Articles 2 and 3 of this Agreement, and subject to the same terms and conditions as described therein and in Articles 5 through 9 of this Agreement.
2. The United States shall notify Trinidad and Tobago of any such more favorable terms, and such more favorable terms shall apply automatically under this Agreement as if such terms were specified in this Agreement and effective as of the date of signing of the agreement incorporating the more favorable terms, unless Trinidad and Tobago declines in writing the application thereof.

**Article 8**  
**Consultations and Amendments**

1. In case any difficulties in the implementation of this Agreement arise, either Party may request consultations to develop appropriate measures to ensure the fulfillment of this Agreement.
2. This Agreement may be amended by written mutual agreement of the Parties. Unless otherwise agreed upon, such an amendment shall enter into force through the same procedures as set forth in paragraph 1 of Article 10 of this Agreement.

**Article 9**  
**Annexes**

The Annexes form an integral part of this Agreement.

**Article 10**  
**Term of Agreement**

1. This Agreement shall enter into force on the date of Trinidad and Tobago's written notification to the United States that Trinidad and Tobago has completed its necessary internal procedures for entry into force of this Agreement.
2. Either Party may terminate this Agreement by giving notice of termination in writing to the other Party. Such termination shall become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination.
3. The Parties shall, prior to December 31, 2018, consult in good faith to amend this Agreement as necessary to reflect progress on the commitments set forth in Article 6 of this Agreement.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Port of Spain, in duplicate, this 19 day of August, 2016.

FOR THE GOVERNMENT OF THE  
REPUBLIC OF TRINIDAD AND  
TOBAGO:

Mr. Colm Imbert  
Minister of Finance

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

John L. Estrada  
Ambassador

SEAL

## ANNEX I

### **DUE DILIGENCE OBLIGATIONS FOR IDENTIFYING AND REPORTING ON U.S. REPORTABLE ACCOUNTS AND ON PAYMENTS TO CERTAIN NONPARTICIPATING FINANCIAL INSTITUTIONS**

#### I. **General.**

A. Trinidad and Tobago shall require that Reporting Trinidad and Tobago Financial Institutions apply the due diligence procedures contained in this Annex I to identify U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions.

B. For purposes of the Agreement,

1. All dollar amounts are in U.S. dollars and shall be read to include the equivalent in other currencies.

2. Except as otherwise provided herein, the balance or value of an account shall be determined as of the last day of the calendar year or other appropriate reporting period.

3. Where a balance or value threshold is to be determined as of the Determination Date under this Annex I, the relevant balance or value shall be determined as of that day or the last day of the reporting period ending immediately before the Determination Date, and where a balance or value threshold is to be determined as of the last day of a calendar year under this Annex I, the relevant balance or value shall be determined as of the last day of the calendar year or other appropriate reporting period.

4. Subject to subparagraph E(1) of section II of this Annex I, an account shall be treated as a U.S. Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in this Annex I.

5. Unless otherwise provided, information with respect to a U.S. Reportable Account shall be reported annually in the calendar year following the year to which the information relates.

C. As an alternative to the procedures described in each section of this Annex I, Trinidad and Tobago may permit Reporting Trinidad and Tobago Financial Institutions to rely on the procedures described in relevant U.S. Treasury Regulations to establish whether an account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution. Trinidad and Tobago may permit Reporting Trinidad and Tobago Financial Institutions to make such election separately for each section of this Annex I either with respect to all relevant Financial Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained).

II. **Preexisting Individual Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts among Preexisting Accounts held by individuals (“Preexisting Individual Accounts”).

A. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Trinidad and Tobago Financial Institution elects otherwise, either with respect to all Preexisting Individual Accounts or, separately, with respect to any clearly identified

group of such accounts, where the implementing rules in Trinidad and Tobago provide for such an election, the following Preexisting Individual Accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts:

1. Subject to subparagraph E(2) of this section, a Preexisting Individual Account with a balance or value that does not exceed \$50,000 as of the Determination Date.
2. Subject to subparagraph E(2) of this section, a Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract with a balance or value of \$250,000 or less as of the Determination Date.
3. A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract, provided the law or regulations of Trinidad and Tobago or the United States effectively prevent the sale of such a Cash Value Insurance Contract or an Annuity Contract to U.S. residents (*e.g.*, if the relevant Financial Institution does not have the required registration under U.S. law, and the law of Trinidad and Tobago requires reporting or withholding with respect to insurance products held by residents of Trinidad and Tobago).
4. A Depository Account with a balance of \$50,000 or less.

**B. Review Procedures for Preexisting Individual Accounts With a Balance or Value as of the Determination Date, that Exceeds \$50,000 (\$250,000 for a Cash Value Insurance Contract or Annuity Contract), But Does Not Exceed \$1,000,000 (“Lower Value Accounts”).**

1. **Electronic Record Search.** The Reporting Trinidad and Tobago Financial Institution must review electronically searchable data maintained by the Reporting Trinidad and Tobago Financial Institution for any of the following U.S. indicia:
  - a) Identification of the Account Holder as a U.S. citizen or resident;
  - b) Unambiguous indication of a U.S. place of birth;
  - c) Current U.S. mailing or residence address (including a U.S. post office box);
  - d) Current U.S. telephone number;
  - e) Standing instructions to transfer funds to an account maintained in the United States;
  - f) Currently effective power of attorney or signatory authority granted to a person with a U.S. address; or

g) An “in-care-of” or “hold mail” address that is the *sole* address the Reporting Trinidad and Tobago Financial Institution has on file for the Account Holder. In the case of a Preexisting Individual Account that is a Lower Value Account, an “in-care-of” address outside the United States or “hold mail” address shall not be treated as U.S. indicia.

2. If none of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account, or the account becomes a High Value Account described in paragraph D of this section.

3. If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, or if there is a change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

4. Notwithstanding a finding of U.S. indicia under subparagraph B(1) of this section, a Reporting Trinidad and Tobago Financial Institution is not required to treat an account as a U.S. Reportable Account if:

a) Where the Account Holder information unambiguously indicates a *U.S. place of birth*, the Reporting Trinidad and Tobago Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form);

(2) A non-U.S. passport or other government-issued identification evidencing the Account Holder’s citizenship or nationality in a country other than the United States; *and*

(3) A copy of the Account Holder’s Certificate of Loss of Nationality of the United States or a reasonable explanation of:

(a) The reason the Account Holder does not have such a certificate despite relinquishing U.S. citizenship; *or*

(b) The reason the Account Holder did not obtain U.S. citizenship at birth.



b) Where the Account Holder information contains a ***current U.S. mailing or residence address, or one or more U.S. telephone numbers that are the only telephone numbers associated with the account***, the Reporting Trinidad and Tobago Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); ***and***

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

c) Where the Account Holder information contains ***standing instructions to transfer funds to an account maintained in the United States***, the Reporting Trinidad and Tobago Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); ***and***

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

d) Where the Account Holder information contains ***a currently effective power of attorney or signatory authority granted to a person with a U.S. address, has an "in-care-of" address or "hold mail" address that is the sole address identified for the Account Holder, or has one or more U.S. telephone numbers (if a non-U.S. telephone number is also associated with the account)***, the Reporting Trinidad and Tobago Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); ***or***

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

**C. Additional Procedures Applicable to Preexisting Individual Accounts That Are Lower Value Accounts.**

1. Review of Preexisting Individual Accounts that are Lower Value Accounts for U.S. indicia must be completed within two years from the Determination Date.
2. If there is a change of circumstances with respect to a Preexisting Individual Account that is a Lower Value Account that results in one or more U.S. indicia described in subparagraph B(1) of this section being associated with the account, then the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account unless subparagraph B(4) of this section applies.
3. Except for Depository Accounts described in subparagraph A(4) of this section, any Preexisting Individual Account that has been identified as a U.S. Reportable Account under this section shall be treated as a U.S. Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

**D. Enhanced Review Procedures for Preexisting Individual Accounts With a Balance or Value That Exceeds \$1,000,000 as of the Determination Date or December 31 of 2015 or Any Subsequent Year (“High Value Accounts”).**

1. **Electronic Record Search.** The Reporting Trinidad and Tobago Financial Institution must review electronically searchable data maintained by the Reporting Trinidad and Tobago Financial Institution for any of the U.S. indicia described in subparagraph B(1) of this section.
2. **Paper Record Search.** If the Reporting Trinidad and Tobago Financial Institution’s electronically searchable databases include fields for, and capture all of the information described in, subparagraph D(3) of this section, then no further paper record search is required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Trinidad and Tobago Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Trinidad and Tobago Financial Institution within the last five years for any of the U.S. indicia described in subparagraph B(1) of this section:
  - a) The most recent documentary evidence collected with respect to the account;
  - b) The most recent account opening contract or documentation;
  - c) The most recent documentation obtained by the Reporting Trinidad and Tobago Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;

- d) Any power of attorney or signature authority forms currently in effect; and
- e) Any standing instructions to transfer funds currently in effect.

3. **Exception Where Databases Contain Sufficient Information.** A Reporting Trinidad and Tobago Financial Institution is not required to perform the paper record search described in subparagraph D(2) of this section if the Reporting Trinidad and Tobago Financial Institution's electronically searchable information includes the following:

- a) The Account Holder's nationality or residence status;
- b) The Account Holder's residence address and mailing address currently on file with the Reporting Trinidad and Tobago Financial Institution;
- c) The Account Holder's telephone number(s) currently on file, if any, with the Reporting Trinidad and Tobago Financial Institution;
- d) Whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Trinidad and Tobago Financial Institution or another Financial Institution);
- e) Whether there is a current "in-care-of" address or "hold mail" address for the Account Holder; *and*
- f) Whether there is any power of attorney or signatory authority for the account.

4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Trinidad and Tobago Financial Institution must treat as a U.S. Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with such High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Specified U.S. Person.

5. **Effect of Finding U.S. Indicia.**

- a) If none of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Specified U.S. Person in subparagraph D(4) of this section, then no further action is

required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account.

b) If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

c) Except for Depository Accounts described in subparagraph A(4) of this section, any Preexisting Individual Account that has been identified as a U.S. Reportable Account under this section shall be treated as a U.S. Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

E. **Additional Procedures Applicable to High Value Accounts.**

1. If a Preexisting Individual Account is a High Value Account as of the Determination Date, the Reporting Trinidad and Tobago Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within one year from the Determination Date. If based on this review such account is identified as a U.S. Reportable Account on or before December 31, 2014, the Reporting Trinidad and Tobago Financial Institution must report the required information about such account with respect to 2014 in the first report on the account and on an annual basis thereafter. In the case of an account identified as a U.S. Reportable Account after December 31, 2014, the Reporting Trinidad and Tobago Financial Institution is not required to report information about such account with respect to 2014, but must report information about the account on an annual basis thereafter.

2. If a Preexisting Individual Account is not a High Value Account as of the Determination Date, but becomes a High Value Account as of the last day of 2015 or any subsequent calendar year, the Reporting Trinidad and Tobago Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a U.S. Reportable Account, the Reporting Trinidad and Tobago Financial Institution must report the required information about such account with respect to the year in which it is identified as a U.S. Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Specified U.S. Person.

3. Once a Reporting Trinidad and Tobago Financial Institution applies the enhanced review procedures described in paragraph D of this section to a High Value Account, the Reporting Trinidad and Tobago Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph D(4) of this section, to the same High Value Account in any subsequent year.

4. If there is a change of circumstances with respect to a High Value Account that results in one or more U.S. indicia described in subparagraph B(1) of this section being associated with the account, then the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

5. A Reporting Trinidad and Tobago Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in the United States, the Reporting Trinidad and Tobago Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(4) of this section, is required to obtain the appropriate documentation from the Account Holder.

**F. Preexisting Individual Accounts That Have Been Documented for Certain Other Purposes.** A Reporting Trinidad and Tobago Financial Institution that has previously obtained documentation from an Account Holder to establish the Account Holder's status as neither a U.S. citizen nor a U.S. resident in order to meet its obligations under a qualified intermediary, withholding foreign partnership, or withholding foreign trust agreement with the IRS, or to fulfill its obligations under chapter 61 of Title 26 of the United States Code, is not required to perform the procedures described in subparagraph B(1) of this section with respect to Lower Value Accounts or subparagraphs D(1) through D(3) of this section with respect to High Value Accounts.

**III. New Individual Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts among Financial Accounts held by individuals and opened after the Determination Date ("New Individual Accounts").

**A. Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Trinidad and Tobago Financial Institution elects otherwise, either with respect to all New Individual Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Trinidad and Tobago provide for such an election, the following New Individual Accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts:

1. A Depository Account unless the account balance exceeds \$50,000 at the end of any calendar year or other appropriate reporting period.

2. A Cash Value Insurance Contract unless the Cash Value exceeds \$50,000 at the end of any calendar year or other appropriate reporting period.

**B. Other New Individual Accounts.** With respect to New Individual Accounts not described in paragraph A of this section, upon account opening (or within 90 days after the end of the calendar year in which the account ceases to be described in paragraph A of this section), the Reporting Trinidad and Tobago Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Trinidad and Tobago Financial Institution to determine whether the Account Holder is resident in the United States for tax purposes (for this purpose, a U.S. citizen is considered to be resident in the United States for tax purposes, even if the Account Holder is also a tax resident of another jurisdiction) and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Trinidad and Tobago Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

1. If the self-certification establishes that the Account Holder is resident in the United States for tax purposes, the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account and obtain a self-certification that includes the Account Holder's U.S. TIN (which may be an IRS Form W-9 or other similar agreed form).

2. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Trinidad and Tobago Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Trinidad and Tobago Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes whether the Account Holder is a U.S. citizen or resident for U.S. tax purposes. If the Reporting Trinidad and Tobago Financial Institution is unable to obtain a valid self-certification, the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account.

**IV. Preexisting Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions among Preexisting Accounts held by Entities ("Preexisting Entity Accounts").

**A. Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Trinidad and Tobago Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Trinidad and Tobago provide for such an election, a Preexisting Entity Account with an account balance or value that does not exceed \$250,000 as of the Determination Date, is not required to be reviewed, identified, or reported as a U.S. Reportable Account until the account balance or value exceeds \$1,000,000.

B. **Entity Accounts Subject to Review.** A Preexisting Entity Account that has an account balance or value that exceeds \$250,000 as of the Determination Date, and a Preexisting Entity Account that does not exceed \$250,000 as of the Determination Date but the account balance or value of which exceeds \$1,000,000 as of the last day of 2015 or any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D of this section.

C. **Entity Accounts With Respect to Which Reporting Is Required.** With respect to Preexisting Entity Accounts described in paragraph B of this section, only accounts that are held by one or more Entities that are Specified U.S. Persons, or by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, shall be treated as U.S. Reportable Accounts. In addition, accounts held by Nonparticipating Financial Institutions shall be treated as accounts for which aggregate payments as described in subparagraph 1(b) of Article 4 of the Agreement are reported to the Trinidad and Tobago Competent Authority.

D. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required.** For Preexisting Entity Accounts described in paragraph B of this section, the Reporting Trinidad and Tobago Financial Institution must apply the following review procedures to determine whether the account is held by one or more Specified U.S. Persons, by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, or by Nonparticipating Financial Institutions:

1. **Determine Whether the Entity Is a Specified U.S. Person.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is a U.S. Person. For this purpose, information indicating that the Account Holder is a U.S. Person includes a U.S. place of incorporation or organization, or a U.S. address.

b) If the information indicates that the Account Holder is a U.S. Person, the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account unless it obtains a self-certification from the Account Holder (which may be on an IRS Form W-8 or W-9, or a similar agreed form), or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Specified U.S. Person.

2. **Determine Whether a Non-U.S. Entity Is a Financial Institution.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is a Financial Institution.

b) If the information indicates that the Account Holder is a Financial Institution, or the Reporting Trinidad and Tobago Financial Institution verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list, then the account is not a U.S. Reportable Account.

**3. Determine Whether a Financial Institution Is a Nonparticipating Financial Institution Payments to Which Are Subject to Aggregate Reporting Under Subparagraph 1(b) of Article 4 of the Agreement.**

a) Subject to subparagraph D(3)(b) of this section, a Reporting Trinidad and Tobago Financial Institution may determine that the Account Holder is a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution if the Reporting Trinidad and Tobago Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Identification Number on the published IRS FFI list or other information that is publicly available or in the possession of the Reporting Trinidad and Tobago Financial Institution, as applicable. In such case, no further review, identification, or reporting is required with respect to the account.

b) If the Account Holder is a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

c) If the Account Holder is not a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution, then the Reporting Trinidad and Tobago Financial Institution must treat the Account Holder as a Nonparticipating Financial Institution payments to which are reportable under subparagraph 1(b) of Article 4 of the Agreement, unless the Reporting Trinidad and Tobago Financial Institution:

(1) Obtains a self-certification (which may be on an IRS Form W-8 or similar agreed form) from the Account Holder that it is a certified deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; *or*

(2) In the case of a participating FFI or registered deemed-compliant FFI, verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list.



4. **Determine Whether an Account Held by an NFFE Is a U.S. Reportable Account.** With respect to an Account Holder of a Preexisting Entity Account that is not identified as either a U.S. Person or a Financial Institution, the Reporting Trinidad and Tobago Financial Institution must identify (i) whether the Account Holder has Controlling Persons, (ii) whether the Account Holder is a Passive NFFE, and (iii) whether any of the Controlling Persons of the Account Holder is a U.S. citizen or resident. In making these determinations the Reporting Trinidad and Tobago Financial Institution must follow the guidance in subparagraphs D(4)(a) through D(4)(d) of this section in the order most appropriate under the circumstances.

a) For purposes of determining the Controlling Persons of an Account Holder, a Reporting Trinidad and Tobago Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

b) For purposes of determining whether the Account Holder is a Passive NFFE, the Reporting Trinidad and Tobago Financial Institution must obtain a self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFFE.

c) For purposes of determining whether a Controlling Person of a Passive NFFE is a U.S. citizen or resident for tax purposes, a Reporting Trinidad and Tobago Financial Institution may rely on:

(1) Information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that does not exceed \$1,000,000; *or*

(2) A self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder or such Controlling Person in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that exceeds \$1,000,000.

d) If any Controlling Person of a Passive NFFE is a U.S. citizen or resident, the account shall be treated as a U.S. Reportable Account.

E. **Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts.**

1. Review of Preexisting Entity Accounts with an account balance or value that exceeds \$250,000 as of the Determination Date must be completed within two years from the Determination Date.
2. Review of Preexisting Entity Accounts with an account balance or value that does not exceed \$250,000 as of the Determination Date, but exceeds \$1,000,000 as of December 31 of 2015 or any subsequent year, must be completed within six months after the last day of the calendar year in which the account balance or value exceeds \$1,000,000.
3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Trinidad and Tobago Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Trinidad and Tobago Financial Institution must redetermine the status of the account in accordance with the procedures set forth in paragraph D of this section.

V. **New Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions among Financial Accounts held by Entities and opened after the Determination Date (“New Entity Accounts”).

A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.**

Unless the Reporting Trinidad and Tobago Financial Institution elects otherwise, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Trinidad and Tobago provide for such election, a credit card account or a revolving credit facility treated as a New Entity Account is not required to be reviewed, identified, or reported, provided that the Reporting Trinidad and Tobago Financial Institution maintaining such account implements policies and procedures to prevent an account balance owed to the Account Holder that exceeds \$50,000.

B. **Other New Entity Accounts.** With respect to New Entity Accounts not described in paragraph A of this section, the Reporting Trinidad and Tobago Financial Institution must determine whether the Account Holder is: (i) a Specified U.S. Person; (ii) a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; or (iv) an Active NFFE or Passive NFFE.

1. Subject to subparagraph B(2) of this section, a Reporting Trinidad and Tobago Financial Institution may determine that the Account Holder is an Active NFFE, a Trinidad and Tobago Financial Institution, or other Partner Jurisdiction Financial Institution if the Reporting Trinidad and Tobago Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder’s Global Intermediary Identification Number or other

information that is publicly available or in the possession of the Reporting Trinidad and Tobago Financial Institution, as applicable.

2. If the Account Holder is a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

3. In all other cases, a Reporting Trinidad and Tobago Financial Institution must obtain a self-certification from the Account Holder to establish the Account Holder's status. Based on the self-certification, the following rules apply:

a) If the Account Holder is *a Specified U.S. Person*, the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account.

b) If the Account Holder is *a Passive NFFE*, the Reporting Trinidad and Tobago Financial Institution must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a U.S. citizen or resident on the basis of a self-certification from the Account Holder or such person. If any such person is a U.S. citizen or resident, the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account.

c) If the Account Holder is: (i) a U.S. Person that is not a Specified U.S. Person; (ii) subject to subparagraph B(3)(d) of this section, a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; (iv) an Active NFFE; or (v) a Passive NFFE none of the Controlling Persons of which is a U.S. citizen or resident, then the account is not a U.S. Reportable Account, and no reporting is required with respect to the account.

d) If the Account Holder is a Nonparticipating Financial Institution (including a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution), then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

VI. **Special Rules and Definitions.** The following additional rules and definitions apply in implementing the due diligence procedures described above:

A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting Trinidad and Tobago Financial Institution may not rely on a self-certification or documentary evidence if the Reporting Trinidad and Tobago Financial Institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

B. **Definitions.** The following definitions apply for purposes of this Annex I.

1. **AML/KYC Procedures.** “AML/KYC Procedures” means the customer due diligence procedures of a Reporting Trinidad and Tobago Financial Institution pursuant to the anti-money laundering or similar requirements of Trinidad and Tobago to which such Reporting Trinidad and Tobago Financial Institution is subject.
2. **NFFE.** An “NFFE” means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations or is an Entity described in subparagraph B(4)(j) of this section, and also includes any Non-U.S. Entity that is established in Trinidad and Tobago or another Partner Jurisdiction and that is not a Financial Institution.
3. **Passive NFFE.** A “Passive NFFE” means any NFFE that is not (i) an Active NFFE, or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.
4. **Active NFFE.** An “Active NFFE” means any NFFE that meets any of the following criteria:
  - a) Less than 50 percent of the NFFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
  - b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
  - c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
  - d) The NFFE is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international

organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;

- e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an entity shall not qualify for NFFE status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;
- g) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- h) The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;
- i) The NFFE is an “excepted NFFE” as described in relevant U.S. Treasury Regulations; *or*
- j) The NFFE meets all of the following requirements:
  - i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
  - ii. It is exempt from income tax in its jurisdiction of residence;

- iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - iv. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; *and*
  - v. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.
5. **Preexisting Account**. A "Preexisting Account" means a Financial Account maintained by a Reporting Financial Institution as of the Determination Date.
6. **Determination Date**. The "Determination Date" means the date, which may be prior to entry into force of this Agreement, on which the Treasury Department determines not to apply withholding under section 1471 of the U.S. Internal Revenue Code to Trinidad and Tobago Financial Institutions. That date is: (a) June 30, 2014, in the case of (i) a jurisdiction that signed an agreement with the United States to implement FATCA or facilitate FATCA implementation on or before June 30, 2014, or (ii) a jurisdiction that the Treasury Department determined reached such an agreement in substance on or before June 30, 2014, and is included on the Treasury Department list of such jurisdictions, (b) November 30, 2014, in the case of a jurisdiction that the Treasury Department determined reached such an agreement in substance on or after July 1, 2014, and on or before November 30, 2014, and is included on the Treasury Department list of such jurisdictions, or (c) the date of signature of such an agreement, in the case of any other jurisdiction. The Determination Date for Trinidad and Tobago is November 30, 2014.

C. **Account Balance Aggregation and Currency Translation Rules.**

- i. **Aggregation of Individual Accounts**. For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Trinidad and Tobago Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Trinidad and Tobago Financial Institution, or by a Related Entity, but only to the extent that the Reporting Trinidad and Tobago Financial Institution's

computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this paragraph 1.

- ii. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Trinidad and Tobago Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Trinidad and Tobago Financial Institution, or by a Related Entity, but only to the extent that the Reporting Trinidad and Tobago Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.
  - iii. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Trinidad and Tobago Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.
  - iv. **Currency Translation Rule.** For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the U.S. dollar, a Reporting Trinidad and Tobago Financial Institution must convert the U.S. dollar threshold amounts described in this Annex I into such currency using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting Trinidad and Tobago Financial Institution is determining the balance or value.
- b. **Documentary Evidence.** For purposes of this Annex I, acceptable documentary evidence includes any of the following:
- i. A certificate of residence issued by an authorized government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
  - ii. With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.

- iii. With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction (or U.S. Territory) in which it claims to be a resident or the jurisdiction (or U.S. Territory) in which the Entity was incorporated or organized.
- iv. With respect to a Financial Account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents, other than a Form W-8 or W-9, referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or Entities.
- v. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.

c. **Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract.** A Reporting Trinidad and Tobago Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract receiving a death benefit is not a Specified U.S. Person and may treat such Financial Account as other than a U.S. Reportable Account unless the Reporting Trinidad and Tobago Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person. A Reporting Trinidad and Tobago Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract is a Specified U.S. Person if the information collected by the Reporting Trinidad and Tobago Financial Institution and associated with the beneficiary contains U.S. indicia as described in subparagraph (B)(1) of section II of this Annex I. If a Reporting Trinidad and Tobago Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person, the Reporting Trinidad and Tobago Financial Institution must follow the procedures in subparagraph B(3) of section II of this Annex I.

d. **Reliance on Third Parties.** Regardless of whether an election is made under paragraph C of section I of this Annex I, Trinidad and Tobago may permit Reporting Trinidad and Tobago Financial Institutions to rely on due diligence procedures performed by third parties, to the extent provided in relevant U.S. Treasury Regulations.

G. **Alternative Procedures for New Accounts Opened Prior to Entry Into Force of this Agreement.**

1. **Applicability.** If Trinidad and Tobago has provided a written notice to the United States prior to entry into force of this Agreement that, as of the



Determination Date, Trinidad and Tobago lacked the legal authority to require Reporting Trinidad and Tobago Financial Institutions either: (i) to require Account Holders of New Individual Accounts to provide the self-certification specified in section III of this Annex I, or (ii) to perform all the due diligence procedures related to New Entity Accounts specified in section V of this Annex I, then Reporting Trinidad and Tobago Financial Institutions may apply the alternative procedures described in subparagraph G(2) of this section, as applicable, to such New Accounts, in lieu of the procedures otherwise required under this Annex I. The alternative procedures described in subparagraph G(2) of this section shall be available only for those New Individual Accounts or New Entity Accounts, as applicable, opened prior to the earlier of: (i) the date Trinidad and Tobago has the ability to compel Reporting Trinidad and Tobago Financial Institutions to comply with the due diligence procedures described in section III or section V of this Annex I, as applicable, which date Trinidad and Tobago shall inform the United States of in writing by the date of entry into force of this Agreement, or (ii) the date of entry into force of this Agreement. If the alternative procedures for New Entity Accounts opened after the Determination Date, and before January 1, 2015, described in paragraph H of this section are applied with respect to all New Entity Accounts or a clearly identified group of such accounts, the alternative procedures described in this paragraph G may not be applied with respect to such New Entity Accounts. For all other New Accounts, Reporting Trinidad and Tobago Financial Institutions must apply the due diligence procedures described in section III or section V of this Annex I, as applicable, to determine if the account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution.

2. **Alternative Procedures.**

- a) Within one year after the date of entry into force of this Agreement, Reporting Trinidad and Tobago Financial Institutions must: (i) with respect to a New Individual Account described in subparagraph G(1) of this section, request the self-certification specified in section III of this Annex I and confirm the reasonableness of such self-certification consistent with the procedures described in section III of this Annex I, and (ii) with respect to a New Entity Account described in subparagraph G(1) of this section, perform the due diligence procedures specified in section V of this Annex I and request information as necessary to document the account, including any self-certification, required by section V of this Annex I.
- b) Trinidad and Tobago must report on any New Account that is identified pursuant to subparagraph G(2)(a) of this section as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, by the date that is the later of: (i) September 30 next following the date that the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating

Financial Institution, as applicable, or (ii) 90 days after the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable. The information required to be reported with respect to such a New Account is any information that would have been reportable under this Agreement if the New Account had been identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, as of the date the account was opened.

- c) By the date that is one year after the date of entry into force of this Agreement, Reporting Trinidad and Tobago Financial Institutions must close any New Account described in subparagraph G(1) of this section for which it was unable to collect the required self-certification or other documentation pursuant to the procedures described in subparagraph G(2)(a) of this section. In addition, by the date that is one year after the date of entry into force of this Agreement, Reporting Trinidad and Tobago Financial Institutions must: (i) with respect to such closed accounts that prior to such closure were New Individual Accounts (without regard to whether such accounts were High Value Accounts), perform the due diligence procedures specified in paragraph D of section II of this Annex I, or (ii) with respect to such closed accounts that prior to such closure were New Entity Accounts, perform the due diligence procedures specified in section IV of this Annex I.
- d) Trinidad and Tobago must report on any closed account that is identified pursuant to subparagraph G(2)(c) of this section as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, by the date that is the later of: (i) September 30 next following the date that the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, or (ii) 90 days after the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable. The information required to be reported for such a closed account is any information that would have been reportable under this Agreement if the account had been identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, as of the date the account was opened.

**H. Alternative Procedures for New Entity Accounts Opened after the Determination Date, and before January 1, 2015.** For New Entity Accounts opened after the Determination Date, and before January 1, 2015, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, Trinidad and Tobago may permit Reporting Trinidad and Tobago Financial Institutions to treat such accounts as Preexisting Entity Accounts and apply the due

diligence procedures related to Preexisting Entity Accounts specified in section IV of this Annex I in lieu of the due diligence procedures specified in section V of this Annex I. In this case, the due diligence procedures of section IV of this Annex I must be applied without regard to the account balance or value threshold specified in paragraph A of section IV of this Annex I.

## ANNEX II

The following Entities shall be treated as exempt beneficial owners or deemed-compliant FFIs, as the case may be, and the following accounts are excluded from the definition of Financial Accounts.

This Annex II may be modified by a mutual written decision entered into between the Competent Authorities of Trinidad and Tobago and the United States: (1) to include additional Entities and accounts that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the Entities and accounts described in this Annex II as of the date of signature of the Agreement; or (2) to remove Entities and accounts that, due to changes in circumstances, no longer present a low risk of being used by U.S. Persons to evade U.S. tax. Any such addition or removal shall be effective on the date of signature of the mutual decision, unless otherwise provided therein. Procedures for reaching such a mutual decision may be included in the mutual agreement or arrangement described in paragraph 6 of Article 3 of the Agreement.

- I. **Exempt Beneficial Owners other than Funds.** The following Entities shall be treated as Non-Reporting Trinidad and Tobago Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, *other than* with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.
  - A. **Governmental Entity.** The government of Trinidad and Tobago, any political subdivision of Trinidad and Tobago (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of Trinidad and Tobago or any one or more of the foregoing (each, a “Trinidad and Tobago Governmental Entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of Trinidad and Tobago.
    1. An integral part of Trinidad and Tobago means any person, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of Trinidad and Tobago. The net earnings of the governing authority must be credited to its own account or to other accounts of Trinidad and Tobago, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

2. A controlled entity means an Entity that is separate in form from Trinidad and Tobago or that otherwise constitutes a separate juridical entity, provided that:
  - a) The Entity is wholly owned and controlled by one or more Trinidad and Tobago Governmental Entities directly or through one or more controlled entities;
  - b) The Entity's net earnings are credited to its own account or to the accounts of one or more Trinidad and Tobago Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
  - c) The Entity's assets vest in one or more Trinidad and Tobago Governmental Entities upon dissolution.
3. Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental program, and the program activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

B. **International Organization.** Any international organization or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organization (including a supranational organization) (1) that is comprised primarily of non-U.S. governments; (2) that has in effect a headquarters agreement with Trinidad and Tobago; and (3) the income of which does not inure to the benefit of private persons.

C. **Central Bank.** An institution that is by law or government sanction the principal authority, other than the government of Trinidad and Tobago itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of Trinidad and Tobago, whether or not owned in whole or in part by Trinidad and Tobago.

II. **Funds that Qualify as Exempt Beneficial Owners.** The following Entities shall be treated as Non-Reporting Trinidad and Tobago Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code.

A. **Treaty-Qualified Retirement Fund.** A fund established in Trinidad and Tobago, provided that the fund is entitled to benefits under an income tax treaty between Trinidad and Tobago and the United States on income that it derives from sources within the United States (or would be entitled to such benefits if it derived any such income) as a resident of Trinidad and Tobago that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits.

- B. Broad Participation Retirement Fund.** A fund established in Trinidad and Tobago to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:
1. Does not have a single beneficiary with a right to more than five percent of the fund's assets;
  2. Is subject to government regulation and provides information reporting to the tax authorities in Trinidad and Tobago; and
  3. Satisfies at least one of the following requirements:
    - a) The fund is generally exempt from tax in Trinidad and Tobago on investment income under the laws of Trinidad and Tobago due to its status as a retirement or pension plan;
    - b) The fund receives at least 50 percent of its total contributions (other than transfers of assets from other plans described in paragraphs A through D of this section or from retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) from the sponsoring employers;
    - c) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in paragraphs A through D of this section or retirement and pension accounts described in subparagraph A(1) of section V of this Annex II), or penalties apply to distributions or withdrawals made before such specified events; or
    - d) Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed \$50,000 annually, applying the rules set forth in Annex I for account aggregation and currency translation.
- C. Narrow Participation Retirement Fund.** A fund established in Trinidad and Tobago to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:
1. The fund has fewer than 50 participants;
  2. The fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs;

3. The employee and employer contributions to the fund (other than transfers of assets from treaty-qualified retirement funds described in paragraph A of this section or retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) are limited by reference to earned income and compensation of the employee, respectively;
4. Participants that are not residents of Trinidad and Tobago are not entitled to more than 20 percent of the fund's assets; and
5. The fund is subject to government regulation and provides information reporting to the tax authorities in Trinidad and Tobago.

D. **Pension Fund of an Exempt Beneficial Owner.** A fund established in Trinidad and Tobago by an exempt beneficial owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

E. **Investment Entity Wholly Owned by Exempt Beneficial Owners.** An Entity that is a Trinidad and Tobago Financial Institution solely because it is an Investment Entity, provided that each direct holder of an Equity Interest in the Entity is an exempt beneficial owner, and each direct holder of a debt interest in such Entity is either a Depository Institution (with respect to a loan made to such Entity) or an exempt beneficial owner.

III. **Small or Limited Scope Financial Institutions that Qualify as Deemed-Compliant FFIs.** The following Financial Institutions are Non-Reporting Trinidad and Tobago Financial Institutions that shall be treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code.

A. **Financial Institution with a Local Client Base.** A Financial Institution satisfying the following requirements:

1. The Financial Institution must be licensed and regulated as a financial institution under the laws of Trinidad and Tobago;
2. The Financial Institution must have no fixed place of business outside of Trinidad and Tobago. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the Financial Institution performs solely administrative support functions;
3. The Financial Institution must not solicit customers or Account Holders outside Trinidad and Tobago. For this purpose, a Financial Institution shall not be considered to have solicited customers or Account Holders outside Trinidad and Tobago merely because the Financial Institution (a) operates a website, provided that the website does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S.

- customers or Account Holders, or (b) advertises in print media or on a radio or television station that is distributed or aired primarily within Trinidad and Tobago but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders;
4. The Financial Institution must be required under the laws of Trinidad and Tobago to identify resident Account Holders for purposes of either information reporting or withholding of tax with respect to Financial Accounts held by residents or for purposes of satisfying Trinidad and Tobago's AML due diligence requirements;
  5. At least 98 percent of the Financial Accounts by value maintained by the Financial Institution must be held by residents (including residents that are Entities) of Trinidad and Tobago;
  6. By the later of the Determination Date, or the date that the Financial Institution claims treatment as a deemed-compliant FFI pursuant to this paragraph A, the Financial Institution must have policies and procedures, consistent with those set forth in Annex I, to prevent the Financial Institution from providing a Financial Account to any Nonparticipating Financial Institution and to monitor whether the Financial Institution opens or maintains a Financial Account for any Specified U.S. Person who is not a resident of Trinidad and Tobago (including a U.S. Person that was a resident of Trinidad and Tobago when the Financial Account was opened but subsequently ceases to be a resident of Trinidad and Tobago) or any Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of Trinidad and Tobago;
  7. Such policies and procedures must provide that if any Financial Account held by a Specified U.S. Person who is not a resident of Trinidad and Tobago or by a Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of Trinidad and Tobago is identified, the Financial Institution must report such Financial Account as would be required if the Financial Institution were a Reporting Trinidad and Tobago Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account;
  8. With respect to a Preexisting Account held by an individual who is not a resident of Trinidad and Tobago or by an Entity, the Financial Institution must review those Preexisting Accounts in accordance with the procedures set forth in Annex I applicable to Preexisting Accounts to identify any U.S. Reportable Account or Financial Account held by a Nonparticipating Financial Institution, and must report such Financial Account as would be required if the Financial Institution were a Reporting Trinidad and Tobago Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account;

9. Each Related Entity of the Financial Institution that is a Financial Institution must be incorporated or organized in Trinidad and Tobago and, with the exception of any Related Entity that is a retirement fund described in paragraphs A through D of section II of this Annex II, satisfy the requirements set forth in this paragraph A; and
10. The Financial Institution must not have policies or practices that discriminate against opening or maintaining Financial Accounts for individuals who are Specified U.S. Persons and residents of Trinidad and Tobago.

B. **Local Bank.** A Financial Institution satisfying the following requirements:

1. The Financial Institution operates solely as (and is licensed and regulated under the laws of Trinidad and Tobago as) (a) a bank or (b) a credit union or similar cooperative credit organization that is operated without profit;
2. The Financial Institution's business consists primarily of receiving deposits from and making loans to, with respect to a bank, unrelated retail customers and, with respect to a credit union or similar cooperative credit organization, members, provided that no member has a greater than five percent interest in such credit union or cooperative credit organization;
3. The Financial Institution satisfies the requirements set forth in subparagraphs A(2) and A(3) of this section, provided that, in addition to the limitations on the website described in subparagraph A(3) of this section, the website does not permit the opening of a Financial Account;
4. The Financial Institution does not have more than \$175 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than \$500 million in total assets on their consolidated or combined balance sheets; and
5. Any Related Entity must be incorporated or organized in Trinidad and Tobago, and any Related Entity that is a Financial Institution, with the exception of any Related Entity that is a retirement fund described in paragraphs A through D of section II of this Annex II or a Financial Institution with only low-value accounts described in paragraph C of this section, must satisfy the requirements set forth in this paragraph B.

C. **Financial Institution with Only Low-Value Accounts.** A Trinidad and Tobago Financial Institution satisfying the following requirements:

1. The Financial Institution is not an Investment Entity;



2. No Financial Account maintained by the Financial Institution or any Related Entity has a balance or value in excess of \$50,000, applying the rules set forth in Annex I for account aggregation and currency translation; and
3. The Financial Institution does not have more than \$50 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than \$50 million in total assets on their consolidated or combined balance sheets.

D. **Qualified Credit Card Issuer.** A Trinidad and Tobago Financial Institution satisfying the following requirements:

1. The Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
2. By the later of the Determination Date, or the date that the Financial Institution claims treatment as a deemed-compliant FFI pursuant to this paragraph D, the Financial Institution implements policies and procedures to either prevent a customer deposit in excess of \$50,000, or to ensure that any customer deposit in excess of \$50,000, in each case applying the rules set forth in Annex I for account aggregation and currency translation, is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

IV. **Investment Entities that Qualify as Deemed-Compliant FFIs and Other Special Rules.**

The Financial Institutions described in paragraphs A through E of this section are Non-Reporting Trinidad and Tobago Financial Institutions that shall be treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code. In addition, paragraph F of this section provides special rules applicable to an Investment Entity.

- A. **Trustee-Documented Trust.** A trust established under the laws of Trinidad and Tobago to the extent that the trustee of the trust is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI and the trustee reports all information required to be reported pursuant to the Agreement as would be required if the trust were a Reporting Trinidad and Tobago Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website).
- B. **Sponsored Investment Entity and Controlled Foreign Corporation.** A Financial Institution described in subparagraph B(1) or B(2) of this section having a sponsoring entity that complies with the requirements of subparagraph B(3) of this section.
  1. A Financial Institution is a sponsored investment entity if (a) it is an Investment Entity established in Trinidad and Tobago that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant

- U.S. Treasury Regulations; and (b) an Entity has agreed with the Financial Institution to act as a sponsoring entity for the Financial Institution.
2. A Financial Institution is a sponsored controlled foreign corporation if (a) the Financial Institution is a controlled foreign corporation<sup>1</sup> organized under the laws of Trinidad and Tobago that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; (b) the Financial Institution is wholly owned, directly or indirectly, by a Reporting U.S. Financial Institution that agrees to act, or requires an affiliate of the Financial Institution to act, as a sponsoring entity for the Financial Institution; and (c) the Financial Institution shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all Account Holders and payees of the Financial Institution and to access all account and customer information maintained by the Financial Institution including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the Account Holder or payee.
  3. The sponsoring entity complies with the following requirements:
    - a) The sponsoring entity is authorized to act on behalf of the Financial Institution (such as a fund manager, trustee, corporate director, or managing partner) to fulfill applicable registration requirements on the IRS FATCA registration website;
    - b) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;
    - c) If the sponsoring entity identifies any U.S. Reportable Accounts with respect to the Financial Institution, the sponsoring entity registers the Financial Institution pursuant to applicable registration requirements on the IRS FATCA registration website on or before the later of December 31, 2016 and the date that is 90 days after such a U.S. Reportable Account is first identified;
    - d) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial

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<sup>1</sup> A “controlled foreign corporation” means any foreign corporation if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, or the total value of the stock of such corporation, is owned, or is considered as owned, by “United States shareholders” on any day during the taxable year of such foreign corporation. The term a “United States shareholder” means, with respect to any foreign corporation, a United States person who owns, or is considered as owning, 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

Institution would have been required to perform if it were a Reporting Trinidad and Tobago Financial Institution;

- e) The sponsoring entity identifies the Financial Institution and includes the identifying number of the Financial Institution (obtained by following applicable registration requirements on the IRS FATCA registration website) in all reporting completed on the Financial Institution's behalf; and
- f) The sponsoring entity has not had its status as a sponsor revoked.

C. **Sponsored, Closely Held Investment Vehicle.** A Trinidad and Tobago Financial Institution satisfying the following requirements:

1. The Financial Institution is a Financial Institution solely because it is an Investment Entity and is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations;
2. The sponsoring entity is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI, is authorized to act on behalf of the Financial Institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Trinidad and Tobago Financial Institution;
3. The Financial Institution does not hold itself out as an investment vehicle for unrelated parties;
4. Twenty or fewer individuals own all of the debt interests and Equity Interests in the Financial Institution (disregarding debt interests owned by Participating FFIs and deemed-compliant FFIs and Equity Interests owned by an Entity if that Entity owns 100 percent of the Equity Interests in the Financial Institution and is itself a sponsored Financial Institution described in this paragraph C); and
5. The sponsoring entity complies with the following requirements:
  - a) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;
  - b) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Trinidad and Tobago Financial Institution and retains documentation collected with respect to the Financial Institution for a period of six years;
  - c) The sponsoring entity identifies the Financial Institution in all reporting completed on the Financial Institution's behalf; and

d) The sponsoring entity has not had its status as a sponsor revoked.

D. **Investment Advisors and Investment Managers.** An Investment Entity established in Trinidad and Tobago that is a Financial Institution solely because it (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution.

E. **Collective Investment Vehicle.** An Investment Entity established in Trinidad and Tobago that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle (including debt interests in excess of \$50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not Specified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions.

F. **Special Rules.** The following rules apply to an Investment Entity:

1. With respect to interests in an Investment Entity that is a collective investment vehicle described in paragraph E of this section, the reporting obligations of any Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.
2. With respect to interests in:
  - a) An Investment Entity established in a Partner Jurisdiction that is regulated as a collective investment vehicle, all of the interests in which (including debt interests in excess of \$50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not Specified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions; or
  - b) An Investment Entity that is a qualified collective investment vehicle under relevant U.S. Treasury Regulations;

the reporting obligations of any Investment Entity that is a Trinidad and Tobago Financial Institution (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.

3. With respect to interests in an Investment Entity established in Trinidad and Tobago that is not described in paragraph E or subparagraph F(2) of this section, consistent with paragraph 3 of Article 5 of the Agreement, the reporting obligations of all other Investment Entities with respect to such interests shall be deemed fulfilled if the information required to be reported by the first-mentioned Investment Entity pursuant

to the Agreement with respect to such interests is reported by such Investment Entity or another person.

4. An Investment Entity established in Trinidad and Tobago that is regulated as a collective investment vehicle shall not fail to qualify under paragraph E or subparagraph F(2) of this section, or otherwise as a deemed-compliant FFI, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:
  - a) The collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after December 31, 2012;
  - b) The collective investment vehicle retires all such shares upon surrender;
  - c) The collective investment vehicle (or a Reporting Trinidad and Tobago Financial Institution) performs the due diligence procedures set forth in Annex I and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
  - d) The collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilized as soon as possible, and in any event prior to January 1, 2017.

V. **Accounts Excluded from Financial Accounts.** The following accounts are excluded from the definition of Financial Accounts and therefore shall not be treated as U.S. Reportable Accounts.

A. **Certain Savings Accounts.**

1. **Retirement and Pension Account.** A retirement or pension account maintained in Trinidad and Tobago that satisfies the following requirements under the laws of Trinidad and Tobago.
  - a) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
  - b) The account is tax-favored (*i.e.*, contributions to the account that would otherwise be subject to tax under the laws of Trinidad and Tobago are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
  - c) Annual information reporting is required to the tax authorities in Trinidad and Tobago with respect to the account;

- d) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
  - e) Either (i) annual contributions are limited to \$50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of \$1,000,000 or less, in each case applying the rules set forth in Annex I for account aggregation and currency translation.
2. Non-Retirement Savings Accounts. An account maintained in Trinidad and Tobago (other than an insurance or Annuity Contract) that satisfies the following requirements under the laws of Trinidad and Tobago.
- a) The account is subject to regulation as a savings vehicle for purposes other than for retirement;
  - b) The account is tax-favored (*i.e.*, contributions to the account that would otherwise be subject to tax under the laws of Trinidad and Tobago are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
  - c) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
  - d) Annual contributions are limited to \$50,000 or less, applying the rules set forth in Annex I for account aggregation and currency translation.
- B. Certain Term Life Insurance Contracts. A life insurance contract maintained in Trinidad and Tobago with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:
- 1. Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
  - 2. The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
  - 3. The amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
  - 4. The contract is not held by a transferee for value.

- C. **Account Held By an Estate.** An account maintained in Trinidad and Tobago that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.
- D. **Escrow Accounts.** An account maintained in Trinidad and Tobago established in connection with any of the following:
1. A court order or judgment.
  2. A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
    - a) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
    - b) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
    - c) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
    - d) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
    - e) The account is not associated with a credit card account.
  3. An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
  4. An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.
- E. **Partner Jurisdiction Accounts.** An account maintained in Trinidad and Tobago and excluded from the definition of Financial Account under an agreement between the United States and another Partner Jurisdiction to facilitate the implementation of FATCA, provided that such account is subject to the same requirements and oversight under the laws of such other Partner Jurisdiction as if such account were established in that Partner Jurisdiction and maintained by a Partner Jurisdiction Financial Institution in that Partner Jurisdiction.

- VI. **Definitions.** The following additional definitions shall apply to the descriptions above:
- A. **Reporting Model 1 FFI.** The term Reporting Model 1 FFI means a Financial Institution with respect to which a non-U.S. government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than a Financial Institution treated as a Nonparticipating Financial Institution under the Model 1 IGA. For purposes of this definition, the term Model 1 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to implement FATCA through reporting by Financial Institutions to such non-U.S. government or agency thereof, followed by automatic exchange of such reported information with the IRS.
- B. **Participating FFI.** The term Participating FFI means a Financial Institution that has agreed to comply with the requirements of an FFI Agreement, including a Financial Institution described in a Model 2 IGA that has agreed to comply with the requirements of an FFI Agreement. The term Participating FFI also includes a qualified intermediary branch of a Reporting U.S. Financial Institution, unless such branch is a Reporting Model 1 FFI. For purposes of this definition, the term FFI Agreement means an agreement that sets forth the requirements for a Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code. In addition, for purposes of this definition, the term Model 2 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by Financial Institutions directly to the IRS in accordance with the requirements of an FFI Agreement, supplemented by the exchange of information between such non-U.S. government or agency thereof and the IRS.



## SCHEDULE 3

(Sections 4, 9 and 25)

The following Entities shall be treated as exempt beneficial owners or deemed-compliant FFIs, as the case may be, and the following accounts are excluded from the definition of Financial Accounts.

This Annex II may be modified by a mutual written decision entered into between the Competent Authorities of Trinidad and Tobago and the United States: (1) to include additional Entities and accounts that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the Entities and accounts described in this Annex II as of the date of signature of the Agreement; or (2) to remove Entities and accounts that, due to changes in circumstances, no longer present a low risk of being used by U.S. Persons to evade U.S. tax. Any such addition or removal shall be effective on the date of signature of the mutual decision, unless otherwise provided therein. Procedures for reaching such a mutual decision may be included in the mutual agreement or arrangement described in paragraph 6 of Article 3 of the Agreement.

- VII. **Exempt Beneficial Owners other than Funds.** The following Entities shall be treated as Non-Reporting Trinidad and Tobago Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, *other than* with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.
- A. **Governmental Entity.** The government of Trinidad and Tobago, any political subdivision of Trinidad and Tobago (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of Trinidad and Tobago or any one or more of the foregoing (each, a “Trinidad and Tobago Governmental Entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of Trinidad and Tobago.
1. An integral part of Trinidad and Tobago means any person, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of Trinidad and Tobago. The net earnings of the governing authority must be credited to its own account or to other accounts of Trinidad and Tobago, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
  2. A controlled entity means an Entity that is separate in form from Trinidad and Tobago or that otherwise constitutes a separate juridical entity, provided that:
    - a) The Entity is wholly owned and controlled by one or more Trinidad and Tobago Governmental Entities directly or through one or more controlled entities;

- b) The Entity's net earnings are credited to its own account or to the accounts of one or more Trinidad and Tobago Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
  - c) The Entity's assets vest in one or more Trinidad and Tobago Governmental Entities upon dissolution.
3. Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental program, and the program activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

B. **International Organization.** Any international organization or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organization (including a supranational organization) (1) that is comprised primarily of non-U.S. governments; (2) that has in effect a headquarters agreement with Trinidad and Tobago; and (3) the income of which does not inure to the benefit of private persons.

C. **Central Bank.** An institution that is by law or government sanction the principal authority, other than the government of Trinidad and Tobago itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of Trinidad and Tobago, whether or not owned in whole or in part by Trinidad and Tobago.

VIII. **Funds that Qualify as Exempt Beneficial Owners.** The following Entities shall be treated as Non-Reporting Trinidad and Tobago Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code.

A. **Treaty-Qualified Retirement Fund.** A fund established in Trinidad and Tobago, provided that the fund is entitled to benefits under an income tax treaty between Trinidad and Tobago and the United States on income that it derives from sources within the United States (or would be entitled to such benefits if it derived any such income) as a resident of Trinidad and Tobago that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits.

B. **Broad Participation Retirement Fund.** A fund established in Trinidad and Tobago to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:

1. Does not have a single beneficiary with a right to more than five percent of the fund's assets;
2. Is subject to government regulation and provides information reporting to the tax authorities in Trinidad and Tobago; and
3. Satisfies at least one of the following requirements:
  - a) The fund is generally exempt from tax in Trinidad and Tobago on investment income under the laws of Trinidad and Tobago due to its status as a retirement or pension plan;
  - b) The fund receives at least 50 percent of its total contributions (other than transfers of assets from other plans described in paragraphs A through D of this section or from retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) from the sponsoring employers;
  - c) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in paragraphs A through D of this section or retirement and pension accounts described in subparagraph A(1) of section V of this Annex II), or penalties apply to distributions or withdrawals made before such specified events; or
  - d) Contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed \$50,000 annually, applying the rules set forth in Annex I for account aggregation and currency translation.

C. **Narrow Participation Retirement Fund.** A fund established in Trinidad and Tobago to provide retirement, disability, or death benefits to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:

1. The fund has fewer than 50 participants;
2. The fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs;
3. The employee and employer contributions to the fund (other than transfers of assets from treaty-qualified retirement funds described in paragraph A of this section or retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) are limited by reference to earned income and compensation of the employee, respectively;

4. Participants that are not residents of Trinidad and Tobago are not entitled to more than 20 percent of the fund's assets; and
5. The fund is subject to government regulation and provides information reporting to the tax authorities in Trinidad and Tobago.

D. **Pension Fund of an Exempt Beneficial Owner.** A fund established in Trinidad and Tobago by an exempt beneficial owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.

E. **Investment Entity Wholly Owned by Exempt Beneficial Owners.** An Entity that is a Trinidad and Tobago Financial Institution solely because it is an Investment Entity, provided that each direct holder of an Equity Interest in the Entity is an exempt beneficial owner, and each direct holder of a debt interest in such Entity is either a Depository Institution (with respect to a loan made to such Entity) or an exempt beneficial owner.

IX. **Small or Limited Scope Financial Institutions that Qualify as Deemed-Compliant FFIs.**

The following Financial Institutions are Non-Reporting Trinidad and Tobago Financial Institutions that shall be treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code.

A. **Financial Institution with a Local Client Base.** A Financial Institution satisfying the following requirements:

1. The Financial Institution must be licensed and regulated as a financial institution under the laws of Trinidad and Tobago;
2. The Financial Institution must have no fixed place of business outside of Trinidad and Tobago. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the Financial Institution performs solely administrative support functions;
3. The Financial Institution must not solicit customers or Account Holders outside Trinidad and Tobago. For this purpose, a Financial Institution shall not be considered to have solicited customers or Account Holders outside Trinidad and Tobago merely because the Financial Institution (a) operates a website, provided that the website does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders, or (b) advertises in print media or on a radio or television station that is distributed or aired primarily within Trinidad and Tobago but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders;

4. The Financial Institution must be required under the laws of Trinidad and Tobago to identify resident Account Holders for purposes of either information reporting or withholding of tax with respect to Financial Accounts held by residents or for purposes of satisfying Trinidad and Tobago's AML due diligence requirements;
5. At least 98 percent of the Financial Accounts by value maintained by the Financial Institution must be held by residents (including residents that are Entities) of Trinidad and Tobago;
6. By the later of the Determination Date, or the date that the Financial Institution claims treatment as a deemed-compliant FFI pursuant to this paragraph A, the Financial Institution must have policies and procedures, consistent with those set forth in Annex I, to prevent the Financial Institution from providing a Financial Account to any Nonparticipating Financial Institution and to monitor whether the Financial Institution opens or maintains a Financial Account for any Specified U.S. Person who is not a resident of Trinidad and Tobago (including a U.S. Person that was a resident of Trinidad and Tobago when the Financial Account was opened but subsequently ceases to be a resident of Trinidad and Tobago) or any Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of Trinidad and Tobago;
7. Such policies and procedures must provide that if any Financial Account held by a Specified U.S. Person who is not a resident of Trinidad and Tobago or by a Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of Trinidad and Tobago is identified, the Financial Institution must report such Financial Account as would be required if the Financial Institution were a Reporting Trinidad and Tobago Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account;
8. With respect to a Preexisting Account held by an individual who is not a resident of Trinidad and Tobago or by an Entity, the Financial Institution must review those Preexisting Accounts in accordance with the procedures set forth in Annex I applicable to Preexisting Accounts to identify any U.S. Reportable Account or Financial Account held by a Nonparticipating Financial Institution, and must report such Financial Account as would be required if the Financial Institution were a Reporting Trinidad and Tobago Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account;
9. Each Related Entity of the Financial Institution that is a Financial Institution must be incorporated or organized in Trinidad and Tobago and, with the exception of any Related Entity that is a retirement fund described in paragraphs A through D of section II of this Annex II, satisfy the requirements set forth in this paragraph A; and

10. The Financial Institution must not have policies or practices that discriminate against opening or maintaining Financial Accounts for individuals who are Specified U.S. Persons and residents of Trinidad and Tobago.

B. **Local Bank.** A Financial Institution satisfying the following requirements:

1. The Financial Institution operates solely as (and is licensed and regulated under the laws of Trinidad and Tobago as) (a) a bank or (b) a credit union or similar cooperative credit organization that is operated without profit;
2. The Financial Institution's business consists primarily of receiving deposits from and making loans to, with respect to a bank, unrelated retail customers and, with respect to a credit union or similar cooperative credit organization, members, provided that no member has a greater than five percent interest in such credit union or cooperative credit organization;
3. The Financial Institution satisfies the requirements set forth in subparagraphs A(2) and A(3) of this section, provided that, in addition to the limitations on the website described in subparagraph A(3) of this section, the website does not permit the opening of a Financial Account;
4. The Financial Institution does not have more than \$175 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than \$500 million in total assets on their consolidated or combined balance sheets; and
5. Any Related Entity must be incorporated or organized in Trinidad and Tobago, and any Related Entity that is a Financial Institution, with the exception of any Related Entity that is a retirement fund described in paragraphs A through D of section II of this Annex II or a Financial Institution with only low-value accounts described in paragraph C of this section, must satisfy the requirements set forth in this paragraph B.

C. **Financial Institution with Only Low-Value Accounts.** A Trinidad and Tobago Financial Institution satisfying the following requirements:

1. The Financial Institution is not an Investment Entity;
2. No Financial Account maintained by the Financial Institution or any Related Entity has a balance or value in excess of \$50,000, applying the rules set forth in Annex I for account aggregation and currency translation; and
3. The Financial Institution does not have more than \$50 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than \$50 million in total assets on their consolidated or combined balance sheets.

D. **Qualified Credit Card Issuer.** A Trinidad and Tobago Financial Institution satisfying the following requirements:

1. The Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
2. By the later of the Determination Date, or the date that the Financial Institution claims treatment as a deemed-compliant FFI pursuant to this paragraph D, the Financial Institution implements policies and procedures to either prevent a customer deposit in excess of \$50,000, or to ensure that any customer deposit in excess of \$50,000, in each case applying the rules set forth in Annex I for account aggregation and currency translation, is refunded to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

X. **Investment Entities that Qualify as Deemed-Compliant FFIs and Other Special Rules.**

The Financial Institutions described in paragraphs A through E of this section are Non-Reporting Trinidad and Tobago Financial Institutions that shall be treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code. In addition, paragraph F of this section provides special rules applicable to an Investment Entity.

A. **Trustee-Documented Trust.** A trust established under the laws of Trinidad and Tobago to the extent that the trustee of the trust is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI and the trustee reports all information required to be reported pursuant to the Agreement as would be required if the trust were a Reporting Trinidad and Tobago Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website).

B. **Sponsored Investment Entity and Controlled Foreign Corporation.** A Financial Institution described in subparagraph B(1) or B(2) of this section having a sponsoring entity that complies with the requirements of subparagraph B(3) of this section.

1. A Financial Institution is a sponsored investment entity if (a) it is an Investment Entity established in Trinidad and Tobago that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; and (b) an Entity has agreed with the Financial Institution to act as a sponsoring entity for the Financial Institution.
2. A Financial Institution is a sponsored controlled foreign corporation if (a) the Financial Institution is a controlled foreign corporation<sup>2</sup> organized under the laws of

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<sup>2</sup> A “controlled foreign corporation” means any foreign corporation if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, or the total value of the

Trinidad and Tobago that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; (b) the Financial Institution is wholly owned, directly or indirectly, by a Reporting U.S. Financial Institution that agrees to act, or requires an affiliate of the Financial Institution to act, as a sponsoring entity for the Financial Institution; and (c) the Financial Institution shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all Account Holders and payees of the Financial Institution and to access all account and customer information maintained by the Financial Institution including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the Account Holder or payee.

3. The sponsoring entity complies with the following requirements:
  - a) The sponsoring entity is authorized to act on behalf of the Financial Institution (such as a fund manager, trustee, corporate director, or managing partner) to fulfill applicable registration requirements on the IRS FATCA registration website;
  - b) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;
  - c) If the sponsoring entity identifies any U.S. Reportable Accounts with respect to the Financial Institution, the sponsoring entity registers the Financial Institution pursuant to applicable registration requirements on the IRS FATCA registration website on or before the later of December 31, 2016 and the date that is 90 days after such a U.S. Reportable Account is first identified;
  - d) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Trinidad and Tobago Financial Institution;
  - e) The sponsoring entity identifies the Financial Institution and includes the identifying number of the Financial Institution (obtained by following applicable registration requirements on the IRS FATCA registration website) in all reporting completed on the Financial Institution's behalf; and
  - f) The sponsoring entity has not had its status as a sponsor revoked.

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stock of such corporation, is owned, or is considered as owned, by "United States shareholders" on any day during the taxable year of such foreign corporation. The term a "United States shareholder" means, with respect to any foreign corporation, a United States person who owns, or is considered as owning, 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.



C. **Sponsored, Closely Held Investment Vehicle.** A Trinidad and Tobago Financial Institution satisfying the following requirements:

1. The Financial Institution is a Financial Institution solely because it is an Investment Entity and is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations;
2. The sponsoring entity is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI, is authorized to act on behalf of the Financial Institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Trinidad and Tobago Financial Institution;
3. The Financial Institution does not hold itself out as an investment vehicle for unrelated parties;
4. Twenty or fewer individuals own all of the debt interests and Equity Interests in the Financial Institution (disregarding debt interests owned by Participating FFIs and deemed-compliant FFIs and Equity Interests owned by an Entity if that Entity owns 100 percent of the Equity Interests in the Financial Institution and is itself a sponsored Financial Institution described in this paragraph C); and
5. The sponsoring entity complies with the following requirements:
  - a) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;
  - b) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Trinidad and Tobago Financial Institution and retains documentation collected with respect to the Financial Institution for a period of six years;
  - c) The sponsoring entity identifies the Financial Institution in all reporting completed on the Financial Institution's behalf; and
  - d) The sponsoring entity has not had its status as a sponsor revoked.

D. **Investment Advisors and Investment Managers.** An Investment Entity established in Trinidad and Tobago that is a Financial Institution solely because it (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution.

E. **Collective Investment Vehicle.** An Investment Entity established in Trinidad and Tobago that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle (including debt interests in excess of \$50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not Specified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions.

F. **Special Rules.** The following rules apply to an Investment Entity:

1. With respect to interests in an Investment Entity that is a collective investment vehicle described in paragraph E of this section, the reporting obligations of any Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.
2. With respect to interests in:
  - a) An Investment Entity established in a Partner Jurisdiction that is regulated as a collective investment vehicle, all of the interests in which (including debt interests in excess of \$50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not Specified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions; or
  - b) An Investment Entity that is a qualified collective investment vehicle under relevant U.S. Treasury Regulations;

the reporting obligations of any Investment Entity that is a Trinidad and Tobago Financial Institution (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.

3. With respect to interests in an Investment Entity established in Trinidad and Tobago that is not described in paragraph E or subparagraph F(2) of this section, consistent with paragraph 3 of Article 5 of the Agreement, the reporting obligations of all other Investment Entities with respect to such interests shall be deemed fulfilled if the information required to be reported by the first-mentioned Investment Entity pursuant to the Agreement with respect to such interests is reported by such Investment Entity or another person.
4. An Investment Entity established in Trinidad and Tobago that is regulated as a collective investment vehicle shall not fail to qualify under paragraph E or subparagraph F(2) of this section, or otherwise as a deemed-compliant FFI, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

- a) The collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after December 31, 2012;
- b) The collective investment vehicle retires all such shares upon surrender;
- c) The collective investment vehicle (or a Reporting Trinidad and Tobago Financial Institution) performs the due diligence procedures set forth in Annex I and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
- d) The collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilized as soon as possible, and in any event prior to January 1, 2017.

XI. **Accounts Excluded from Financial Accounts.** The following accounts are excluded from the definition of Financial Accounts and therefore shall not be treated as U.S. Reportable Accounts.

A. **Certain Savings Accounts.**

- 1. **Retirement and Pension Account.** A retirement or pension account maintained in Trinidad and Tobago that satisfies the following requirements under the laws of Trinidad and Tobago.
  - a) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
  - b) The account is tax-favored (*i.e.*, contributions to the account that would otherwise be subject to tax under the laws of Trinidad and Tobago are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
  - c) Annual information reporting is required to the tax authorities in Trinidad and Tobago with respect to the account;
  - d) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
  - e) Either (i) annual contributions are limited to \$50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of \$1,000,000 or less, in each case applying the rules set forth in Annex I for account aggregation and currency translation.

2. **Non-Retirement Savings Accounts.** An account maintained in Trinidad and Tobago (other than an insurance or Annuity Contract) that satisfies the following requirements under the laws of Trinidad and Tobago.
  - a) The account is subject to regulation as a savings vehicle for purposes other than for retirement;
  - b) The account is tax-favored (*i.e.*, contributions to the account that would otherwise be subject to tax under the laws of Trinidad and Tobago are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
  - c) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
  - d) Annual contributions are limited to \$50,000 or less, applying the rules set forth in Annex I for account aggregation and currency translation.

B. **Certain Term Life Insurance Contracts.** A life insurance contract maintained in Trinidad and Tobago with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

1. Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
2. The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
3. The amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
4. The contract is not held by a transferee for value.

C. **Account Held By an Estate.** An account maintained in Trinidad and Tobago that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.

D. **Escrow Accounts.** An account maintained in Trinidad and Tobago established in connection with any of the following:

1. A court order or judgment.
2. A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
  - a) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
  - b) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
  - c) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
  - d) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
  - e) The account is not associated with a credit card account.
3. An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
4. An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.

E. **Partner Jurisdiction Accounts.** An account maintained in Trinidad and Tobago and excluded from the definition of Financial Account under an agreement between the United States and another Partner Jurisdiction to facilitate the implementation of FATCA, provided that such account is subject to the same requirements and oversight under the laws of such other Partner Jurisdiction as if such account were established in that Partner Jurisdiction and maintained by a Partner Jurisdiction Financial Institution in that Partner Jurisdiction.

XII. **Definitions.** The following additional definitions shall apply to the descriptions above:

A. **Reporting Model 1 FFI.** The term Reporting Model 1 FFI means a Financial Institution with respect to which a non-U.S. government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than a Financial Institution treated as a Nonparticipating Financial Institution under the Model 1 IGA. For purposes of this definition, the term Model 1 IGA means an arrangement between the United

States or the Treasury Department and a non-U.S. government or one or more agencies thereof to implement FATCA through reporting by Financial Institutions to such non-U.S. government or agency thereof, followed by automatic exchange of such reported information with the IRS.

- B. **Participating FFI**. The term Participating FFI means a Financial Institution that has agreed to comply with the requirements of an FFI Agreement, including a Financial Institution described in a Model 2 IGA that has agreed to comply with the requirements of an FFI Agreement. The term Participating FFI also includes a qualified intermediary branch of a Reporting U.S. Financial Institution, unless such branch is a Reporting Model 1 FFI. For purposes of this definition, the term FFI Agreement means an agreement that sets forth the requirements for a Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code. In addition, for purposes of this definition, the term Model 2 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by Financial Institutions directly to the IRS in accordance with the requirements of an FFI Agreement, supplemented by the exchange of information between such non-U.S. government or agency thereof and the IRS.

## **SCHEDULE 4**

*(Sections 12)*

### **DUE DILIGENCE OBLIGATIONS FOR IDENTIFYING AND REPORTING ON U.S. REPORTABLE ACCOUNTS AND ON PAYMENTS TO CERTAIN NONPARTICIPATING FINANCIAL INSTITUTIONS**

**VI. General.**

A. Trinidad and Tobago shall require that Reporting Trinidad and Tobago Financial Institutions apply the due diligence procedures contained in this Annex I to identify U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions.

B. For purposes of the Agreement,

1. All dollar amounts are in U.S. dollars and shall be read to include the equivalent in other currencies.

2. Except as otherwise provided herein, the balance or value of an account shall be determined as of the last day of the calendar year or other appropriate reporting period.

3. Where a balance or value threshold is to be determined as of the Determination Date under this Annex I, the relevant balance or value shall be determined as of that day or the last day of the reporting period ending immediately before the Determination Date, and where a balance or value threshold is to be determined as of the last day of a calendar year under this Annex I, the relevant balance or value shall be determined as of the last day of the calendar year or other appropriate reporting period.

4. Subject to subparagraph E(1) of section II of this Annex I, an account shall be treated as a U.S. Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in this Annex I.

5. Unless otherwise provided, information with respect to a U.S. Reportable Account shall be reported annually in the calendar year following the year to which the information relates.

C. As an alternative to the procedures described in each section of this Annex I, Trinidad and Tobago may permit Reporting Trinidad and Tobago Financial Institutions to rely on the procedures described in relevant U.S. Treasury Regulations to establish whether an account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution. Trinidad and Tobago may permit Reporting Trinidad and Tobago Financial Institutions to make such election separately for each section of this Annex I either with respect to all relevant Financial Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location of where the account is maintained).

VII. **Preexisting Individual Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts among Preexisting Accounts held by individuals (“Preexisting Individual Accounts”).

B. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Trinidad and Tobago Financial Institution elects otherwise, either with respect to all Preexisting Individual Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Trinidad and Tobago provide for such an election, the following Preexisting Individual Accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts:

1. Subject to subparagraph E(2) of this section, a Preexisting Individual Account with a balance or value that does not exceed \$50,000 as of the Determination Date.

2. Subject to subparagraph E(2) of this section, a Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract with a balance or value of \$250,000 or less as of the Determination Date.

3. A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract, provided the law or regulations of Trinidad and Tobago or the United States effectively prevent the sale of such a Cash Value Insurance Contract or an Annuity Contract to U.S. residents (*e.g.*, if the relevant Financial Institution does not have the required registration under U.S. law, and the law of Trinidad and Tobago requires reporting or withholding with respect to insurance products held by residents of Trinidad and Tobago).

4. A Depository Account with a balance of \$50,000 or less.

B. **Review Procedures for Preexisting Individual Accounts With a Balance or Value as of the Determination Date, that Exceeds \$50,000 (\$250,000 for a Cash Value Insurance Contract or Annuity Contract), But Does Not Exceed \$1,000,000 (“Lower Value Accounts”).**

1. **Electronic Record Search.** The Reporting Trinidad and Tobago Financial Institution must review electronically searchable data maintained by the Reporting Trinidad and Tobago Financial Institution for any of the following U.S. indicia:

- a) Identification of the Account Holder as a U.S. citizen or resident;
- b) Unambiguous indication of a U.S. place of birth;
- c) Current U.S. mailing or residence address (including a U.S. post office box);



- d) Current U.S. telephone number;
- e) Standing instructions to transfer funds to an account maintained in the United States;
- f) Currently effective power of attorney or signatory authority granted to a person with a U.S. address; or
- g) An “in-care-of” or “hold mail” address that is the *sole* address the Reporting Trinidad and Tobago Financial Institution has on file for the Account Holder. In the case of a Preexisting Individual Account that is a Lower Value Account, an “in-care-of” address outside the United States or “hold mail” address shall not be treated as U.S. indicia.

2. If none of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account, or the account becomes a High Value Account described in paragraph D of this section.

3. If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, or if there is a change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

4. Notwithstanding a finding of U.S. indicia under subparagraph B(1) of this section, a Reporting Trinidad and Tobago Financial Institution is not required to treat an account as a U.S. Reportable Account if:

a) Where the Account Holder information unambiguously indicates a *U.S. place of birth*, the Reporting Trinidad and Tobago Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form);

(2) A non-U.S. passport or other government-issued identification evidencing the Account Holder’s citizenship or nationality in a country other than the United States; *and*

(3) A copy of the Account Holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of:

(a) The reason the Account Holder does not have such a certificate despite relinquishing U.S. citizenship; *or*

(b) The reason the Account Holder did not obtain U.S. citizenship at birth.

b) Where the Account Holder information contains a *current U.S. mailing or residence address, or one or more U.S. telephone numbers that are the only telephone numbers associated with the account*, the Reporting Trinidad and Tobago Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *and*

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

c) Where the Account Holder information contains *standing instructions to transfer funds to an account maintained in the United States*, the Reporting Trinidad and Tobago Financial Institution obtains, or has previously reviewed and maintains a record of:

(1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *and*

(2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

d) Where the Account Holder information contains *a currently effective power of attorney or signatory authority granted to a person with a U.S. address, has an "in-care-of" address or "hold mail" address that is the sole address identified for the Account Holder, or has one or more U.S. telephone numbers (if a non-U.S. telephone number is also associated with the account)*, the Reporting Trinidad and Tobago Financial Institution obtains, or has previously reviewed and maintains a record of:

- (1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *or*
- (2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.

**C. Additional Procedures Applicable to Preexisting Individual Accounts That Are Lower Value Accounts.**

1. Review of Preexisting Individual Accounts that are Lower Value Accounts for U.S. indicia must be completed within two years from the Determination Date.
2. If there is a change of circumstances with respect to a Preexisting Individual Account that is a Lower Value Account that results in one or more U.S. indicia described in subparagraph B(1) of this section being associated with the account, then the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account unless subparagraph B(4) of this section applies.
3. Except for Depository Accounts described in subparagraph A(4) of this section, any Preexisting Individual Account that has been identified as a U.S. Reportable Account under this section shall be treated as a U.S. Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

**D. Enhanced Review Procedures for Preexisting Individual Accounts With a Balance or Value That Exceeds \$1,000,000 as of the Determination Date or December 31 of 2015 or Any Subsequent Year ("High Value Accounts").**

1. **Electronic Record Search.** The Reporting Trinidad and Tobago Financial Institution must review electronically searchable data maintained by the Reporting Trinidad and Tobago Financial Institution for any of the U.S. indicia described in subparagraph B(1) of this section.
2. **Paper Record Search.** If the Reporting Trinidad and Tobago Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, subparagraph D(3) of this section, then no further paper record search is required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Trinidad and Tobago Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting

Trinidad and Tobago Financial Institution within the last five years for any of the U.S. indicia described in subparagraph B(1) of this section:

- a) The most recent documentary evidence collected with respect to the account;
- b) The most recent account opening contract or documentation;
- c) The most recent documentation obtained by the Reporting Trinidad and Tobago Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
- d) Any power of attorney or signature authority forms currently in effect; and
- e) Any standing instructions to transfer funds currently in effect.

3. **Exception Where Databases Contain Sufficient Information.** A Reporting Trinidad and Tobago Financial Institution is not required to perform the paper record search described in subparagraph D(2) of this section if the Reporting Trinidad and Tobago Financial Institution's electronically searchable information includes the following:

- a) The Account Holder's nationality or residence status;
- b) The Account Holder's residence address and mailing address currently on file with the Reporting Trinidad and Tobago Financial Institution;
- c) The Account Holder's telephone number(s) currently on file, if any, with the Reporting Trinidad and Tobago Financial Institution;
- d) Whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Trinidad and Tobago Financial Institution or another Financial Institution);
- e) Whether there is a current "in-care-of" address or "hold mail" address for the Account Holder; *and*
- f) Whether there is any power of attorney or signatory authority for the account.

4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Trinidad and Tobago Financial Institution must treat as a U.S. Reportable Account any

High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with such High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Specified U.S. Person.

5. **Effect of Finding U.S. Indicia.**

a) If none of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Specified U.S. Person in subparagraph D(4) of this section, then no further action is required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account.

b) If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

c) Except for Depository Accounts described in subparagraph A(4) of this section, any Preexisting Individual Account that has been identified as a U.S. Reportable Account under this section shall be treated as a U.S. Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

E. **Additional Procedures Applicable to High Value Accounts.**

1. If a Preexisting Individual Account is a High Value Account as of the Determination Date, the Reporting Trinidad and Tobago Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within one year from the Determination Date. If based on this review such account is identified as a U.S. Reportable Account on or before December 31, 2014, the Reporting Trinidad and Tobago Financial Institution must report the required information about such account with respect to 2014 in the first report on the account and on an annual basis thereafter. In the case of an account identified as a U.S. Reportable Account after December 31, 2014, the Reporting Trinidad and Tobago Financial Institution is not required to report information about such account with respect to 2014, but must report information about the account on an annual basis thereafter.

2. If a Preexisting Individual Account is not a High Value Account as of the Determination Date, but becomes a High Value Account as of the last day of 2015 or any subsequent calendar year, the Reporting Trinidad and Tobago Financial

Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a U.S. Reportable Account, the Reporting Trinidad and Tobago Financial Institution must report the required information about such account with respect to the year in which it is identified as a U.S. Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Specified U.S. Person.

3. Once a Reporting Trinidad and Tobago Financial Institution applies the enhanced review procedures described in paragraph D of this section to a High Value Account, the Reporting Trinidad and Tobago Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph D(4) of this section, to the same High Value Account in any subsequent year.

4. If there is a change of circumstances with respect to a High Value Account that results in one or more U.S. indicia described in subparagraph B(1) of this section being associated with the account, then the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

5. A Reporting Trinidad and Tobago Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in the United States, the Reporting Trinidad and Tobago Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(4) of this section, is required to obtain the appropriate documentation from the Account Holder.

F. **Preexisting Individual Accounts That Have Been Documented for Certain Other Purposes.** A Reporting Trinidad and Tobago Financial Institution that has previously obtained documentation from an Account Holder to establish the Account Holder's status as neither a U.S. citizen nor a U.S. resident in order to meet its obligations under a qualified intermediary, withholding foreign partnership, or withholding foreign trust agreement with the IRS, or to fulfill its obligations under chapter 61 of Title 26 of the United States Code, is not required to perform the procedures described in subparagraph B(1) of this section with respect to Lower Value Accounts or subparagraphs D(1) through D(3) of this section with respect to High Value Accounts.

VIII. **New Individual Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts among Financial Accounts held by individuals and opened after the Determination Date ("New Individual Accounts").

A. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Trinidad and Tobago Financial Institution elects otherwise, either with respect to all New Individual Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Trinidad and Tobago provide for such an election, the following New Individual Accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts:

1. A Depository Account unless the account balance exceeds \$50,000 at the end of any calendar year or other appropriate reporting period.
2. A Cash Value Insurance Contract unless the Cash Value exceeds \$50,000 at the end of any calendar year or other appropriate reporting period.

B. **Other New Individual Accounts.** With respect to New Individual Accounts not described in paragraph A of this section, upon account opening (or within 90 days after the end of the calendar year in which the account ceases to be described in paragraph A of this section), the Reporting Trinidad and Tobago Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Trinidad and Tobago Financial Institution to determine whether the Account Holder is resident in the United States for tax purposes (for this purpose, a U.S. citizen is considered to be resident in the United States for tax purposes, even if the Account Holder is also a tax resident of another jurisdiction) and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Trinidad and Tobago Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

1. If the self-certification establishes that the Account Holder is resident in the United States for tax purposes, the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account and obtain a self-certification that includes the Account Holder's U.S. TIN (which may be an IRS Form W-9 or other similar agreed form).

2. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Trinidad and Tobago Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Trinidad and Tobago Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes whether the Account Holder is a U.S. citizen or resident for U.S. tax purposes. If the Reporting Trinidad and Tobago Financial Institution is unable to obtain a valid self-certification, the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account.

IX. **Preexisting Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions among Preexisting Accounts held by Entities ("Preexisting Entity Accounts").

A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.**

Unless the Reporting Trinidad and Tobago Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Trinidad and Tobago provide for such an election, a Preexisting Entity Account with an account balance or value that does not exceed \$250,000 as of the Determination Date, is not required to be reviewed, identified, or reported as a U.S. Reportable Account until the account balance or value exceeds \$1,000,000.

B. **Entity Accounts Subject to Review.** A Preexisting Entity Account that has an account balance or value that exceeds \$250,000 as of the Determination Date, and a Preexisting Entity Account that does not exceed \$250,000 as of the Determination Date but the account balance or value of which exceeds \$1,000,000 as of the last day of 2015 or any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D of this section.

C. **Entity Accounts With Respect to Which Reporting Is Required.** With respect to Preexisting Entity Accounts described in paragraph B of this section, only accounts that are held by one or more Entities that are Specified U.S. Persons, or by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, shall be treated as U.S. Reportable Accounts. In addition, accounts held by Nonparticipating Financial Institutions shall be treated as accounts for which aggregate payments as described in subparagraph 1(b) of Article 4 of the Agreement are reported to the Trinidad and Tobago Competent Authority.

D. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required.** For Preexisting Entity Accounts described in paragraph B of this section, the Reporting Trinidad and Tobago Financial Institution must apply the following review procedures to determine whether the account is held by one or more Specified U.S. Persons, by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, or by Nonparticipating Financial Institutions:

1. **Determine Whether the Entity Is a Specified U.S. Person.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is a U.S. Person. For this purpose, information indicating that the Account Holder is a U.S. Person includes a U.S. place of incorporation or organization, or a U.S. address.

b) If the information indicates that the Account Holder is a U.S. Person, the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account unless it obtains a self-certification from the Account Holder (which may be on an IRS Form W-8 or W-9, or a similar agreed form), or reasonably determines based on



information in its possession or that is publicly available, that the Account Holder is not a Specified U.S. Person.

2. **Determine Whether a Non-U.S. Entity Is a Financial Institution.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is a Financial Institution.

b) If the information indicates that the Account Holder is a Financial Institution, or the Reporting Trinidad and Tobago Financial Institution verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list, then the account is not a U.S. Reportable Account.

3. **Determine Whether a Financial Institution Is a Nonparticipating Financial Institution Payments to Which Are Subject to Aggregate Reporting Under Subparagraph 1(b) of Article 4 of the Agreement.**

a) Subject to subparagraph D(3)(b) of this section, a Reporting Trinidad and Tobago Financial Institution may determine that the Account Holder is a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution if the Reporting Trinidad and Tobago Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Identification Number on the published IRS FFI list or other information that is publicly available or in the possession of the Reporting Trinidad and Tobago Financial Institution, as applicable. In such case, no further review, identification, or reporting is required with respect to the account.

b) If the Account Holder is a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

c) If the Account Holder is not a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution, then the Reporting Trinidad and Tobago Financial Institution must treat the Account Holder as a Nonparticipating Financial Institution payments to which are reportable under subparagraph 1(b) of Article 4 of the Agreement, unless the Reporting Trinidad and Tobago Financial Institution:

(1) Obtains a self-certification (which may be on an IRS Form W-8 or similar agreed form) from the Account Holder that it is a certified deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; *or*

(2) In the case of a participating FFI or registered deemed-compliant FFI, verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list.

4. **Determine Whether an Account Held by an NFFE Is a U.S.**

**Reportable Account.** With respect to an Account Holder of a Preexisting Entity Account that is not identified as either a U.S. Person or a Financial Institution, the Reporting Trinidad and Tobago Financial Institution must identify (i) whether the Account Holder has Controlling Persons, (ii) whether the Account Holder is a Passive NFFE, and (iii) whether any of the Controlling Persons of the Account Holder is a U.S. citizen or resident. In making these determinations the Reporting Trinidad and Tobago Financial Institution must follow the guidance in subparagraphs D(4)(a) through D(4)(d) of this section in the order most appropriate under the circumstances.

a) For purposes of determining the Controlling Persons of an Account Holder, a Reporting Trinidad and Tobago Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

b) For purposes of determining whether the Account Holder is a Passive NFFE, the Reporting Trinidad and Tobago Financial Institution must obtain a self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFFE.

c) For purposes of determining whether a Controlling Person of a Passive NFFE is a U.S. citizen or resident for tax purposes, a Reporting Trinidad and Tobago Financial Institution may rely on:

(1) Information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance or value that does not exceed \$1,000,000; *or*

(2) A self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder or such Controlling Person in the case of a Preexisting Entity Account

held by one or more NFFEs with an account balance or value that exceeds \$1,000,000.

- d) If any Controlling Person of a Passive NFFE is a U.S. citizen or resident, the account shall be treated as a U.S. Reportable Account.

**E. Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts.**

1. Review of Preexisting Entity Accounts with an account balance or value that exceeds \$250,000 as of the Determination Date must be completed within two years from the Determination Date.
2. Review of Preexisting Entity Accounts with an account balance or value that does not exceed \$250,000 as of the Determination Date, but exceeds \$1,000,000 as of December 31 of 2015 or any subsequent year, must be completed within six months after the last day of the calendar year in which the account balance or value exceeds \$1,000,000.
3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Trinidad and Tobago Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Trinidad and Tobago Financial Institution must redetermine the status of the account in accordance with the procedures set forth in paragraph D of this section.

X. **New Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions among Financial Accounts held by Entities and opened after the Determination Date (“New Entity Accounts”).

A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Trinidad and Tobago Financial Institution elects otherwise, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Trinidad and Tobago provide for such election, a credit card account or a revolving credit facility treated as a New Entity Account is not required to be reviewed, identified, or reported, provided that the Reporting Trinidad and Tobago Financial Institution maintaining such account implements policies and procedures to prevent an account balance owed to the Account Holder that exceeds \$50,000.

B. **Other New Entity Accounts.** With respect to New Entity Accounts not described in paragraph A of this section, the Reporting Trinidad and Tobago Financial Institution must determine whether the Account Holder is: (i) a Specified U.S. Person; (ii) a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial

owner, as those terms are defined in relevant U.S. Treasury Regulations; or (iv) an Active NFFE or Passive NFFE.

1. Subject to subparagraph B(2) of this section, a Reporting Trinidad and Tobago Financial Institution may determine that the Account Holder is an Active NFFE, a Trinidad and Tobago Financial Institution, or other Partner Jurisdiction Financial Institution if the Reporting Trinidad and Tobago Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Identification Number or other information that is publicly available or in the possession of the Reporting Trinidad and Tobago Financial Institution, as applicable.

4. If the Account Holder is a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

5. In all other cases, a Reporting Trinidad and Tobago Financial Institution must obtain a self-certification from the Account Holder to establish the Account Holder's status. Based on the self-certification, the following rules apply:

a) If the Account Holder is *a Specified U.S. Person*, the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account.

b) If the Account Holder is *a Passive NFFE*, the Reporting Trinidad and Tobago Financial Institution must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a U.S. citizen or resident on the basis of a self-certification from the Account Holder or such person. If any such person is a U.S. citizen or resident, the Reporting Trinidad and Tobago Financial Institution must treat the account as a U.S. Reportable Account.

c) If the Account Holder is: (i) a U.S. Person that is not a Specified U.S. Person; (ii) subject to subparagraph B(3)(d) of this section, a Trinidad and Tobago Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; (iv) an Active NFFE; or (v) a Passive NFFE none of the Controlling Persons of which is a U.S. citizen or resident, then the account is not a U.S. Reportable Account, and no reporting is required with respect to the account.

d) If the Account Holder is a Nonparticipating Financial Institution (including a Trinidad and Tobago Financial Institution or other Partner

Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution), then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

VII. **Special Rules and Definitions.** The following additional rules and definitions apply in implementing the due diligence procedures described above:

A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting Trinidad and Tobago Financial Institution may not rely on a self-certification or documentary evidence if the Reporting Trinidad and Tobago Financial Institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

B. **Definitions.** The following definitions apply for purposes of this Annex I.

7. **AML/KYC Procedures.** “AML/KYC Procedures” means the customer due diligence procedures of a Reporting Trinidad and Tobago Financial Institution pursuant to the anti-money laundering or similar requirements of Trinidad and Tobago to which such Reporting Trinidad and Tobago Financial Institution is subject.
8. **NFFE.** An “NFFE” means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations or is an Entity described in subparagraph B(4)(j) of this section, and also includes any Non-U.S. Entity that is established in Trinidad and Tobago or another Partner Jurisdiction and that is not a Financial Institution.
9. **Passive NFFE.** A “Passive NFFE” means any NFFE that is not (i) an Active NFFE, or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.
10. **Active NFFE.** An “Active NFFE” means any NFFE that meets any of the following criteria:
  - a) Less than 50 percent of the NFFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
  - b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;

- c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
- d) The NFFE is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;
- e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an entity shall not qualify for NFFE status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;
- g) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- h) The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;
- i) The NFFE is an “excepted NFFE” as described in relevant U.S. Treasury Regulations; *or*
- j) The NFFE meets all of the following requirements:
  - i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated

in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;

- ii. It is exempt from income tax in its jurisdiction of residence;
- iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- iv. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFFE has purchased; *and*
- v. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

11. **Preexisting Account**. A "Preexisting Account" means a Financial Account maintained by a Reporting Financial Institution as of the Determination Date.

12. **Determination Date**. The "Determination Date" means the date, which may be prior to entry into force of this Agreement, on which the Treasury Department determines not to apply withholding under section 1471 of the U.S. Internal Revenue Code to Trinidad and Tobago Financial Institutions. That date is: (a) June 30, 2014, in the case of (i) a jurisdiction that signed an agreement with the United States to implement FATCA or facilitate FATCA implementation on or before June 30, 2014, or (ii) a jurisdiction that the Treasury Department determined reached such an agreement in substance on or before June 30, 2014, and is included on the Treasury Department list of such jurisdictions, (b) November 30, 2014, in the case of a jurisdiction that the Treasury Department determined reached such an agreement in substance on or after July 1, 2014, and on or before November 30, 2014, and is included on the Treasury Department list of such jurisdictions, or (c) the date of signature of such an agreement, in the case of any other jurisdiction. The Determination Date for Trinidad and Tobago is November 30, 2014.

C. **Account Balance Aggregation and Currency Translation Rules.**

- i. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Trinidad and Tobago Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Trinidad and Tobago Financial Institution, or by a Related Entity, but only to the extent that the Reporting Trinidad and Tobago Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this paragraph 1.
- ii. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Trinidad and Tobago Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Trinidad and Tobago Financial Institution, or by a Related Entity, but only to the extent that the Reporting Trinidad and Tobago Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.
- iii. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Trinidad and Tobago Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.
- iv. **Currency Translation Rule.** For purposes of determining the balance or value of Financial Accounts denominated in a currency other than the U.S. dollar, a Reporting Trinidad and Tobago Financial Institution must convert the U.S. dollar threshold amounts described in this Annex I into such currency using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting Trinidad and Tobago Financial Institution is determining the balance or value.
- e. **Documentary Evidence.** For purposes of this Annex I, acceptable documentary evidence includes any of the following:



- i. A certificate of residence issued by an authorized government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
  - ii. With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.
  - iii. With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction (or U.S. Territory) in which it claims to be a resident or the jurisdiction (or U.S. Territory) in which the Entity was incorporated or organized.
  - iv. With respect to a Financial Account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents, other than a Form W-8 or W-9, referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or Entities.
  - v. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.
- f. **Alternative Procedures for Financial Accounts Held by Individual Beneficiaries of a Cash Value Insurance Contract.** A Reporting Trinidad and Tobago Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract receiving a death benefit is not a Specified U.S. Person and may treat such Financial Account as other than a U.S. Reportable Account unless the Reporting Trinidad and Tobago Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person. A Reporting Trinidad and Tobago Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract is a Specified U.S. Person if the information collected by the Reporting Trinidad and Tobago Financial Institution and associated with the beneficiary contains U.S. indicia as described in subparagraph (B)(1) of section II of this Annex I. If a Reporting Trinidad and Tobago Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person, the Reporting Trinidad and Tobago Financial Institution must follow the procedures in subparagraph B(3) of section II of this Annex I.
- g. **Reliance on Third Parties.** Regardless of whether an election is made under paragraph C of section I of this Annex I, Trinidad and Tobago may permit Reporting Trinidad and Tobago Financial Institutions to rely on due diligence

procedures performed by third parties, to the extent provided in relevant U.S. Treasury Regulations.

H. **Alternative Procedures for New Accounts Opened Prior to Entry Into Force of this Agreement.**

3. **Applicability.** If Trinidad and Tobago has provided a written notice to the United States prior to entry into force of this Agreement that, as of the Determination Date, Trinidad and Tobago lacked the legal authority to require Reporting Trinidad and Tobago Financial Institutions either: (i) to require Account Holders of New Individual Accounts to provide the self-certification specified in section III of this Annex I, or (ii) to perform all the due diligence procedures related to New Entity Accounts specified in section V of this Annex I, then Reporting Trinidad and Tobago Financial Institutions may apply the alternative procedures described in subparagraph G(2) of this section, as applicable, to such New Accounts, in lieu of the procedures otherwise required under this Annex I. The alternative procedures described in subparagraph G(2) of this section shall be available only for those New Individual Accounts or New Entity Accounts, as applicable, opened prior to the earlier of: (i) the date Trinidad and Tobago has the ability to compel Reporting Trinidad and Tobago Financial Institutions to comply with the due diligence procedures described in section III or section V of this Annex I, as applicable, which date Trinidad and Tobago shall inform the United States of in writing by the date of entry into force of this Agreement, or (ii) the date of entry into force of this Agreement. If the alternative procedures for New Entity Accounts opened after the Determination Date, and before January 1, 2015, described in paragraph H of this section are applied with respect to all New Entity Accounts or a clearly identified group of such accounts, the alternative procedures described in this paragraph G may not be applied with respect to such New Entity Accounts. For all other New Accounts, Reporting Trinidad and Tobago Financial Institutions must apply the due diligence procedures described in section III or section V of this Annex I, as applicable, to determine if the account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution.

4. **Alternative Procedures.**

- e) Within one year after the date of entry into force of this Agreement, Reporting Trinidad and Tobago Financial Institutions must: (i) with respect to a New Individual Account described in subparagraph G(1) of this section, request the self-certification specified in section III of this Annex I and confirm the reasonableness of such self-certification consistent with the procedures described in section III of this Annex I, and (ii) with respect to a New Entity Account described in subparagraph G(1) of this section, perform the due diligence procedures specified in section V of this Annex I and request

information as necessary to document the account, including any self-certification, required by section V of this Annex I.

- f) Trinidad and Tobago must report on any New Account that is identified pursuant to subparagraph G(2)(a) of this section as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, by the date that is the later of: (i) September 30 next following the date that the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, or (ii) 90 days after the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable. The information required to be reported with respect to such a New Account is any information that would have been reportable under this Agreement if the New Account had been identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, as of the date the account was opened.
- g) By the date that is one year after the date of entry into force of this Agreement, Reporting Trinidad and Tobago Financial Institutions must close any New Account described in subparagraph G(1) of this section for which it was unable to collect the required self-certification or other documentation pursuant to the procedures described in subparagraph G(2)(a) of this section. In addition, by the date that is one year after the date of entry into force of this Agreement, Reporting Trinidad and Tobago Financial Institutions must: (i) with respect to such closed accounts that prior to such closure were New Individual Accounts (without regard to whether such accounts were High Value Accounts), perform the due diligence procedures specified in paragraph D of section II of this Annex I, or (ii) with respect to such closed accounts that prior to such closure were New Entity Accounts, perform the due diligence procedures specified in section IV of this Annex I.
- h) Trinidad and Tobago must report on any closed account that is identified pursuant to subparagraph G(2)(c) of this section as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, by the date that is the later of: (i) September 30 next following the date that the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, or (ii) 90 days after the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable. The information required to be reported for such a closed account is any information that would have been reportable under this Agreement if the account had been identified as a U.S. Reportable Account or as an account held

by a Nonparticipating Financial Institution, as applicable, as of the date the account was opened.

I. **Alternative Procedures for New Entity Accounts Opened after the Determination Date, and before January 1, 2015.** For New Entity Accounts opened after the Determination Date, and before January 1, 2015, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, Trinidad and Tobago may permit Reporting Trinidad and Tobago Financial Institutions to treat such accounts as Preexisting Entity Accounts and apply the due diligence procedures related to Preexisting Entity Accounts specified in section IV of this Annex I in lieu of the due diligence procedures specified in section V of this Annex I. In this case, the due diligence procedures of section IV of this Annex I must be applied without regard to the account balance or value threshold specified in paragraph A of section IV of this Annex I.

4

**DUE DILIGENCE REQUIREMENTS**

Passed by the House of Representatives this                      day of                      , 2016.

*Clerk of the House*

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say, by the votes of \_\_\_\_\_ members of the House.

*Clerk of the House*

I confirm the above.

*Speaker*

Passed by the Senate this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

*Clerk of the Senate*

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of \_\_\_\_\_ Senators.

*Clerk of the Senate*

I confirm the above.

*President of the Senate*

**MINUTES  
OF  
PROCEEDINGS**



1.1 The Speaker called the meeting to order at 11:07 a.m. and welcomed Members present. She explained that her role at the meeting was to facilitate the election of the Chairman.

## **ANNOUNCEMENTS**

2.1 The Speaker informed the Committee that Ms. Keiba Jacob was assigned to serve as Secretary to the Committee and Mrs. Angelique Massiah as Assistant Secretary.

## **ELECTION OF CHAIRMAN**

3.1 The Speaker invited nominations for the post of Chairman. Ms. Paula Gopee-Scoon nominated Mr. Colm Imbert. The nomination was seconded by Mr. Clarence Rambharat.

3.2 There being no further nominations, Mr. Colm Imbert was declared the duly elected Chairman.

3.3 The Speaker wished the Members success in their deliberations and invited the Chairman to take the Chair.

*[The Speaker exited the room]*

## **DETERMINATION OF A QUORUM**

4.1 The Chairman proposed a quorum of three (3) Members inclusive of the Chairman and a Member from each House.

4.2 Members agreed to this proposal.

## **OTHER BUSINESS**

### *Determination of the next Meeting Day and the Work Agenda*

5.1 The Chairman informed the Committee that the next meeting will be held on Tuesday January 17, 2017 at 10:00 a.m.

5.2 The Chairman informed the Committee that at the next meeting, the Committee shall go through the Bill clause by clause; identify the issues within each clause; and determine the work programme for the Committee.

## **ADJOURNMENT**



- 6.1 The Chairman thanked Members and adjourned the meeting.
- 6.2 The meeting was adjourned at 11:12 a.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

January 13, 2017

**MINUTES OF THE 2<sup>ND</sup> MEETING  
OF THE  
JOINT SELECT COMMITTEE  
ON THE TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2016  
HELD IN THE ARNOLD THOMASOS ROOM (WEST), OFFICE OF THE  
PARLIAMENT, TOWER D, 1A WRIGHTSON ROAD, PORT OF SPAIN  
TUESDAY JANUARY 17, 2017 AT 10:07 A.M.**

**PRESENT**

**Committee Members**

Mr. Colm Imbert, MP	Chairman
Dr. Bhoendradatt Tewarie, MP	Member
Ms. Paula Gopee-Scoon	Member
Mr. Clarence Rambharat	Member
Mr. Michael Coppin	Member
Mr. Gerald Ramdeen	Member
Mr. H.R. Ian Roach	Member
Mr. Taurel Shrikissoon	Member
Dr. Tim Gopeesingh, MP	Member
Mr. Faris Al-Rawi	Member
Mr. Stuart Young	Member

**Secretariat**

Ms. Keiba Jacob	Secretary
Ms. Candice Skerrette	Assistant Secretary

**ABSENT/EXCUSED**

## **COMMENCEMENT**

1.2 The Chairman called the meeting to order at 10:07 a.m. and welcomed Members present.

## **ANNOUNCEMENTS**

2.1 The Chairman informed the Committee that Dr. Bhoendradatt Tewarie gave notice for the following item of business to be added to the agenda:

*Determination of the list of Stakeholders to be interviewed.*

2.2 The Chairman advised Members that this item of business will be considered after item five (5) on the agenda which was the clause by clause consideration of the Bill.

## **CONFIRMATION OF MINUTES**

3.1 The Committee examined the Minutes of the First Meeting held on Friday January 13, 2017.

3.2 There being no omissions or corrections, the Minutes were confirmed on a motion moved by Mrs. Paula Gopee-Scoon and seconded by Dr. Bhoendradatt Tewarie.

## **CLAUSE BY CLAUSE CONSIDERATION OF THE BILL**

4.1 The Chairman informed Members that Officials from the Chief Parliamentary Counsel's Department, the Office of the Attorney General and the Ministry of Finance were invited to assist the Committee in its deliberations on the Bill.

The following officials joined the meeting:

### **CHIEF PARLIAMENTARY COUNSEL'S DEPARTMENT**

Ms. Ida Mariana Eversley	Deputy Chief Parliamentary Counsel
Ms. Donna Marie Neaves-Rostant	Legal Counsel II
Ms. Paula Hender	Legal Counsel I

### **OFFICE OF THE ATTORNEY GENERAL**

Mrs. Vyana Sharma	Legal Counsel II
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### **MINISTRY OF FINANCE**

Ms. Nnika Watson	Senior Legal Officer
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4.2 The Chairman invited each Member to share comments and identify issues or concerns with the Bill. Clarification was provided by the Chairman, Mr. Faris Al-Rawi and Mr. Stuart Young.

4.3 Mr. Gerald Ramdeen gave the assurance to submit the Opposition's comments on the Bill in the form of a note by midday on Wednesday January 18, 2017. Mr. Ramdeen also agreed to prepare a list of inconsistencies discovered between the Schedules and Clauses of the Bill (or any domestic law).

4.4 The Committee asked the Chief Parliamentary Counsel to submit the amended version of the Bill inclusive of amendments to explanatory notes based on the list of Amendments circulated by the Minister of Finance in the House of Representatives on December 12, 2016.

4.5 The Committee also requested from the Chief Parliamentary Counsel, a comparative brief on the various approaches used for the implementation of the Tax Information Exchange Agreements in other countries and reasons for approach used in the current Bill.

4.6 The Chairman gave the commitment to provide the correspondence received from the United States Treasury indicating the deadlines in relation to the Tax Information Exchange Agreements.

4.7 The Chairman also agreed to provide the Communications Plan expected to be used by Ministry of Finance upon passage of Bill as well as the existing practice used by the Board of Inland Revenue for the exchange of tax information with the United States.

#### **DETERMINATION OF THE LIST OF STAKEHOLDERS TO BE INTERVIEWED**

5.1 The Committee discussed possible stakeholders to provide comments and feedback on the Bill.

5.2 After a detailed discussion, Mr. Faris Al-Rawi was asked to submit written submissions/concerns received during consultations on the Bill with stakeholders/interest groups (e.g. Banks, business associations). The Committee agreed that following the consideration of these submissions a decision would be made on stakeholders to be interviewed.

#### **ADJOURNMENT**

6.1 The Chairman thanked Members and indicated that the next meeting will be held on Friday January 20, 2017 at 10:00 a.m.

6.2 The meeting adjourned at 11:47 a.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

January 18, 2017

***MINUTES OF THE 3<sup>RD</sup> MEETING  
OF THE  
JOINT SELECT COMMITTEE  
ON THE TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2016  
HELD IN THE ARNOLD THOMASOS ROOM (WEST), OFFICE OF THE PARLIAMENT,  
TOWER D, 1A WRIGHTSON ROAD, PORT OF SPAIN  
FRIDAY JANUARY 20, 2017 AT 10:24 A.M.***

**PRESENT**

**Committee Members**

Mr. Colm Imbert, MP  
Mr. Faris Al-Rawi, MP  
Mr. Stuart Young, MP

Chairman  
Member  
Member

Dr. Bhoendradatt Tewarie, MP	Member
Ms. Marlene Mc Donald, MP	Member
Dr. Tim Gopeesingh, MP	Member
Ms. Paula Gopee-Scoon	Member
Mr. Gerald Ramdeen	Member
Mr. H.R. Ian Roach	Member
Mr. Taurel Shrikissoon	Member

#### **Secretariat**

Ms. Keiba Jacob	Secretary
Ms. Angelique Massiah	Assistant Secretary
Ms. Simone Yallery	Legal Officer I

#### **ABSENT/EXCUSED**

Mr. Michael Coppin	Member
Mr. Clarence Rambharat	Member

#### **COMMENCEMENT**

1.3 The Chairman called the meeting to order at 10:24 a.m. and welcomed Members present.

#### **ANNOUNCEMENTS**

2.2 The Chairman indicated that Mr. Michael Coppin had asked to be excused from the day's meeting.

#### **CONFIRMATION OF MINUTES**

3.1 The Committee examined the Minutes of the Second Meeting held on Tuesday January 17, 2017.

3.2 There being no omissions or corrections, the Minutes were confirmed on a motion moved by Mr. H.R. Ian Roach and seconded by Mr. Stuart Young.

#### **MATTERS ARISING FROM THE MINUTES**

##### **CLAUSE BY CLAUSE CONSIDERATION OF THE BILL**

4.1 Per **Item 2.1**, the Chairman stated that the list of Stakeholders to be interviewed shall be:

1. The Board of Inland Revenue;
2. The Central Bank of Trinidad and Tobago;
3. Bankers Association of Trinidad and Tobago which represents the interest of Commercial and Merchant Banks;
4. Co-operative Credit Union League of Trinidad and Tobago;
5. The Trinidad and Tobago Securities and Exchange
6. Trust Corporations (not within a Bank);
7. Merchant Banks that fall outside of the Commercial Banks framework; and
8. The Association of Trinidad and Tobago Insurance Companies.

4.2 Per **Item 4.3**, the Chairman advised that Mr. Ramdeen had submitted his comments and that the document was circulated.

4.3 Per **Item 4.4**, the Chairman advised that the CPC had submitted the consolidated version of the Bill, inclusive of amendments to the Explanatory Note and that it was circulated.

4.4 Per **Item 4.5**, the Chairman advised that the CPC had submitted a comparative brief on the various approaches used by other countries for the implementation of the Tax Information Exchange Agreements and that the brief was circulated.

4.5 Per **Item 4.6**, the Chairman:

- i. gave an undertaking to circulate correspondence from Ms. Elena Virgadamo of the US Treasury, which provided a response to the request for a further extension of time;
- ii. read the correspondence into record and provided explanations in relation to the timelines; and
- iii. agreed to a Member's suggestion to indicate in a written response to the US Treasury, that a Joint Select Committee has been appointed to consider the Bill.

4.6 Per **Item 4.7**, Mr. Al-Rawi gave an undertaking to submit a copy of the correspondence he received from the stakeholders and interest groups e.g. Bankers Association of Trinidad and Tobago.

#### **CONSIDERATION OF THE BILL: CLAUSE BY CLAUSE**

5.1 The Chairman informed Members that Officials from the Chief Parliamentary Counsel's Department, the Office of the Attorney General and the Ministry of Finance were invited to assist the Committee in its deliberations on the Bill.

The following officials joined the meeting:

##### **CHIEF PARLIAMENTARY COUNSEL'S DEPARTMENT**

Ms. Ida Mariana Eversley	Deputy Chief Parliamentary Counsel
Ms. Donna Marie Neaves-Rostant	Legal Counsel II
Ms. Paula Hender	Legal Counsel I

##### **OFFICE OF THE ATTORNEY GENERAL**

Mrs. Vyana Sharma	Legal Counsel II
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##### **MINISTRY OF FINANCE**

Ms. Nnika Watson	Senior Legal Officer
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5.2 The Committee discussed and agreed to the changes made to the Bill's:

- i. Explanatory Note;
- ii. Long Title; and
- iii. Preamble.

5.3 The clause by clause consideration of the Bill proceeded as indicated in **Appendix I** to these Minutes.

5.4 The Chairman requested that CPC provide a Brief outlining the type of information which would require consent and those which will not.

5.5 The Chairman requested that CPC submit the majority of briefs requested during the meeting by the evening of Tuesday January 24, 2017 and the remainder by 12:00 noon on Wednesday January 25, 2017.

#### **OTHER BUSINESS**

6.1 The Chairman advised that all Members must submit their questions for stakeholders by midday on Monday January 23, 2017.

6.2 The Chairman gave an undertaking to submit:

- (i) the Communications Plan expected to be used by the Ministry of Finance upon passage of the Bill;
- (ii) the existing practices used by the BIR for exchange of tax information with the United States.

#### **ADJOURNMENT**

7.1 The Chairman thanked Members and indicated that the next meeting will be held on Friday January 27, 2017 from 9:00 a.m. to 12:30 p.m.

7.2 The meeting adjourned at 12:11 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

**January 31, 2017**

#### **APPENDIX I**

#### **Clause by Clause examination of the Tax Information Exchange Agreements Bill, 2016 (Amended Version of Bill<sup>3</sup>)**

**Friday January 20, 2017**

<b>Clause No.</b>	<b>Issues Raised</b>	<b>Decision Taken</b>
1	None	Agreed

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<sup>3</sup> Inclusive of amendments to Explanatory Notes based on List of Amendments circulated by the Minister of Finance in the House of Representatives on December 12, 2016.

Clause No.	Issues Raised	Decision Taken
2	None	Agreed
3	None	Agreed
4	Under “former Act”, the word ‘Agreement’ should be deleted and replaced by ‘ <b>Agreements</b> ’.	<b>Deferred.</b> CPC to correct typographical error.
5	None	Agreed
6	None	Agreed
7	<ul style="list-style-type: none"> <li>▪ Penalty for the financial institution’s failure and the powers of the Board.</li> <li>▪ Under Clause 7(3) the words “...shall take all relevant measures to provide.” can be interpreted too broadly.</li> <li>▪ Under Clause 7 (4), addition of a short sentence “this shall be done in writing”.</li> </ul>	<b>Deferred –</b> <ol style="list-style-type: none"> <li>1. Mr. Al-Rawi gave an undertaking to review the wording of the sub-clause and provide a response.</li> <li>2. CPC to add the requirement for the information to be provided in writing to 7(4).</li> </ol>
8	Clause 8 (1) (b)- Sections 6, 30, 31, 38, 40, 41, 46 and 69 of the Data Protection Act require explanation since some sections have not yet been proclaimed.	<b>Deferred</b> - The Chairman asked the CPC to a Brief on each section.
	Clause 8 (1) (c)-What is captured under “any other law of like effect”?	<b>Deferred</b> - The Chairman asked for a brief on the meaning of “laws of like effect’ and for the CPC to provide a compendium of other laws.
	Clause 8 (2) -It was suggested that the fine be increased to \$250,000.00 and imprisonment to five (5) years.	<b>Deferred</b> - The Chairman asked Mr. Al-Rawi to provide an advice on the proportionality of the suggested increases.



Clause No.	Issues Raised	Decision Taken
9	None	Agreed
10	The setting aside of sections 6, 38, and 40 of the Data Protection Act for the purpose of the IGA.	<p><b>Deferred:</b></p> <ol style="list-style-type: none"> <li>1. The Chairman asked that Mr. Al-Rawi provide a response on the use of the stated sections.</li> <li>2. CPC to determine whether there were any typographical errors.</li> </ol>
11	<ul style="list-style-type: none"> <li>▪ There may a typographical error.</li> <li>▪ Implication of citing Sections in the Data Protection Act which have not been proclaimed.</li> </ul>	<p><b>Deferred.</b></p> <ol style="list-style-type: none"> <li>1. The Chairman asked that Mr. Al-Rawi provide a response on the use of the stated sections.</li> <li>2. CPC to determine whether there were any typographical errors.</li> </ol>
12	Implication of citing Sections in the Data Protection Act which have not been proclaimed.	<p><b>Deferred-</b> The Chairman asked that Mr. Al-Rawi provide a response on the use of the stated sections.</p>
13	Implication of citing Sections in the Data Protection Act which have not been proclaimed.	<p><b>Deferred-</b>The Chairman asked that Mr. Al-Rawi provide a response on the use of the stated sections.</p>
14	None	Agreed
15	None	Agreed
16	None	Agreed

Clause No.	Issues Raised	Decision Taken
17	None	Agreed
18	None	Agreed
19	None	Agreed
20	None	Agreed
21	None	Agreed
22	None	Agreed
23	None	Agreed
24	Guidelines should have Parliamentary oversight.	<b>Deferred</b> – Chairman requested that the CPC prepare a brief to consider the effect of guidelines being approved by negative resolution.
25	<ul style="list-style-type: none"> <li>▪ Guidelines should have Parliamentary oversight.</li> <li>▪ Clause 25 (c)(ii)-Uncertainty of the phrase “or similar legislation of a foreign jurisdiction or a declared agreement”</li> </ul>	<b>Deferred</b> – <ol style="list-style-type: none"> <li>1. Chairman requested that the CPC prepare a brief to consider the effect of guidelines being approved by negative resolution.</li> <li>2. Chairman asked that Mr. Al-Rawi provide a response stating where the phrase may be applicable.</li> </ol>
26	Guidelines should have Parliamentary oversight.	<b>Deferred</b> – Chairman requested that the CPC prepare a brief to

Clause No.	Issues Raised	Decision Taken
		consider the effect of guidelines being approved by negative resolution.
27	<ul style="list-style-type: none"> <li>▪ Blanket approval is given to the Minister to give effect to future changes with the IGA without disclosure to Parliament.</li> <li>▪ Constitutionality of this approval.</li> <li>▪ Order should be made by negative resolution</li> </ul>	<b>Deferred</b> – Chairman requested that the CPC prepare a brief to consider the effect of a negative resolution procedure for a modified IGA and its annexes.
28	None	Agreed
29	None	Agreed

January 31, 2017

**MINUTES OF THE 4<sup>TH</sup> MEETING  
OF THE  
JOINT SELECT COMMITTEE  
ON THE TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2016  
HELD IN THE ANR ROBINSON ROOMS, OFFICE OF THE PARLIAMENT, TOWER D, 1A  
WRIGHTSON ROAD, PORT OF SPAIN  
FRIDAY JANUARY 27, 2017 AT 9:12 A.M.**

**PRESENT**

**Committee Members**

Mr. Colm Imbert, MP	Chairman
Mr. Faris Al-Rawi, MP	Member
Mr. Stuart Young, MP	Member
Dr. Bhoendradatt Tewarie, MP	Member
Ms. Marlene Mc Donald, MP	Member

Dr. Tim Gopeesingh, MP	Member
Ms. Paula Gopee-Scoon	Member
Mr. Gerald Ramdeen	Member
Mr. H.R. Ian Roach	Member
Mr. Taurel Shrikissoon	Member
Mr. Michael Coppin	Member
Mr. Clarence Rambharat	Member

**Secretariat**

Ms. Keiba Jacob	Secretary
Ms. Angelique Massiah	Assistant Secretary
Ms. Simone Yallery	Legal Officer I

**COMMENCEMENT**

1.4 The Chairman called the meeting to order at 9:12 a.m. and welcomed Members present.

**CONFIRMATION OF MINUTES**

2.1 The Committee agreed to defer confirmation of the Minutes pending the Secretariat’s verification of the clause by clause examination of the Tax Information Exchange Bill, 2016 (“the Bill”) against the verbatim notes.

**MATTERS ARISING FROM THE MINUTES**

3.1 Per **Item 4.1**, the Chairman informed Members that letters were sent to the following stakeholders inviting them to the day’s meeting:

9. Board of Inland Revenue
10. The President, Bankers Association of Trinidad and Tobago;
11. The President, Co-operative Credit Union League;
12. The Governor, Central Bank of Trinidad and Tobago; and
13. The Deputy Chief Executive Officer, Securities and Exchange Commission

3.2 The Chairman confirmed that written submissions were requested from the following entities:

1. The Trinidad and Tobago Chamber of Industry and Commerce;
2. The President, Law Association of Trinidad and Tobago;
3. The Chief Executive Officer, AMCHAM Trinidad and Tobago; and
4. The Dean, Faculty of Law, UWI.

3.3 Per **Item 4.5 on page 2**, the Chairman confirmed that the email from Ms. Elena Virgadamo of the US Treasury was circulated to the Members by the Secretary to the Committee.

3.4 Per **Item 4.6**, the Chairman reminded Mr. Al-Rawi of the undertaking to submit a copy of the correspondence he received from the Bankers Association of Trinidad and Tobago.

3.5 Per **Items 5.4 and 5.5 on page 3**, the Chairman advised that the CPC had submitted all briefs requested at the 3<sup>rd</sup> Meeting and that they were circulated to Members via email from the Secretary to the Committee.

#### **OTHER MATTERS**

4.1 The Committee determined that its mandate in relation to the Bill was not affected by the letter purportedly written to the US President on the matter.

#### **SUSPENSION**

5.1 The meeting in the A.N.R Robinson Room (West) was suspended at 9:29 a.m.

#### **MEETING WITH STAKEHOLDERS**

6.1 The meeting resumed in the A.N.R Robinson Room (East) at 9:35 a.m. for meeting with the following Stakeholders:

1. The Board of Inland Revenue;
2. The Bankers Association of Trinidad and Tobago;
3. The Co-operative Credit Union League;
4. The Central Bank of Trinidad and Tobago; and
5. The Securities and Exchange Commission.

6.2 The following Officials from the Chief Parliamentary Counsel's Department, the Office of the Attorney General and the Ministry of Finance were present to assist the Committee:

#### **CHIEF PARLIAMENTARY COUNSEL'S DEPARTMENT**

Ms. Ida Mariana Eversley Counsel	Deputy Chief Parliamentary Legal Counsel II
Ms. Donna Marie Neaves-Rostant Ms. Paula Hender	Legal Counsel I

#### **OFFICE OF THE ATTORNEY GENERAL**

Mrs. Vyana Sharma	Legal Counsel II
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#### **MINISTRY OF FINANCE**

Ms. Nnika Watson	Senior Legal Officer
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6.3 The following Officials from the **Board of Inland Revenue (BIR)** were invited to join the Meeting:

1. Ms. Allison Raphael, Chairman
2. Mr. Ramnarine Bedassie, Commissioner;
3. Ms. Neela Ram, ICT Director; and
4. Ms. Sharon Boodoosingh, Field Officer V

6.4 The following issues were discussed with the BIR Officials (*for full details see the Verbatim Notes*):

- i. Adequacy of the System;
- ii. Privacy provisions;
- iii. Staffing;
- iv. Reciprocity;
- v. Competent Authority;
- vi. The purpose of the validation clause;
- vii. Illegalities which occurred between 1990 – 2016;
- viii. Dissemination of information relating to FATCA;
- ix. The readiness of financial institutions;
- x. Software application;
- xi. The Agreement for the Competent Authority;
- xii. Institutions under the law that the BIR can ask for information on taxpayers;
- xiii. Institutions under the law that can ask the BIR for information on taxpayers; and
- xiv. The BIR's Communication and Education Plans.

6.5 With respect to 6.4 xiv, the BIR gave an undertaking to have a Public Education Plan on the issue.

6.6 The Chairman thanked the Officials of the Board of Inland Revenue for their assistance.

6.7 The following Officials from the **Bankers Association of Trinidad and Tobago (BATT)** were invited to join the Meeting:

1. Ms. Anya Schnoor, President;
2. Mrs. Karen Darbasie, Treasurer;
3. Ms. Kimi Rochard, Legal Committee Chair;
4. Ms. Rachel Laquis, Alternate Legal Committee Chair;
5. Ms. Janelle Bernard, Senior Manager Compliance;
6. Ms. Lindi Ballah-Tull, Head Legal Compliance; and
7. Mrs. Kelly Bute-Seaton, Executive Director.

6.7 The following issues were discussed with the BATT (*for full details see the Verbatim Notes*):

- i. Consensus amongst the eight (8) member Bankers of the Association;

- ii. Consequences on local banks if the legislation is not passed;
- iii. Risk profile of Trinidad and Tobago in relation to US transactions;
- iv. Process for reporting suspicious transactions;
- v. The state of readiness of all eight (8) Member Banks;
- vi. Powers of the Supervisor of Banks
- vii. Confidentiality of information;
- viii. Reciprocity; and
- ix. Annual submission of information on US persons to the BIR.

6.8 The Chairman thanked the Officials of the BATT for their assistance.

6.7 The following Officials from the **Co-operative Credit Union League** were invited to join the Meeting:

1. Mr. Joseph Remy, President; and
2. Ms. Dianne Joseph, Chief Operations Officer.

6.9 The following issues were discussed with the Officials of the Co-operative Credit Union League (*for full details see the Verbatim Notes*):

- i. The views of the League and Membership have not been collated as the request for responses were only received earlier that week;
- ii. The request did not contain any specific questions for the League; and
- iii. Approximately 1% of accounts are held by US persons.

6.10 Mr. Remy gave an undertaking to submit written submissions by **Tuesday January 31, 2017**.

6.11 The Chairman thanked the Officials of the Co-operative Credit Union League for their assistance.

6.12 The following Officials from the **Central Bank of Trinidad and Tobago (CBTT)** were invited to join the Meeting:

1. Mrs. Michelle Francis-Pantor, Deputy Inspector;
2. Ms. Shastri Singh, Examiner II;
3. Ms. Deborah Boynes, senior Legal Counsel; and
4. Ms. Camille Rajnauth, Legal Counsel I.

6.13 The following issues were discussed with Officials of the CBTT (*for full details see the Verbatim Notes*):

- i. The Central Bank's general agreement with the Bill;
- ii. Suggestion to strengthen:
  - Clause 26 of the Bill; and
  - Section 8(2) of the Financial Intelligence Act, Chap. 79:09;
- iii. The process for requesting information from other Banks;

- iv. Central Bank's readiness for implementation;
- v. Central Bank's requirement to issue Guidelines for compliance;
- vi. Consequences of financial institutions breaching Guidelines;
- vii. Framework for the Guidelines;
- viii. No effect on staffing requirement; and
- ix. The number of financial institutions that fall under Central Bank's inspection.

6.14 The Chairman thanked the Officials of the Central Bank for their assistance.

6.15 The following Officials from the **Securities and Exchange Commission (SEC)** were invited to join the Meeting:

1. Ms. Lystra Lucillio, Deputy Chief Executive Officer;
2. Ms. Astraea Douglas, Legal Counsel; and
3. Ms. Leslie Ann Browne.

6.16 The following issues were discussed with Officials of the SEC (*for full details see the verbatim notes*):

- i. The relationship between the SEC and the BIR;
- ii. Reciprocity with the BIR; and
- iii. The SEC's state of readiness for implementation of the Bill.

6.14 The Chairman thanked the Officials of the SEC for their assistance.

## **ADJOURNMENT**

7.1 The Chairman thanked Members and indicated that all information will be collated and a consolidated Bill circulated by Tuesday January 31, 2017.

7.2 The Committee agreed that the next meeting will be held on Wednesday February 1, 2017 at 10:00 a.m.

7.2 The meeting adjourned at 12:17 p.m.

I certify that the Minutes are true and correct.

Chairman



Secretary

January 31, 2017

**MINUTES OF THE 5<sup>TH</sup> MEETING  
OF THE  
JOINT SELECT COMMITTEE  
ON THE TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2016  
HELD IN THE ARNOLD THOMASOS ROOM (WEST), OFFICE OF THE PARLIAMENT,  
TOWER D, 1A WRIGHTSON ROAD, PORT OF SPAIN  
WEDNESDAY FEBRUARY 1, 2017 AT 10:16 A.M.**

**PRESENT**

**Committee Members**

Mr. Colm Imbert, MP	Chairman
Mr. Faris Al-Rawi, MP	Member
Mr. Stuart Young, MP	Member
Dr. Bhoendradatt Tewarie, MP	Member
Ms. Marlene Mc Donald, MP	Member
Dr. Tim Gopeesingh, MP	Member
Ms. Paula Gopee-Scoon	Member
Mr. Gerald Ramdeen	Member
Mr. H.R. Ian Roach	Member
Mr. Taurel Shrikissoon	Member
Mr. Michael Coppin	Member
Mr. Clarence Rambharat	Member

**Secretariat**

Ms. Keiba Jacob	Secretary
Ms. Angelique Massiah	Assistant Secretary
Ms. Simone Yallery	Legal Officer I

## COMMENCEMENT

1.5 The Chairman called the meeting to order at 10:16 a.m. and welcomed Members present.

## ANNOUNCEMENTS

2.3 The Chairman informed that the following Members will be late:

- (i) Mr. Taurel Shrikissoo;
- (ii) Mr. Faris Al-Rawi;
- (iii) Mr. Clarence Rambharat; and
- (iv) Mr. Stuart Young.

## CONFIRMATION OF THE MINUTES OF THE THIRD MEETING

3.1 The Committee examined the Minutes of the Third Meeting held on Friday January 20, 2017 which was deferred at the Fourth Meeting pending the Secretariat's verification of the clause by clause examination of the Tax Information Exchange Bill, 2016 ("the Bill") against the Verbatim Notes.

3.2 The Committee agreed to defer the confirmation of the Minutes of the Third Meeting to later in the proceedings.

## CONFIRMATION OF THE MINUTES OF THE FOURTH MEETING

4.1 The Committee examined the Minutes of the Fourth Meeting held on Friday January 27, 2017

4.2 There being no omissions or corrections, the Minutes were confirmed on a motion moved by Mr. H.R. Ian Roach and seconded by Ms. Marlene Mc Donald.

## MATTERS ARISING FROM THE MINUTES

5.1 Per **Item 3.2 on page 2**, in relation to the Committee's requests for submissions, the Secretary informed the Committee that:

- 1. The Trinidad and Tobago Chamber of Industry and Commerce, no response received;
- 2. AMCHAM Trinidad and Tobago, no response received;
- 3. The President, Law Association of Trinidad and Tobago, additional time was requested; and
- 4. The Dean, Faculty of Law, UWI, additional time was requested.

5.2 Per **Item 3.3 on page 2**, the Chairman circulated to the Members copies of the Notices referred to in the email from the Office of the International Tax Counsel, United States Department of the Treasury.

5.3 Per **Item 3.4 on page 2**, the Chairman confirmed that consultations occurred only with Bankers Association of Trinidad and Tobago.

5.4 Per **Item 6.1 on page 2**, the Chairman advised the Secretary to request the written responses from:

1. ANSA Merchant Bank Limited;
2. Unit Trust Corporation of Trinidad and Tobago; and
3. Association of Trinidad and Tobago Insurance Companies (ATTIC).

5.5 Per **Item 6.4 on page 3**, the Chairman clarified that the vacancies at BIR were with public service posts and that the Chairman, BIR clarified that the contract employment was used to supplement the staffing needs.

5.6 Per **Item 6.13 on page 4**, the Chairman confirmed that amendments suggested by the Central Bank of Trinidad and Tobago were incorporated into the latest draft of the Bill.

#### **CLAUSE BY CLAUSE EXAMINATION OF THE BILL**

6.1 The following Officials from the Chief Parliamentary Counsel's Department, the Office of the Attorney General and the Ministry of Finance were present to assist the Committee:

##### **CHIEF PARLIAMENTARY COUNSEL'S DEPARTMENT**

Ms. Ida Mariana Eversley	Deputy Chief Parliamentary Counsel
Ms. Donna Marie Neaves-Rostant	Legal Counsel II
Ms. Paula Hender	Legal Counsel I

##### **OFFICE OF THE ATTORNEY GENERAL**

Mrs. Vyana Sharma	Legal Counsel II
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##### **MINISTRY OF FINANCE**

Ms. Nnika Watson	Senior Legal Officer
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6.2 The clause by clause consideration of the Bill proceeded as indicated in **Appendix I** to these Minutes.

#### **OTHER MATTERS**

7.1 The Committee was informed by Mr. Al-Rawi that Trinidad and Tobago does in fact have a Double Taxation Treaty with the US.

7.2 Mr. Al-Rawi gave an undertaking to determine whether the Central Bank Guidelines could simply be laid in Parliament.

7.3 The Committee agreed to invite public comments on the Bill and that a deadline of ten days from February 1, 2017.

7.4 The CPC was advised to prepare a revised Consolidated Bill incorporating all the changes that were discussed and agreed to.

7.5 The Committee agreed to lay a Report on Friday February 3, 2017 in the House which would reflect its agreement to the amendments to the Bill.

## ADJOURNMENT

8.1 The Chairman thanked Members and indicated that all information will be collated into a Report.

8.2 The meeting adjourned at 12:54 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

February 2, 2017

## APPENDIX I

### Clause by Clause examination of the Tax Information Exchange Agreements Bill, 2016 (Revised Version of Bill)

Wednesday February 1, 2017

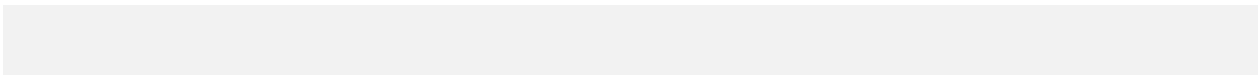
Clause No.	Issues Raised	Decision Taken
<b>Preamble</b>	For clarity, the phrase "from an identifiable person" should be added to the twelfth recital which begins "And whereas the IGA	CPC to make correction to Preamble.

Clause No.	Issues Raised	Decision Taken
	provides for the sharing of information..."	
1	None	Agreed
2	None	Agreed
3	None	Agreed
4	Under "former Act", the word 'Agreement' should be deleted and replaced by 'Agreements'.	CPC to correct typographical error.
5	None	Agreed
6	Typographical errors under 6 (2) and 6 (3)	CPC to correct typographical error.
7	Typographical error under 7 (2)	CPC to correct typographical error.
8	Clause 8 (1) (c)- to <u>remove</u> the words " <i>...of like effect</i> " and <u>replace</u> them with " <i>that prohibits the sharing of personal information</i> "	CPC to review and correct.
	Clause 8 (2) ( <b>and new Clause 22</b> ) The new amendment will make the offence triable either way: <ul style="list-style-type: none"> <li>▪ On summary conviction - a fine of one hundred thousand dollars (\$100,000) and 3 years in prison</li> <li>▪ On indictment - a fine of two hundred and fifty thousand dollars (\$250,000) and five years in prison</li> </ul>	CPC to correct.
9	None	Agreed

Clause No.	Issues Raised	Decision Taken
10	None	Agreed
11	None	Agreed
12	None	Agreed
13	None	Agreed
14	None	Agreed
15	None	Agreed
16	None	Agreed
17	None	Agreed
18	None	Agreed
19	None	Agreed
20	None	Agreed
21	None	Agreed
		<p><b>New Clause to be inserted:</b></p> <p>CPC to insert a new Clause which will appear after Clause 21.</p> <p>Provision will be similar to Clause 8(1) and 8 (2) in the Bill.</p>
22	<p>The new amendment will make the offence triable either way:</p> <ul style="list-style-type: none"> <li>▪ On summary conviction - a fine of one hundred thousand dollars (\$100,000) and 3 years in prison</li> <li>▪ On indictment - a fine of two hundred and fifty thousand dollars (\$250,000) and five years in prison</li> </ul>	CPC to correct

Clause No.	Issues Raised	Decision Taken
23	<ul style="list-style-type: none"> <li data-bbox="493 256 937 489">▪ <b>Delete</b> the following words under 117A (b) “<i>...in respect of paragraphs (a) or (b)</i>”, and <b>Replace</b> with the following words “<i>....in respect of paragraph (a)</i>”</li> <li data-bbox="493 548 937 655">▪ <b>Review</b> the deletion of Section 117 (6) of the Income Tax Act.</li> </ul>	CPC to review and correct.
24	None	Agreed
25	Under 25(d), <b>delete</b> all of (b)	CPC to review and correct.
26	None	Agreed
27	Under 27(c), <b>delete</b> all of (b)	CPC to review and correct.
28	None	Agreed
29	None	Agreed
30	None	Agreed
31	None	Agreed

February 2, 2017



**MINUTES OF THE 6<sup>TH</sup> MEETING  
OF THE  
JOINT SELECT COMMITTEE  
ON THE TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2016  
HELD IN THE ARNOLD THOMASOS ROOM (WEST), OFFICE OF THE PARLIAMENT,  
TOWER D, 1A WRIGHTSON ROAD, PORT OF SPAIN  
FRIDAY FEBRUARY 17, 2017 AT 11:15 A.M.**

**PRESENT**

**Committee Members**

Mr. Colm Imbert, MP	Chairman
Mr. Faris Al-Rawi, MP	Member
Mr. Stuart Young, MP	Member
Dr. Bhoendradatt Tewarie, MP	Member
Ms. Marlene Mc Donald, MP	Member
Dr. Tim Gopeesingh, MP	Member
Mrs. Paula Gopee-Scoon	Member
Mr. Gerald Ramdeen	Member
Mr. H.R. Ian Roach	Member
Mr. Taurel Shrikissoon	Member
Mr. Michael Coppin	Member
Mr. Clarence Rambharat	Member

**Secretariat**

Ms. Keiba Jacob	Secretary
Ms. Angelique Massiah	Assistant Secretary

**COMMENCEMENT**

1.6 The Chairman called the meeting to order at 11:15 a.m. and welcomed Members present.

**CONFIRMATION OF THE MINUTES OF THE THIRD MEETING**

2.1 The confirmation of the Minutes of the Third meeting held on Friday January 20, 2017 was deferred at the Fourth and Fifth Meetings. The Committee therefore examined the Minutes of the Third Meeting which was deferred at the Fourth Meeting.

2.2 There being no omissions or corrections, the Minutes of the Third Meeting were confirmed on a motion moved by Mr. H.R. Ian Roach and seconded by Ms. Marlene Mc Donald.

**CONFIRMATION OF THE MINUTES OF THE FIFTH MEETING**

3.1 The Committee examined the Minutes of the Fifth Meeting which was held on Wednesday February 1, 2017.

3.2 There being no omissions or corrections, the Minutes of the Fifth Meeting were confirmed on a motion moved by Mrs. Paula Gopee-Scoon and seconded by Mr. W. Michael Coppin.

**MATTERS ARISING FROM THE MINUTES OF THE THIRD MEETING**



4.1 Per **Item 4.1 on page 2**, the Chairman confirmed that letters requesting written submissions were sent to the following:

5. ANSA Merchant Bank;
6. Unit Trust Corporation of Trinidad and Tobago; and
7. Association of Trinidad and Tobago Insurance Companies.

4.2 Per **Item 4.4 on page 2**, the Committee agreed to defer discussion on this item to obtain clarification from the representatives from the Chief Parliamentary Counsel's Department.

4.3 Per **Item 4.5 (i) on page 2**, the Chairman confirmed that the correspondence from Elena Virgadamo, Office of International Tax Counsel, United States Department of Treasury was circulated to the Committee.

4.4 Per **Item 4.5 (iii) on page 2**, the Chairman informed the Committee that the United States Embassy in Trinidad and Tobago was informed of the appointment of the Joint Select Committee to consider the Bill. The United States Embassy in Trinidad and Tobago then forwarded this information to the US Treasury.

4.5 Per **Item 6.2 on page 3**, the Chairman gave an undertaking to submit the information.

#### **MATTERS ARISING FROM THE MINUTES OF THE FOURTH MEETING**

5.7 Per **Item 5.1 on page 2**, the Committee was informed that:

1. there was no response from the Trinidad and Tobago Chamber of Industry and Commerce;
2. American Chamber of Commerce Trinidad and Tobago acknowledged receipt of the Committee's letter requesting submissions however a response was not submitted;
3. there was no response from the Law Association; and
4. the comments from the Dean, Faculty of Law, UWI appeared to be in reference to an earlier version of the Bill and in that regard the consolidated Bill was sent to her for consideration.

#### **CLAUSE BY CLAUSE EXAMINATION OF THE BILL**

6.1 The following Officials from the Chief Parliamentary Counsel's Department, the Office of the Attorney General and the Ministry of Finance were present to assist the Committee:

##### **CHIEF PARLIAMENTARY COUNSEL'S DEPARTMENT**

Ms. Ida Mariana Eversley	Deputy Chief Parliamentary Counsel
Ms. Kimberly Superville	Legal Counsel I

##### **OFFICE OF THE ATTORNEY GENERAL**

Mrs. Solange De Souza-Ransome	Legal Counsel
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##### **MINISTRY OF FINANCE**

Ms. Carla Carter	Treasury Solicitor
Ms. Nnika Watson	Senior Legal Officer

6.2 Per **Item 4.4 on page 2**, the Deputy Chief Parliamentary Counsel confirmed that Trinidad and Tobago's legislative approach was to repeal and replace the Tax Information Exchange Agreements Act. She also provided clarity to the Committee on:

- (i) the different IGA Models; and
- (ii) the legislative difference between Trinidad and Tobago's TIEA (USA) Bill, 2016 and Barbados':
  - Income Tax (Amendment) (No. 2) Act, 2015; and
  - Income Tax (Automatic Exchange of Information) Regulations, 2015.

6.2 The clause by clause consideration of the Bill proceeded as indicated in **Appendix I** to these Minutes.

## **OTHER MATTERS**

7.1 The Chairman informed the Committee that twenty-five (25) comments were received from the public via email. He further informed that since no security measure was put in place to determine whether persons submitting comments were real, he instructed the Secretary to request a form of identification from the individuals before the comments were circulated to Members.

7.2 The Committee discussed the publication of the Committee call for public submissions. The Committee was informed that the requests for public comments on the Bill were published on the following days:

- Parliament's website and social media platforms February 1 – February 10, 2017;
- Newsday – February 2, 2017;
- Express – February 5, 2017; and
- Guardian – February 7, 2017.

7.3 The Chairman informed the Committee that Mr. Ramdeen submitted a letter dated February 14, 2017 and received via email on February 16, 2017 detailing a number of concerns. The correspondence was then circulated to all Members at the meeting. The Committee examined the proposals made under item **(ii)** of Mr. Ramdeen's letter. The following actions/decisions were taken for each proposal:

- (1) A copy of the correspondence from Ms. Carla Carter, Treasury Solicitor to the US Treasury was circulated to all Members during the meeting;
- (2) A copy of correspondence from the Ministry of Finance to the US treasury was circulated to all Members during the meeting;
- (3) A copy of correspondence from the US Treasury was circulated to all Members during the meeting;
- (4) An undertaking was given by the Chairman to circulate all responses received from persons who submitted identification (see 7.1 above);
- (5) The Chairman confirmed that no response was received from ANSA Merchant Bank and the Secretary was instructed to circulate responses from Unit Trust Corporation and the Association of Trinidad and Tobago Insurance Companies;
- (6) The Law Association did not submit a response. The Dean, Faculty of Law, UWI appeared to respond to an earlier version of the Bill. In that regard the version of the

Bill appended to the Committee's report on February 3, was forwarded for consideration;

- (7) A copy of the advice from CPC with respect to the existence of a double taxation treaty was circulated to all Members during the Meeting;
- (8) The Chairman gave an undertaking to clarify the number of times the BIR supplied private financial information to the US between 1989 to date;
- (9) The Chairman gave an undertaking to supply the communication plan expected to be used by the Ministry of Finance upon passage of the Bill;
- (10) The Chairman gave an undertaking to provide the list of existing practices used by the BIR for the exchange of tax information with the United States;
- (11) A copy of the submission from the Credit Union League first circulated to all Members at the last meeting held on February 3, 2017 and again via email on February 6, 2017. The document was again circulated during the Meeting;
- (12) Mr. Al-Rawi and the Deputy CPC confirmed that no correspondence was sent directly to the Office of the Attorney General;
- (13) A copy of the correspondence submitted to the US Treasury Department was circulated to all Members during the Meeting; and
- (14) Mr. Al-Rawi clarified that he spoke of oral advice from the Solicitor General and not the Treasury Solicitor.

7.4 The deadline for submission of all outstanding items was set for Tuesday February 21, 2017 at 4:00 p.m.

7.5 The Committee agreed to lay a Report on Thursday February 23, 2017 in the House which would reflect its agreement to the amendments to the Bill.

## **ADJOURNMENT**

8.1 The Chairman thanked Members and indicated that all information will be collated into a Report which will be circulated by the Secretary by 9:00 a.m. on Wednesday February 22, 2017.

8.2 The meeting adjourned at 1:43 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

**February 17, 2017**

**Clause by Clause examination of the Tax Information Exchange Agreements Bill, 2016  
(Revised Version of Bill)**

**Friday February 17, 2017**

<b>Clause No.</b>	<b>Issues Raised</b>	<b>Decision Taken</b>
Preamble	None	Agreed
1	None	Agreed
2	None	Agreed
3	None	Agreed
4	None	Agreed
5	None	Agreed
6	None	Agreed
7	None	Agreed
8	None	Agreed
9	None	Agreed
10	None	Agreed
11	None	Agreed
12	None	Agreed
13	None	Agreed
14	None	Agreed
15	None	Agreed
16	None	Agreed
17	To include a new clause 17(3) which will require reporting financial institutions to give reportable account holders 28 day notice that their information is being forwarded to the competent authority.	Treasury Solicitor to advise the Minister of Finance by Monday February 20, 2017 whether there will be any legal implications if this new sub-clause was included
18	To include a new sub-clause (2) which will require any Agreement entered into between the Competent Authority and	Treasury Solicitor to advise the Minister of Finance by Monday February 20, 2017 whether there will be any legal implications and

Clause No.	Issues Raised	Decision Taken
	the US Treasury to be laid in Parliament.	issues of breach of confidentiality if this new sub-clause was included
19	None	Agreed
20	None	Agreed
21	None	Agreed
22	None	Agreed
23	None	Agreed
24	None	Agreed
25	None	Agreed
26	None	Agreed
27	None	Agreed
28	None	Agreed
29	<p>Amend as follows:</p> <p>29 (1) The Minister may by Order, where the parties modify –</p> <ul style="list-style-type: none"> <li>(a) the 1989 TIEA in Schedule 1; or</li> <li>(b) the IGA or its annexes in Schedule 2, amend the 1989 TIEA or IGA or its annexes contained in Schedule 1 or 2 respectively</li> </ul> <p>(2) An Order made subject to (1) above will be subject to negative resolution.</p>	Agreed
30	None	Agreed
31	None	Agreed
32	None	Agreed
33	<p>The insertion of a new <b>Clause 33</b> which will require the Minister to lay in Parliament an annual report on the</p>	Agreed.

Clause No.	Issues Raised	Decision Taken
	operations of the Competent Authority within <b>three months</b> after the date for the automatic transmission of information	

*Appendix 4*

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# Verbatim Notes

**VERBATIM NOTES - SECOND MEETING  
TUESDAY, JANUARY 17, 2017**

**PRESENT**

Mr. Colm Imbert	Chairman
Mr. Faris Al Rawi	Member
Mr. Stuart Young	Member
Dr. Tim Gopeesingh	Member
Dr. Bhoendradatt Tewarie	Member
Mrs. Paula Gopee-Scoon	Member
Mr. Clarence Rambharat	Member
Mr. Michael Coppin	Member
Mr. Gerald Ramdeen	Member
Mr. H.R. Ian Roach	Member
Mr. Taurel Shrikissoon	Member
Miss Keiba Jacob	Secretary
Miss Candice Skerrette	Procedural Clerk

**ABSENT**

Ms. Marlene Mc Donald	Member
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**CHIEF PARLIAMENTARY COUNSEL**

Ms. Ida Mariana Eversley	Deputy CPC
Ms. Donna Marie Neaves-Ronstant	Legal Counsel II
Ms. Paula Hender	Legal Counsel I

**OFFICE OF THE ATTORNEY GENERAL**

Ms. Vyana Sharma	Legal Counsel II
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**MINISTRY OF FINANCE**

Ms. Nnika Watson	Senior Legal Officer
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**Mr. Chairman:** I now call the meeting to order. So I would like to right now invite – I am told that I have to confirm the Minutes. So does everybody have a copy of the Minutes? Well, this is very straightforward so to deal with the quorum issue, Dr. Gopeesingh, we agreed it would be three members inclusive of myself and one member from each House. Okay? All right? Could somebody move the confirmation of the Minutes and seconded?

*[Confirmed by Mrs. Paula Gopee-Scoon]*

*[Seconded by Mr. Michael Coppin]*

**Mr. Chairman:** Okay, Minutes are confirmed. Could you call in the public servants, please? We have people there from the Chief Parliamentary Counsel's department. I had

asked for an attorney from the Board of Inland Revenue to attend to advise us on legislative drafting matters. All right, let us start, I think with some of these clauses, we do not need the public servants. But what I am not seeing, where is the list of amendments? Has that been circulated to Members?

**Miss Skerrette:** Yes.

**Mr. Chairman:** Do we have a revised Bill, consolidated version? Because we really should not be doing this without that.

**Dr. Tewarie:** Is that this?

**Mr. Chairman:** That is the old one. Miss Jacob, where is the consolidated version with the amendments? The consolidated version of the Bill with the amendments? [*Discussion with Miss Jacob*] Members, we will take a five-minute break.

**10.11 a.m.:** *Meeting suspended.*

**10.20 a.m.:** *Meeting resumed.*

**Mr. Chairman:** It is a lot of confusion so it will slow us down by my estimation by approximately one day but it is all right, I understand what has happened. There is a consolidated version with all the amendments that has not been circulated to members because apparently there were some typographical errors and the Parliament chose not to circulate that to you all. Okay? So I am resolving all of those issues. But what we are going to do is still go through the Bill clause by clause. It is not going to be easy but we will try our best to make sure everything is harmonized so that we do not make mistakes.

**Dr. Tewarie:** Are we formally in the meeting now?

**Mr. Chairman:** Yes.

**Dr. Tewarie:** Chair, if we are going to address this issue as a JSC, we can only address one version of the Bill and that is the version of the Bill that has been referred to us by the Parliament, and we need to know what that version is. We will have no objection because we do not want to interfere with progress to accommodating other documents that would help us in going through whatever the Bill is that we are supposed to be going through, but we can only deal with one version of the Bill, plus whatever other documents we are prepared to accommodate. That is all I would like to say.

**Mr. Chairman:** You remember I told you when I discovered you were a member of this Committee, there was a look of pain on my face. [*Laughter*] What has been referred to this Committee is the original version and that is all that could possibly have been referred to the Committee because I withdrew the Bill from the committee stage and referred the original. That is not the problem. The problem is to understand what we are dealing with because there are multiple documents which are contradictory which is what Sen. Ramdeen pointed out to me and he is quite correct. So I am trying to resolve the other documents that are going to assist us in our deliberations but that is not what the subject matter of this Committee is all about. Okay? So do not worry about it. It is not my first rodeo, Dr. Tewarie.

**Dr. Tewarie:** All I would say is that I do not mean to, in any way —

**Mr. Chairman:** I did not think you would.

**Dr. Tewarie:** — to cause you pain or cause you to reminisce but I must insist that we deal with the Bill that was referred here.



**Mr. Chairman:** Do not worry about it, we will.

**Dr. Gopeesingh:** Chairman, was this the original Bill that was sent to us?

**Mr. Chairman:** Unchanged.

**Dr. Gopeesingh:** Unchanged.

**Mr. Chairman:** This is what was in September yes, September, 2016. Okay?

**Dr. Gopeesingh:** Right. From the Opposition's perspective, we have some overarching issues in terms of what has been presented to us. The agreements with the Bill here, the agreement in this, and there are some major overarching areas which we need to have clarified. We are working towards a final conclusion and working expeditiously and we support the movement forward. But we knew that you all indicated that there were certain timeframes and deadlines to meet and is it possible that the Committee could have the privilege of having these deadlines given to us if you said that these were the deadlines by the end of February, the end of November, whatever. Were these deadlines in writing and if so, if we can have some information on that so we know where we are in terms of the validity of it and we work towards that?

**Mr. Chairman:** Sure, I have no objection to that.

**Dr. Gopeesingh:** That is the first issue.

**Mr. Chairman:** But you know that I was going to give you them right now. I was going to give you the deadlines right now.

**Dr. Gopeesingh:** Okay, but we would like to see it if it is in writing.

**Mr. Chairman:** No problem, I can circulate that to you. That is not a problem.

**Dr. Gopeesingh:** Well, colleagues, let me just say at the beginning, I had the privilege and honour of serving on joint select committees with the Chairman in the past. We have had very cordial meetings, very good meetings, we brought on good law and we will continue to cooperate to bring on good law. I think at one time, we were in Government and you were in Opposition and whatever. So that is the first thing.

The second issue is there are other countries which have gone through this piece of legislation and they have in fact signed on to something that is different from what is being brought to us as a country and it would be good for us to have an understanding and appreciation in which countries like Jamaica, Barbados, Belize, et cetera, if we can have that information so that we can study that in comparison or contrast to what we have here.

**Mr. Chairman:** All right, so those are your two issues?

**Dr. Gopeesingh:** Two issues so far.

**Mr. Chairman:** All right. I really wanted to get straight into the consideration of the Bill clause by clause but since we are delayed and we are waiting on some documentation, I would allow members of the Committee to make any preliminary statements they want to make on procedure or any information that they require. So Dr. Gopeesingh has told us – yes, Minister Young.

**Mr. Young:** Just to clarify for myself here, what is it that you are proposing we go through clause by clause?

**Mr. Chairman:** As a Committee, we are legally bound to go through this, the original version of the Bill. That is what was referred to this Committee, the original version. So

what is the problem?

**Mr. Young:** What is the Government's position?

**Mr. Chairman:** No, well as we get to a clause where an amendment has been proposed, we will deal with it in that way. We will indicate what the amendment is.

**Mr. Young:** Subject to what everybody thinks or what my friends on the other side have to say, would it not be a more prudent use of our time if they are provided with what was the final marked up version? They have not seen it before is my understanding. Right?

**Dr. Gopeesingh:** No, we were not – yeah.

**Mr. Young:** Right, so if everybody in here were provided with that, can we not – I mean whatever exists –

**Mr. Al-Rawi:** Pre-reading.

**Mr. Young:** Well, yeah, exactly so you have pre-reading and we can all agree that that is the version that we will look at, presumably not today because you all have –

**Mr. Chairman:** No, no, we cannot. We have to look at this and then as we reach a clause where an amendment is proposed, we propose the amendment. That is how we have to do it. We cannot do it any other way.

**Dr. Tewarie:** I think the Chair is correct there.

**Mr. Chairman:** Okay, we cannot do it any other way and I do not see any problem anyhow. No, it does not pre-empt anything.

**Dr. Gopeesingh:** Chair, in relation to what hon. Minister just indicated, Stuart Young, what you have made amendments to in Parliament, we can use that in conjunction with when we are examining the clause, so you can give that information and we can use that in relation to the clauses that we are going to examine but we have to examine these clauses here and then use what you have done in Parliament. If you want to proffer that, we can use it to compare and then move forward.

**Mr. Chairman:** Right and that is the proper procedure. I was not talking about that, I was talking about any views anybody has. You want to see correspondence which speaks to dates, no problem, and you want to know about other jurisdictions that are faced with a similar challenge and have approached this in a different way.

**Dr. Gopeesingh:** Yeah, Belize, Barbados, Jamaica.

**Mr. Chairman:** No problem.

**Dr. Gopeesingh:** And the last point I want to make – sorry, I apologize to you and to the team. Well, we are a joint select committee and we will be looking to hear the views of some organizations.

**Mr. Chairman:** Dr. Gopeesingh, Dr. Tewarie has already raised that issue formally in writing. Okay?

**Dr. Gopeesingh:** Okay, good.

**Mr. Roach:** I was just taking on what Dr. Gopeesingh was saying earlier on in terms of making comparison with other jurisdictions. We have to be careful with that because for instance, Belize, I know for sure, is not going the route that we are taking here. Belize allowed their financial institutions to directly deal with it which probably would have been Option 2 so that does not apply in this instance, so comparison with them is not a

proper –

**Mr. Chairman:** Very good, Sen. Roach, I am glad you are aware of this. I was going to ask the Attorney General, when we finished hearing what everybody would want us to do, to address that issue because he has addressed it with me. There are fundamental differences in the way other countries address this matter. Some have not even signed agreements with the United States and so on; some have. So the legislative approach flows from how you deal with the agreement but I will let the Attorney General address that in a little while.

**Dr. Gopeesingh:** May I just respond to Sen. Roach on the issue. Sen. Roach, the issue is we are not going to look to bring our legislation in relation to what Belize has done but it would be very informative for us as a Committee to see what other countries have done, and it is in that context that is why I am asking for the agreements made by Barbados and Jamaica and Belize and so on, for us to understand and appreciate as a country where they went and we have to see as a country where we are going.

**Mr. Roach:** Yeah.

**Dr. Gopeesingh:** We may differ from them but it is important to have –

**Mr. Chairman:** Dr. Gopeesingh, I think you have made your point.

**Dr. Gopeesingh:** Right, good.

**Mr. Chairman:** Sen. Ramdeen.

**Mr. Ramdeen:** Thank you, Chairman. I would like to agree with Minister Young to the extent that I do not think – we have a limited period of time to do this and I do not think it would be an efficient use of time, speaking for myself, that I understand procedurally that the original Bill is what we have to look at. I have not looked at the version which is the version just before the version that you are going to distribute and having looked at the table of amendments, it is difficult and it will be difficult for me, I am speaking for myself, to now see it for the first time and having to then go through and indicate to you these are our difficulties or these are things that we should want to agree to or we do not want to agree to. Because the version that I looked at, like I said, was the version before this version, there are many –

**Miss Jacob:** It is the same version.

**Mr. Ramdeen:** Well, I am being told now it is the same version. If this is the same version, this is not the last version that Minister Young is speaking about because this version, if you look at it, the numbering is off and when you go to try and determine whether the new clauses and the amendments that are made, not only by the new clauses, but also by amendments that are made as a result of this, we will run into serious difficulty if we do not have the time to actually study it and come back to you and be able to say –

**Mr. Chairman:** Yes, but I will address all of that as we go along.

**Mr. Ramdeen:** Well, I am just saying that it is going to be difficult for me to contribute to that.

**Mr. Chairman:** I understand what you are saying but I will deal with that as we go along. Okay?

**Mr. Ramdeen:** As you please.

**Mr. Chairman:** Right. Sen. Shrikissoon, do you have anything to say?

**Mr. Shrikissoon:** Chair, I thank you for the updated version of the Bill. I have read it a couple of times but just as Sen. Ramdeen was saying, the numbering was off so it did present some challenges. I would like to also say that it is my first JSC so I am so guided and I thank you for the experience.

**Mr. Chairman:** No problem. Sorry, Dr. Tewarie.

**Dr. Tewarie:** No, you said when Dr. Gopeesingh was making general suggestion, you asked if there were others. I would like as we go through the clauses to identify any and all laws that are affected by any of these clauses.

**Mr. Chairman:** No problem. That is fine.

**Dr. Tewarie:** And on the clauses that have to do with reciprocity, we would like to interrogate some of those and determine whether reciprocity is, in fact, a requirement of the agreement.

**Mr. Chairman:** No problem, fine. Yes, Dr. Gopeesingh.

**Dr. Gopeesingh:** Appreciated, Chair. One other, the issue with the Board of Inland Revenue, we having to legislate to make retroactive all the legal acts done by the Board of Inland Revenue. Is it possible we can get some information related –

**Mr. Chairman:** On what those were?

**Dr. Gopeesingh:** What those were and if there are any legal issues related to some of those.

**Mr. Chairman:** Sure, yes.

**Dr. Gopeesingh:** And one more on that is the laws that are going to be affected for – this Act would impact upon a number of laws and how these laws will be impacted upon by virtue of the passing of this. Thank you.

**Mr. Chairman:** No problem. I think the people who are taking notes, Miss Jacob who is taking notes, we have the CAT Reporter and we have somebody else taking – we have CPC taking notes, you taking notes, so we will try our best to capture all of the points that have been made and all of the requests for information that are being made.

Now, I just want some clarity. We have in front of us the original Bill. Everybody has one of these?

**Members:** Yes.

**Mr. Chairman:** Right. We have something which is a creature of the Parliament called As Amended in the Committee Stage of the HOR on 12<sup>th</sup> December, 2016. Does everybody have that document? And then there is supposed to be a third one which is what the consolidated Bill would have looked like if we had completed the committee stage. Does everybody have that the one?

**Members:** No.

**Mr. Roach:** What? The 12<sup>th</sup> of December?

**Mr. Chairman:** No. What had happened, let me explain. We stopped the committee stage before the end. Now, the procedure in the committee stage is that you deal with amendments to existing clauses first and when you complete all amendments to existing clauses, you then deal with new clauses to be inserted. So we did not complete the examination of existing clauses so we never got to the point where we were inserting new clauses. So what the Parliament did is produce a consolidated version that does not have

the new clauses that are proposed but the CPC's office had prepared a version which contemplated completion of the committee stage which has everything in it. So I would like that document also to be circulated to members. So, Miss Jacob, I believe the CPC has access to that document. Can we get it now? We take another five-minute break and circulate that document to members.

While that is being done, actually we do not have to take a break, let the Attorney General now address that issue with respect to how other countries have treated with FATCA. Are you prepared to do that? Okay, well go ahead.

**Mr. Al-Rawi:** Morning, colleagues. The comparison of jurisdictions is driven by the point of origin with respect to negotiations with the United States of America as laid upon the construct of how their jurisdiction laws work. There are two positions with respect to how people have been exchanging information. One is where jurisdictions have a tax information exchange law as Trinidad and Tobago does and as one other jurisdiction only has. All of the other jurisdictions do not use a tax information exchange law but we have, since 1989. In the other jurisdictions, they use a double taxation relief or double taxation agreement and what they have done is to amend their inland revenue version of laws directly so that information flows from their BIR legislation.

Where we stand apart is that we have actually got in operation, since 1989, a tax information exchange Act, so I will produce a schedule which I have already which will show all of the jurisdictions that actually use tax information exchange legislation. For instance, I noted that the Opposition had referred to Barbados. Barbados does not use tax information exchange legislation; it uses a treaty, and it is equivalent of the Board of Inland Revenue, to exchange information.

The second material point to note and Dr. Gopeesingh was very correct together with Sen. Roach, in observing. It was open to the Government, historically, to stay clean out of this issue. All that was required was the banking sector to comply with the US banking requirements by agreement and what was open to the country then was to have the banking sector engage in the exchange of information directly from the each bank to the US competent authority, and what the bank would have done is to write to all of its customers and say, we are now going to exchange this information, do you agree or not and if you do not agree, please close your account, here is your money, have a nice day.

The Government, in 2013, come forward, agreed to sign an IGA, an Inter-Governmental Agreement, which bound us along the path of having central Government as a competent authority, the Board of Inland Revenue, getting to the dance.

**Dr. Gopeesingh:** Stick a pin. Is there a difference between initialling the agreement and signing the agreement? As Attorney General, you might know that.

**Mr. Al-Rawi:** Sure, I will explain that. The United States had originally set a very close deadline. It was 2014. It had set a hard cast deadline for people to execute this IGA. Because jurisdictions were taking so long to execute the IGAs, they came up with a method of extending the compliance date by saying, well, if you initial the agreement, then you agree to substantially agree with it and you agree that you will perfect the process going forward.

So once you initialled the agreement, you were deemed to have been in substantial

compliance because jurisdictions were alleging, look, we have got to operationalize this law, we have got to take it to our Legislature, et cetera, can we have some guidance on how this thing is to be operationalized? And the United States Department of Treasury produced a large handbook on how you comply with FATCA, and the Government of Trinidad and Tobago, in 2014, had the Central Bank and the CPC's department engage in going through that handbook to see how it was done. So once you initialled that agreement, you are bound to follow the course of the agreement.

In our particular instance, the approach which the last Government was engaged in and the present Government had started originally with, prior to receiving objections from the Opposition, we were going to use the tax information exchange umbrella to take all requirements for exchange of information under that umbrella. Because the original law, the 1989 law, said look, you can bring any agreement, the US agreement, an agreement with France, whomever it may be, put it as a schedule by way of order and then have you bound under this umbrella law.

That would have taken care of the Government's obligations beginning in 2011 because the last Government agreed to join the global forum and bound itself to comply with tax information exchanges with the entire global forum which is 15 other jurisdictions, but unfortunately, that process did not advance and the deadline is April of this year, to have completed 15 other agreements and no work was done. *[Interruption]* Fifteen other IGAs just like the US with 15 European jurisdictions and Asia-Pacific and but no work was done.

So there is this original TIEA, the 1989 law, allowed for each of those 15, together with the US IGA, to be parked under that. What this Bill does is that it completely cuts out all other jurisdictions and it focuses only on the US and the Government agrees that it should do that. It was an observation by the Opposition, because what we will have to do is we will have to bring individual TIEAs for the global forum. What we have done on the global forum, just to let you know, we have gone to them, we have gone on our knees, we have said to them, listen, we have lost time, can we do a multilateral agreement instead. So we do one agreement, one IGA, to satisfy the 15 jurisdictions as opposed to doing 15 individual ones which is unachievable before April.

So just to tell you. This is now on the TIEA which is what we are amending. So the amendments that you will see in the Bill: one, remove the concept of Minister because that was an observation made by the Opposition, confine it only to the Board of Inland Revenue; two, it removes the references to other Orders, et cetera, and then what it does is that it divides out the 1989 to 2016 law period apart from the 2016 go forward period. So it treats the two IGAs separately.

And what it does inside of that is to just use the US terms and definitions which the IGA manual says you must do which was in the existing law, in the 1989 law and as the new IGA says, and we have taken on board the other observations which the Opposition sent to the bankers' association because a draft explanatory note and other information went to the bankers' association. We did not receive it but we asked for a copy of it from the bankers' association, they gave it to us and then we took the observations of the Opposition there and we made further amendments which resulted

in the work at the committee stage which would be shown in the last version of the Bill. So that is a very short summary of some of the rationale as to why we are where we are and how we went to where we go.

**Dr. Gopeesingh:** Chair, through you, to the Attorney General, the first issue is the question of the other 15 jurisdictions – I am now getting the feeling it is the first time I am hearing about that – so if this agreement is signed between Trinidad and Tobago and the United States on this IGA, what is the relationship between the other 15 countries that you have been speaking about?

**Mr. Chairman:** All right, let me just clarify certain issues. Okay. It is not just that the former Minister of Finance initialled the agreement, he went further and he reached an agreement in substance with the US Treasury on the form of the Inter-Governmental Agreement between Trinidad and Tobago and the United States. That is a step in the process. If you do not have a signed Inter-Governmental Agreement, you can avoid sanctions by reaching what is called an Agreement in Substance with the US Treasury which is what was done in December 2014 by Larry Howai. So he actually entered into an agreement with the United States that the Government of Trinidad and Tobago will sign the model – what is it? 1A or something. The model 1A Inter-Governmental – he went beyond the initialling. He said I agree that Trinidad and Tobago will sign this agreement in this form and as proof of that, I am initialling the Model 1 IGA.

The other matter that the AG raised is completely separate and apart from this.

**10.45 a.m.**

The Inter-Governmental Agreement on Tax Information Sharing is between Trinidad and Tobago and the United States. It has no relevance to any other country in the world. The reason why we are pushing ahead with this matter is that this is the most pressing matter in the world, in terms of being compliant with sharing of tax information. The United States is not the only country that is interested in this.

We agreed to join in something called the Global Forum. Again, that would have been 2011. So under the former administration, we as a country agreed to enter a group called the Global Forum. As part of our entry into that group we committed to share tax information with the group of countries that make up the Global Forum. Yeah. We are bound by it. In fact, one of the first things I had to do when I was appointed Minister of Finance, within the first week, was to seek an extension of time from the Global Forum because we were not complaint, because the Global Forum requires us to share tax information with all of these countries. Only 15? I thought it was a little bit more, but it does not matter.

**Dr. Gopeesingh:** Can we get the list?

**Mr. Chairman:** Sure, sure and we could give you all the documentation to show you that this was done. So that, when we dodged this bullet, if I could use that terminology, with respect to the US and get that out of the way, we still have 15 other bullets coming at us from the 15 members of the Global Forum.

Now there is a different way of solving that problem, rather than go through this convoluted process of individual agreements with the 15 countries. They have an omnibus agreement, which when you sign it you are compliant with everyone. We

would then have to incorporate that agreement into our domestic law in the same way we are incorporating the FATCA Act. That was a point of contention, we took it out. We had attempted in this legislation that is before this Committee, to give the Government the authority to go and enter into all those other agreements but that was an objection. We did not want to waste time arguing about that so we have taken that out. So that all we are dealing with is this arrangement with the United States but we also have coming at us another problem from 15 other jurisdictions, mostly European countries.

**Dr. Gopeesingh:** Just a short question. How many agreements that we are aware of between the United States and us? Are there two agreements, three agreements? Because we speak about IGA 1 or IGA 2.

**Mr. Chairman:** It is options.

**Mr. Al-Rawi:** The Cabinet in 2013 was invited to select a model for IGA, Inter-Governmental Agreement. There was Model 1, there was Model 1A. Minister Howai brought two Notes to Cabinet, which committed to Model 1A, which is a reciprocal arrangement. In the Model 1, it is a unilateral giving. In Model 2, the US gives and you give. So the Cabinet considered on two occasions in 2013, this is the model we are going to go to and they gave the green light to Minister Howai to sign the agreement and the form to indicate that is the model form now. You understand the concept of model legislation? That is it, you cannot change it. That is what has been passed by the US Senate. So the last Cabinet said: this is the form we are going with. So we are bound by that IGA. So that IGA is the one which finds itself as a Schedule to the legislation, Model 1A.

**Mr. Chairman:** Model 1A has reciprocity in it.

**Mr. Al-Rawi:** The second option, which has the reciprocity. So that finds itself in an immutable form, cannot be changed because it is what the governments themselves, 2013, the US and Trinidad, agreed to as the model framework legislation that they will be bound by.

Just to explain. Let me explain why the Global Forum was originally relevant and is no longer. The Opposition's publication said: look, we do not want to have any other IGA, let me use that term, Inter-Governmental Agreement, just find itself as legislation without Parliament's scrutiny. Now, the design of the TIEA provided for that, since 1989. Anytime you have an IGA, you bring it in as an amendment and it is subject to negative resolution. So we have parliamentary scrutiny. But there was such a strong position from the Opposition that: look, we want to have Parliament scrutiny. We want to have a full debate on this thing only. We want the US position only. We said: right, insofar as you have to have Parliament scrutiny anyway for the Global Forum, one we just bring a fresh Bill to cover Global Forum. If it is Japan we will bring a fresh Bill to cover Japan, and that also allows us now to not find ourselves bound to use a tax information exchange Act. Because, remember, we are bound by this TIEA and not the method which Barbados uses or other people use because we do not have a double taxation agreement with the United States of America.

What we have with the US is only a TIEA. We do not have a double taxation agreement with them. We have double taxation agreements with other jurisdictions. So



it allows us to, perhaps, allow the Board of Inland Revenue approach, which is what Barbados used, to operate in other instances.

**Dr. Gopeesingh:** AG, I appreciate your elucidation on it and it would be helpful for us to have a look at the double taxation treaty that the other countries signed.

**Mr. Al-Rawi:** I would give you a list. We prepared a list of all jurisdictions that have either double taxation or TIEA, so that you would know when you are comparing apples with apples. Because if they do not have a TIEA, well they are oranges.

**Dr. Gopeesingh:** And is it possible that we can have an understanding of what they would have signed?

**Mr. Al-Rawi:** Well, what they would have signed is either Model 1 or Model 1A and it is on that list as well. So they executed Model 1 or Model 1A. There are only two choices, unilateral disclosure or equal disclosure.

Now, there is something that I need to point out to members. Dr. Tewarie had said something just now, which was quite important. He said that certain jurisdictions have—he wanted to know which laws were going to be affected as a result of this. The marginal notes of the Bill will show the laws that are being affected. They are really quite simple. One, it is the Constitution; two, it is the Data Protection Act; 3, it is the Board of Inland Revenue legislation. That is with the secrecy provisions in section 4 of the BIR Act, about six sections in the Data Protection Act, which deal with sensitive and personal information. And, of course, section 4 of the Constitution, which deals with this privacy issue. Right?

The point inside of that, which has been a contention in the rest of the world when you are comparing apples with oranges, is that the United States of America does not have data protection laws. So, many jurisdictions like Canada, for instance, says well I am not doing with you, the US, because you do not have data protection laws, but the fact is they still had business shut down in the smaller jurisdictions. Belize, Guyana, Jamaica, had certain losses, et cetera, Haiti. Quite a few countries just lost it. So, if we are looking to reciprocal treatment of information, it is not going to happen because they are not bound by data protection laws. It is either you do or you do not approach and the consequence, which has been demonstrated in the rest of the world, is if you do not, you would just lose your business.

**Dr. Gopeesingh:** If you do not what?

**Mr. Al-Rawi:** If you do not commit to the FATCA approach, you will lose your business. So we are not in a leveraged negotiating position, and one has yet to see what the new face of US negotiations looks like because we are all speculative about it.

So, the point is the President of the Bankers Association put it to me this way, there is not going to be evidence of the sky will fall catastrophe. She put it this way: it is death by a thousand cuts. You will lose piece, piece, piece, piece, piece, piece, “whap” you are gone. So we are not in a great negotiating position but that is the real position. So when you are looking to other jurisdictions, bear in mind that we are not in similar circumstances.

**Mr. Ramdeen:** I am happy that at the outset you indicated the fact that we had TIEA legislation since 1989. Am I correct to assume that the difference between the models that

we are adopting now in FATCA, the difference between what was happening between 1989 and now is that you are going to have automatic exchange of information henceforth, which is the difference between the exchange of information before because it was just done unilaterally as a request is made.

**Mr. Al-Rawi:** That is correct.

**Mr. Ramdeen:** Thank you. I am — *[Interruption]*

**Mr. Al-Rawi:** Also if I could just add, sorry to interrupt.

**Mr. Ramdeen:** Sure, sure.

**Mr. Al-Rawi:** It is perfectly correct, save that since 1989 the Board of Inland Revenue has been spontaneously exchanging information.

**Mr. Ramdeen:** Agreed.

**Mr. Al-Rawi:** Which is an issue in and of itself.

**Mr. Ramdeen:** I just wanted to raise one thing for the Chairman and the other side to consider. If it is that we entered into these agreements, which are Executive acts, government to government, and these are treaty agreements and we had legislation. We are uniquely one of the jurisdictions that had legislation for the exchange of information before, why is it and I know the first answer that, perhaps, you would throw back at me is that your administration entered into these agreements. But would it not be a simpler route for us to go the route of using the 1989 legislation, validating what would have been done between 1989 and now, and using that legislation to do what we seek to do by this route in an easier way?

**Mr. Al-Rawi:** That is exactly what the original Bill did. So the original Bill that we brought to Parliament, one, sought to validate the acts of the BIR which none of us apparently knew about.

**Mr. Ramdeen:** I accept that.

**Mr. Al-Rawi:** Two, it incorporated the IGA as a second schedule because you had the first IGA in 1989 right there, which was actually 1990, sorry, there. That is exactly what the first Bill did. So if you want to see what it looks like under that submission it is the original Bill, which was laid in Parliament, save for, perhaps, the tweaking of saying the Board of Inland Revenue will be the authorized representative of the Minister.

**Mr. Ramdeen:** Apart from that, which is here and there, I do not think that — the original Bill I think you are referring to is what the Chairman has before him and I think that version of the Bill, when you look at what the 1989 Act provides for, I think the 1989 Act would have just needed tweaking for the purposes of exchanging the information automatically and that would have been it, and the validation. But the original Bill that was presented as to what the Chairman has there, is a totally different version to what we have.

**Mr. Al-Rawi:** If I could just explain.

**Mr. Ramdeen:** Sure.

**Mr. Al-Rawi:** The architecture of the 1989 Bill has some specific clauses which referred to what came from the 1990 IGA version. So there were some definitional and other positions unique to the 1989 position. Because the 2016 version was so much more expansive and a very much updated version of where the world is at today and what the

US wants, there was need to put in the primary legislation a lot of definitional changes, which would have been convoluted to inter-splice in the 1989 sections.

**Mr. Ramdeen:** AG, I do not want you to go too far off but all I wanted to ask you, is it necessary to have, and I am using this on the basis, can we revoke what the previous Government did and go back to 1989?

**Mr. Chairman:** The problem is a problem with time. If we had a lot of time, like if we had a couple of years, of course, we could do that. But the way the United States operates like for example, I have received a letter from the United States Treasury this month asking me: are you on track to complete the passage of this legislation by February? I am crafting a response right now. The way they operate, they do not really care. You know? You have agreed to go down a certain road, if you decide to stop and reverse now they will view that very adversely. They will say you are not serious, and that is the problem. Yes, we could if we had a United States that would say all right Trinidad and Tobago we will give you a "bligh". You know, go back, talk to your parliamentarians, think about it, talk to the country, whatever, and if you want to do it in a different way, no problem. We will give you two years. The United States is not doing that. They just have a kind of robotic computer approach. They check, okay Trinidad and Tobago is supposed to be here at this point in time. They write you. Are you here? You are not; not compliant. Okay. That is our problem. All right?

**Dr. Tewarie:** I would like the AG to confirm just one thing, which is that we do not in fact have a double taxation treaty with the US?

**Mr. Al-Rawi:** Correct.

**Mr. Chairman:** We do not. It is all right Dr. Tewarie. I am surprised too. I would have thought it is the first country. That is something we would have to look into. Ida, is there to your knowledge any double taxation with the US?

**Ms. Eversley:** No.

**Mr. Chairman:** I would have to look into that and find out why. I find it very strange because we just had Korea here and Minister Gopee-Scoon very kindly deputized with me.

**Mr. Al-Rawi:** Just to tell you I am not surprised because you must remember the US wants taxation in both places. A feature of the double taxation is usually double taxation relief and what they say, which is why a lot of people have been giving back US passports, is we want our tax no matter what. You want our passport, we want your tax. So that is why a lot of people who became naturalized US citizens have been giving back their passports particularly from the European countries.

**Mr. Young:** The IRS, since they are supreme, they will tax you. You would tell me you pay tax – *[Interruption]*

**Mr. Chairman:** On your worldwide income. That is what they do.

**Dr. Gopeesingh:** With a double taxation treaty policy?

**Mr. Young:** Double taxation is a treaty. The US does not have double taxation – *[Interruption]*

**Mr. Al-Rawi:** The core concept of a double taxation treaty is to get relief. So the relief is look, I am already paying tax in Trinidad so give me a relief over here so that I do not

have to pay twice. The US is the opposite. They say we do not care if you are paying in the Cayman or in Trinidad, we want tax here too because you have our passport.

**Mr. Roach:** It is so significant and severe that if you are an American citizen and you are living outside of America for years, working, with no intention of going back, once you remain an American citizen you are supposed to file taxation and pay your taxes.

**Mr. Young:** So FATCA now allows them the legality now to go into other people's systems and get the information to do what their law already is, which is you have to pay tax to the IRS.

**Mr. Chairman:** All right, gentlemen and ladies, let us see if we all have the documents. We are supposed to have a consolidated version which you just got, which would have been the final form of the Bill had we completed the committee stage, with all the new clauses inserted. Then you would have a rather confusing document called "as amended in the committee stage on December 16", which does not have the new clauses in it. Then you have the original Bill. Then you should have a list of amendments. Can I just confirm everybody has this? We have the list of amendments, original Bill, something the Parliament produced after the aborted committee stage and the final version, which would have been if we had – *[Interruption]* Could we have no crosstalk here please? I am not blaming anybody, you know, I am just dealing with reality. So the final version we now have, the whole committee has it. Okay? So let us attempt now, we would try, if we fail we would have to use another method.

**Mr. Al-Rawi:** Chairman, would you permit me just to explain, in two minutes flat –

**Mr. Chairman:** Sure.

**Mr. Al-Rawi:** – this final version, which was just sent off, which does not have any identification, call that CPC's version. Okay? This CPC's version is with a bit of manuscript handwriting included in it, to show you where we did some renumbering, et cetera, because some of the numbering was off.

In general, what it does, it removes any reference to the TIEA applying to any other IGA except the US. So it is only going to be 1989 IGA and 2016 IGA. So those are the amendments in the preamble issues.

Secondly, it materially in clause 4, chops off the definitions. You will see a whole set of strike off of definitions there. It is because we take those definitions and we use definitions under the 1989 part. We put the definitions that came from the 1989 law, which is what you are seeing chopped off here. And then in the 2016 part, we use the definitions in the 2016 part. So we have separated out IGA 1989 from IGA 2016 and that is why you see a whole chopping off of definitions.

When you see a strike off of Part II of the Bill, what we are doing here is we are removing the bit to include any other IGA. So you see, for instance, in 5 where:

"The President may, by Order, declare a tax information exchange agreement specified in the Order to be a declared agreement..."

All of that is out. If you want to bring a declared agreement, bring a law with it, which allows Parliament to have scrutiny over it.

"Powers of the Minister", all of these things, out, out, out. "Disclosure" out. Part II, which was Part III is now the 1989 TIEA and then Part III, which was Part IV is going

to be the 2016 IGA. What we did in Part II as renumbered, that is the 1989 position, is we removed the definitions that did not make sense again. We have clarified a few things. Like instead of saying Treasury Department, we put the correct person as is now called the Secretary to the Treasury.

Then when we went down we had to include, if you see at clause 8, for instance, we are actually putting in the laws that are going to be infringed, which is, as I told you, the Income Tax Act, the Data Protection Act, et cetera –

**Mr. Ramdeen:** With respect to this particular point, the Chairman had indicated that we had not gotten to the stage of the new clauses, but the document that is before us now includes the new clauses as well. So I just wanted to make that point because the Chairman had made – *[Interruption]*

**Mr. Chairman:** Listen, I am fully cognizant of the concerns of everyone. I have listened to everybody. I understand what Sen. Ramdeen is saying, that he did not receive this document. Am I correct to understand that that is what you are saying?

**Mr. Ramdeen:** No, I am just making a point.

**Mr. Chairman:** No, I am talking previously.

**Mr. Ramdeen:** That is correct. I did not receive this document previously. I think at the outset, Chairman, you had indicated that we had not reached in the committee stage the point of putting in the new clauses.

**Mr. Chairman:** Correct, quite correct.

**Mr. Al-Rawi:** But the document that we have before us now.

**Mr. Chairman:** Does have new clauses.

**Mr. Ramdeen:** Does have the new clauses that were proposed to be made and laid within Parliament.

**Mr. Chairman:** Absolutely correct.

**Mr. Ramdeen:** – on January 06<sup>th</sup>, were not laid as yet.

**Mr. Chairman:** You are right. So what I want to do is let us try and proceed. If we get to a clause that you have not seen before or you find is complex – *[Interruption]*

**Mr. Al-Rawi:** Chairman, I am sorry to interrupt. Anyway, I was giving an architectural view but what will be very helpful, I think to members all, we had prepared a table, which was published in the newspapers.

**Mr. Chairman:** Yes, I asked for that to be circulated to everyone. Did you all get that?

**Mr. Al-Rawi:** That table will show the original Bill and the amendments as we have come forward and there were some issues which the committee could consider, which the Opposition had made to the Bankers Association as yes or no issues.

**Mr. Chairman:** What I would like to do, Attorney General, let us start. Okay? So let us go to clause 1. We are using the original Bill, clause 1 of the original Bill.

**Dr. Gopeesingh:** I just want to look at the Explanatory Note, just to give an appreciation and understanding.

My first area of concern under the Explanatory Note is this Bill seeks to implement certain taxation information agreements entered into between Trinidad and Tobago and other states. Is that so or?

**Mr. Chairman:** No.

**Mr. Al-Rawi:** No, we are striking that off.

**Dr. Gopeesingh:** That is why I wanted to know.

**Mr. Chairman:** You do not have a corrected Explanatory Note. Am I correct? That is what I am addressing right now. In the third version is there a corrected explanatory note?

**Ms. Eversley:** In the CPC's version, yes.

**Mr. Chairman:** I did not get that.

**Mr. Al-Rawi:** First paragraph other States, United States.

**Mr. Chairman:** No, problem, cool.

**Dr. Tewarie:** You see Chair, I think it would be very helpful if we looked at the original Bill; that is to say in the Preamble and look at the Preamble here.

**Mr. Chairman:** No, problem. That is fine.

**Dr. Tewarie:** So that way you what you are doing.

**Mr. Chairman:** Okay, so we are going to start with the Preamble. All right? So let us go with the Preamble. No, but hold on. That does not address the point that Dr. Gopeesingh raised.

**Dr. Gopeesingh:** About the Explanatory Note.

**Mr. Chairman:** I am talking about the explanatory notes. Has the CPC done a corrected version of the explanatory notes?

**Dr. Gopeesingh:** No, no.

**Mr. Chairman:** I know the answer is no. It is a rhetorical question. So what Dr. Gopeesingh wanted to do was to look at the revised explanatory notes, which do not exist.

**Ms. Eversley:** Explanatory notes really do not form part of the Bill. So we would not have amended the explanatory notes.

**Dr. Gopeesingh:** But if you amended parts of the Bill, the explanatory notes will have to be amended as well.

**Mr. Al-Rawi:** Dr. Gopeesingh, because we are in the Committee to decide, that Explanatory Note would have been a moving target running back and forth so we did not pour attention to fix that one yet. We started with the Preamble move forward. The Explanatory Note is essentially a précis version of what policy is. So we could attend to that after because it is really just a backfill exercise on it.

**Mr. Chairman:** Yes, let us do that. Okay? All right. Finally, let us go to the Preamble, gentlemen and ladies. All right. So, okay, let us go to the Preamble. So the Preamble in the original Bill will be amended by the proposed amendment to remove the words "other States" and include the words "United States of America". Is everybody seeing that? [*Assent indicated*] Right. So that is clear, right. Any objection to that?

**Dr. Tewarie:** Where are you seeing that?

**Mr. Chairman:** Look at this document. So you see on the third line "other States" gone and the "United States of America" put in. I would ask you all to disregard the copy circulated by the Parliament that is dated 12<sup>th</sup> December, 2016, put that one side and let us deal with the original version of the Bill and the CPC version. Okay? So are you all seeing that "other States" is coming out and "United States of America" is coming in? Is

there any objections to that? Yes? Going once, going twice. Okay. And the reason for that is that this agreement will now be only between Trinidad and Tobago and the United States. So that gets rid of an objection raised by the Opposition that you do not want to give the Executive the freedom to enter into multiple agreements without parliamentary oversight. So the only agreement we are dealing with is an agreement with the United States. Okay? All right.

Let us move on now to the next section of the Preamble. Again, in the first recital, the words "other States" removed and replaced by "United States of America". Are you seeing that, gentlemen? Dr. Tewarie, are you seeing it?

**Dr. Tewarie:** Yes.

**Mr. Chairman:** Right. So, again there should be no objection to that.

The other change to the Preamble is on the second page of the CPC version. Are you seeing that where they strike out? Are you seeing the strikeout on the second page?

**Dr. Gopeesingh:** Yes.

**Mr. Chairman:** Right. Again, that is to deal with the issue of similar agreements with other states. That is so gone. Okay?

With respect to the next strikeout:

"And whereas the implementation of these agreements may affect the right to family...life"

Could the CPC's department explain why you are taking that out from here? It is redundant.

**Ms. Eversley:** It is redundant because it was already stated.

**Mr. Chairman:** It is already there?

**Ms. Eversley:** Yes.

**Mr. Chairman:** Where is it already? Later on or previously?

**Ms. Eversley:** At the bottom of the page, last paragraph.

**Mr. Chairman:** No problem. Well, they had kind of spelt it out and now they are just using a generic. Right, fine. So there should be no objection to this either. Look at what is happening. We are taking out the words:

"And whereas Trinidad and Tobago may wish to enter into similar agreements with other States:"

That is gone. And then we are taking out:

"And whereas the implementation of these agreements may affect the right to family and private life"

—because that is redundant. That is already dealt with elsewhere in the preamble.

**Ms. Eversley:** Well, actually, Chair, it is referring to the paragraph before, because the paragraph before is talking about future agreements. So the next paragraph speaks about future agreements.

**Mr. Chairman:** So because we are no longer entering into other agreements, we no longer have to say that these other agreements might affect the right to privacy.

**Ms. Eversley:** Yes.

**Mr. Chairman:** Okay. So that is gone. So can I get agreement that the proposed revised Preamble is approved?

**Dr. Tewarie:** What I would like to suggest it may take a few minutes more let us go through all the parts.

**Mr. Chairman:** Let us do it your way. You go ahead and if there is any paragraph you have an issue with, you let me know.

**Mr. Ramdeen:** Hearing the views of anyone to come after me, we have seen this document for the first time, it being handed to us now and I think it will take a considerable period of time to do what everybody proposes, which is go through clause by clause by clause. I can speak for myself and say that on behalf of the Opposition, we had prepared a document that took into consideration your advertisement, took into consideration the pre-list version of the Act and had made comments, which is what you seek as the Chairman to get from us and I was wondering whether it would not be better, a more efficient use of everyone's time, and subject to whatever may be the proper procedure in the JSC, for us to be able to look at this and produce a document that can be shared with the other side and the Independents and instead of going through this tiresome process of clause by clause, we do it on our own time, come back before you and have an agreed position that everyone can know exactly what are the contentious clauses, what are the non-contentious clauses and then we move forward from there.

**11.15 a.m.**

**Mr. Chairman:** Well, you see, I do not want to waste this morning. I had intended to close off at 12.00, and I want to come back on Friday, by the way.

**Mr. Ramdeen:** Just to suggest, even if you intend to close off by 12.00, we would not reach very far doing what we are doing here. I think having seen this – and this is a very, very progressive document – the final version, I think it would be a more efficient use of our time if we adjourn this hearing to Friday, be able to come back before you – and even before Friday – so that the members can –

**Mr. Chairman:** Sen. Ramdeen, I am hearing you, but I would prefer – I want to have a discussion on general principles, which would come up as we go along. I have no objection to what you are proposing in principle, and I would ask you to do that for the next meeting, please. How long will it take you to prepare that document?

**Mr. Ramdeen:** I have my version prepared already, I just need to go back through the new clauses.

**Mr. Chairman:** So how long? How long?

**Mr. Ramdeen:** I think I could do it by probably the end of business tomorrow.

**Mr. Chairman:** Okay.

**Mr. Ramdeen:** Well, we have Senate today, so if you give me until Thursday morning.

**Mr. Chairman:** All right, there is a lil difficulty with that. We have Parliament on Wednesday afternoon.

**Mr. Ramdeen:** And we have Senate today.

**Mr. Chairman:** You have Senate today. Could you finish by Wednesday morning or Wednesday midday or something like that?

**Mr. Ramdeen:** I can try.

**Mr. Chairman:** I like to give people enough time to look at what you all are coming up with and Thursday for Friday, we have Cabinet on Thursday, it is difficult. Wednesday



is a day where I think everybody may have a lil time, even when we are debating in the Parliament there, some of us could be looking at it. So can you do it by Wednesday afternoon?

**Mr. Ramdeen:** I would try my best. What I can do is, I can circulate the version I have now and you can have a look at that, and I can do a second version which it incorporates what it is, which would be with everyone's concurrence on our side, and whatever additional comments.

**Mr. Chairman:** Okay. Can you do it by Wednesday midday?

**Mr. Ramdeen:** I would try my best, yeah. I would try my best to do it.

**Mr. Chairman:** Tell me if you could do it or not.

**Mr. Ramdeen:** No, no, I would try my best to do it. I have a working version already. I do not think it is going to take much out of me to do this.

**Mr. Chairman:** Okay, well, let us agree on that then. But what I would still want to do is to deal with some issues, because since you have that working version you must be seized of certain issues. So, I do not disagree unless Sen. Roach, do you have a problem?

**Mr. Roach:** No, no.

**Mr. Chairman:** I would really like us now in the 40 minutes available to us still, let us have a general discussion on issues. Can the Opposition tell us now what are the elements of this legislation that concern you? I would really appreciate it. Anybody can speak on behalf of the Opposition, and then I would ask the Independent Senators to speak.

**Dr. Tewarie:** I would raise some issues.

**Mr. Chairman:** Let us take some notes, and let us see what is going on here.

**Dr. Tewarie:** I am speaking without knowledge of this last document.

**Mr. Chairman:** That is no problem. Understood and accepted.

**Dr. Tewarie:** But I would say one of the issues that we are concerned about is the extent to which the violation of sections 4 and 5 of the Constitution infringes on an individual's privacy considerations. So those clauses that, in fact, infringe we would need to interrogate very, very carefully or make amendments to them.

**Mr. Chairman:** That is probably all, eh?

**Dr. Tewarie:** Okay, so that is one issue. The second thing that we are concerned about, and I indicated that we do not want to – you have to accept that I have not read the last version –

**Mr. Chairman:** That is no problem.

**Dr. Tewarie:** – is the role of the Minister, either directly or indirectly, in relation to certain key institutions. One of them is the BIR and the other one is the Central Bank, because the Central Bank has jurisdiction over the individual banks and the banking sector. So the direct and indirect reach or overreach of ministerial intervention is something we would be concerned about.

**Mr. Chairman:** Can I stick a pin?

**Dr. Tewarie:** Yeah.

**Mr. Chairman:** The Minister's role has been reduced to one thing, and that is simply to approve the guidelines which would be prepared by the Central Bank, nothing else. All

the other functions of the Minister's powers, authority of the Minister that were there before, gone. So the only thing the Minister does now is after the Central Bank drafts the guidelines, which would be the manner in which banks deal with this, they are subject to the approval of the Minister. That is it. Okay? But you will see that as we get deeper.

**Dr. Tewarie:** Okay. And then a third consideration would be the extent of reciprocity and, therefore, what are its implications for Trinidad and Tobago citizens.

**Mr. Chairman:** All right. Could you just stick a pin there? CPC, what are the reciprocity obligations in the agreement, the IGA? All right. Mr. Young, you go ahead.

**Mr. Young:** I think that is a big point. Dr. Tewarie, as you would know, the reciprocity obligations really come from the IGA and has already been signed on to, and as was pointed out and Dr. Gopeesingh—correct—as you picked up on earlier, the Model 1 does not have it. Model 1(a) has it, so we are bound by that agreement. The legislation does not provide for it.

Because, of course, this is now domestic legislation to give the US the ability to get the information from us. They now have to pass domestic legislation to provide reciprocity for us to get information from them otherwise it is just based on the agreement. So it really is not in the legislation, apart from us fulfilling our obligation of that half of the parcel, but it comes from the IGA.

**Mr. Chairman:** What is the effect of this reciprocity? What does it mean?

**Mr. Young:** That does not arise here in the legislation. What it means—

**Dr. Tewarie:** So in the final version then, the reciprocity issues do not arise by clauses in the legislation.

**Mr. Young:** Correct, and that is the point.

**Dr. Tewarie:** Is that what you are saying?

**Mr. Young:** That is the point.

**Dr. Tewarie:** Okay, all right.

**Dr. Gopeesingh:** Where does it arise then?

**Mr. Young:** It arises in the agreement. So the agreement agrees—the agreement says that “US, we will provide you with the information you require, but you have to provide us with reciprocal arrangements where our Board of Inland Revenue can ask for information from you”. That is in an agreement. Now, to give effect to it you have domestic legislation. So we can only legislate to allow our Board of Inland Revenue and the financial institutions under the Central Bank to provide that legally to fulfil the obligation to provide it to the US. They could tell us they are not providing us with anything.

**Mr. Chairman:** We are not legislating, we cannot legislate, for the US to make them give us information on Trinidadians.

**Mr. Young:** And the only way they could do it is they now need to go through whatever it is they do in their legislative process to be able to provide it to us. So really we are giving—

**Dr. Gopeesingh:** But not receiving anything back for the time being.

**Mr. Chairman:** Until they pass a law.

**Mr. Young:** Correct.

**Dr. Gopeesingh:** Could I just stick a pin?

**Mr. Chairman:** Sure. Sen. Roach, do you want to speak?

**Mr. Roach:** No.

**Mr. Chairman:** Okay, right.

**Dr. Gopeesingh:** The issue of giving information to the United States, something is disturbing me in my mind. Is it by notification to the individual whose information is going to be transmitted or it is just automatic without the individual knowing that information? I will tell you, Minister, the Integrity Commission, if I am not mistaken, if a matter is referred to the Integrity Commission, on investigations, they have to notify you. So that holds for the Integrity Commission with the invasion of sections 4 and 5 of the Constitution, but I am a little concerned that there should be notification, not consent, but notification of the –

**Mr. Young:** My understanding is, as it currently stands, that is to be worked out in the guidelines on this type of thing. So the legislation does not have any expressed provision saying that there has to be notification. I am not certain if the IGA says something to that effect.

**Miss Eversley:** Chair, sorry. The IGA speaks about automatic exchange. You have to also remember that the US would have notified their citizens that this information is going to be requested wherever they have accounts.

**Mr. Young:** So the obligation is on their citizens.

**Miss Eversley:** Yes, they notify their citizens. Now, if you are looking for the reciprocity provisions, it is Article 2 of the agreement, which is at the back of the Bill and that you will see what we are required to give and what they are required to give us is in the agreements in Article 2. It is set out in the agreement.

**Dr. Gopeesingh:** Miss Eversley, forgive me, I have not come to that part yet, but if you could give us the information, what does it state in essence? Does it mean that they have to get permission or notify the person?

**Mr. Chairman:** Just read it out for members.

**Miss Eversley:** So, in terms of what we can request from the US – the Board of Inland Revenue:

- Name, address and Trinidad and Tobago TIN of any person that is a resident of Trinidad and Tobago and is an Account Holder of an account
- Account number
- Name and identifying number of the Reporting U.S. Financial Institution
- Gross amount of interest paid on a Depository Account
- Gross amount of U.S. source dividends paid or credited to the account
- Gross amount of other U.S. source – income paid and credited to the account to the extent subject to reporting under Chapter 3 of subtitle A or Chapter 6 of subtitle F of the US Internal Review Code –

Now, that is what we can request from them. They, however, can request –

**Dr. Gopeesingh:** – from them?

**Miss Eversley:** That is what we can request from the US.

**Dr. Gopeesingh:** But for whom?

**Miss Eversley:** For Trinidad and Tobago –

**Dr. Gopeesingh:**—for Trinidad and Tobago citizens in the United States.

**Miss Eversley:** Right. This is a Trinidad and Tobago—

**Mr. Chairman:** Miss Eversley, just let me see if I could break this down into layman's language.

**Miss Eversley:** Sure.

**Mr. Chairman:** According to this agreement, which is not going to be law — this part of this agreement is not going to be law in Trinidad and Tobago. For Trinidadians who have accounts in the United States, that is the kind of person you are talking about. So it is Trinidadian individuals and Trinidadian companies that hold accounts in the United States. The Government of Trinidad—well, not the Government, the Board of Inland Revenue can ask the United States to provide information on that category of persons along the lines of what Miss Eversley was just reading out: name and address, account number, name and number of the US financial institution, gross amount of interest paid, gross amount of dividends and the gross amount of source income paid or credited to the account.

**Dr. Gopeesingh:** And that is part encapsulated in the IGA?

**Mr. Chairman:** In the intergovernmental agreement, yes.

**Dr. Gopeesingh:** Model 1(a)?

**Mr. Chairman:** Yes. So, we, when they pass their law in their Congress — whenever that occurs, it may never happen—we would then, the Board of Inland Revenue, not any Minister, would be entitled to ask the US Treasury for this information on Trinidadians who have accounts in the United States.

**Dr. Gopeesingh:** And if they do not pass it into their internal legislation?

**Mr. Chairman:** It is moot because we are not incorporating that into our domestic law; it is moot.

**Dr. Gopeesingh:** We are not incorporating that in —

**Mr. Chairman:** In this legislation that we want to pass does not have that provision in it. Okay? So it is until the United States passes in their Congress a law giving effect to this, that this part of the agreement will be activated. If they never do it, this part of the agreement can never be activated.

**Dr. Gopeesingh:** So we will have to come back and amend our legislation if they pass their legislation?

**Mr. Chairman:** No, that is an action of the United States. It has nothing to do with us. Okay?

**Dr. Gopeesingh:** Thanks for the great clarification on both sides, I appreciate it.

**Dr. Tewarie:** My final thing would be in repealing, well, in providing coverage for the original 1989 taxation law.

**Mr. Chairman:** I have absolutely no idea what the Board of Inland Revenue has been doing. So as the Attorney General has made the commitment, we will find out what it is and get something in writing and I would circulate it to members. So you would find out what they have been doing. It appears they have been in a kind of way automatically providing the information to the US Treasury on US citizens who have accounts in Trinidad; sometime between 1989 and now they have been doing it.

**Dr. Tewarie:** There may be minor things, but those are the major things.

**Mr. Chairman:** I think we have made a lot of progress then.

**Mr. Ramdeen:** Minister, Chair, one of the things that I had a real concern with is that when we look at the amended version, the final version that you have here and you look at the Schedule II, because of the extent of the amendments that have been made, there are a lot of inconsistencies between what we are incorporating in domestic law and what has been signed off as the model that we are adopting. I was wondering, one of the main purposes that we come here is to ensure that what we put in place, in terms of the agreement and the domestic law, is actually at the end of the day, perfect.

**Mr. Chairman:** No problem. But, you see, I do not have that information. So that in addition to giving us the document you said you would try your best to give us by Wednesday midday, can you give us another document identifying any inconsistencies that you have discovered?

**Mr. Ramdeen:** Sure.

**Mr. Chairman:** Could you do that by Wednesday midday too?

**Mr. Ramdeen:** I would try. I mean the main thing, the most fundamental.

**Mr. Chairman:** If I were the judge and ask if you could do it, would you do it? *[Laughter]*

**Mr. Ramdeen:** The most fundamental thing, I really think it is something that we should really grapple with properly, because if you look in the agreement that has been signed off, the Minister remains the competent authority under the signed-off agreement.

**Mr. Chairman:** Yes, but our domestic law would supersede that.

**Mr. Ramdeen:** I agree. I just think that if it is something that we could tidy up, it is something we should tidy up.

**Mr. Chairman:** But we signed the agreement already.

**Mr. Ramdeen:** There is nothing wrong. It is an administrative arm, we could just clear it up. I mean, the domestic law will be speaking in a different voice from what we signed off, even though the principle is that the domestic law binds us you will have a treaty agreement between two governments that says something different.

**Miss Eversley:** It is our view that in putting the Minister in, he is simply being the administrative arm of the Minister. The Minister is the functionary named in the agreement, but the Minister cannot carry out those functions. An administrative arm has to carry out those functions. So the administrative arm that is carrying out the functions on behalf of the Minister is the BIR, and we did not think it was improper to put the Minister. The "BIR" refers to the BIR in the legislation instead of "the Minister" as provided for in the agreement.

**Mr. Chairman:** That is something we can clarify with the American –

**Mr. Ramdeen:** I would like to look at it.

**Mr. Chairman:** It is not a problem. It is something we can clear up with the US. Okay? You have raised it and we would formally raise it with them in correspondence, and just ensure that the CPC's interpretation is correct, that there is no conflict in having the Minister in the agreement and the Board of Inland Revenue being the competent authority in the legislation.

**Mr. Ramdeen:** Appreciated.

**Mr. Chairman:** No, problem.

**Dr. Gopeesingh:** Chair, just to reiterate the request I made earlier on, just for consolidation is that first we must be able to come together and say which organizations or which bodies we would like here.

**Mr. Chairman:** No, we are doing that at the end. Remember I said I am doing that at the end. We have not reached there yet.

**Dr. Gopeesingh:** Then the deadlines, if you would give us in writing, which you have committed to.

**Mr. Chairman:** I would give you the letter. It is not a secret, I would give you the letter, the correspondence with the US Treasury.

**Dr. Gopeesingh:** I always say that when you come to these committees – we have trouble with you in the House – but when you come here you are a different person.

**Mr. Chairman:** I am sorry to hear that. [*Laughter*] Not the first one, the second one. I am sorry to hear that I am a good man here.

**Dr. Gopeesingh:** By nature you are a good man. [*Laughter*] In the House you give us too much trouble.

**Mr. Chairman:** Go ahead.

**Dr. Gopeesingh:** And the third one is the countries that have signed –

**Mr. Chairman:** Well, the AG said he will do that. I would ask the AG to expand on this, not just a list but some sort of explanation of the issues. Let Dr. Gopeesingh finish.

**Dr. Gopeesingh:** You know, this will affect a number of people even though it is not in our law, but it is in the agreement that Trinidad citizens holding accounts abroad or United States citizens here in Trinidad, I think there must be a little education programme to let them know that this is going to happen.

**Mr. Chairman:** Sure, no problem with that. I totally agree.

**Dr. Gopeesingh:** You have said it in Parliament.

**Mr. Chairman:** I would let my communications department know this. It is a perfectly acceptable request so there needs to be a communications programme to address that. Yes, Miss Eversley.

**Miss Eversley:** We do have copies of the legislation in the other territories and the agreements if the members want.

**Mr. Chairman:** I would like a little more than that. Of course, we could give them that. I would like a little document, a one page or two pages explaining the difference between what the other countries have done and what we are doing, and why we have to do what we are doing and why they were able to do what they did and get away with it.

**Dr. Gopeesingh:** Chair, I forgot to mention just one thing. Do you remember a major part of this is to make retroactive legislation on the Board of Inland Revenue having done illegal acts?

**Mr. Chairman:** Yes, we are going to get correspondence to explain what happened, because we do not know.

**Dr. Gopeesingh:** When they come we can ask them as well, if they come before us.

**Mr. Chairman:** If. If. That is no problem. Okay, Sen. Ramdeen, you have one more intervention.

**Mr. Ramdeen:** I was just wondering, through you, if CPC could tell us if this piece of legislation that represents the Bill before you was modelled on any other legislation and any other jurisdiction or is this an original piece of legislation?

**Mr. Chairman:** Actually, as I said in Parliament, and I am subject to correction, this was actually drafted by the CPC's Office under the former administration. It may not have got to the Legislative Review Committee and received the sign-off of Cabinet, but it was done in early 2015 by the CPC under the former administration. Whether they used another model, I do not know so I would put that straight to CPC now.

**Miss Eversley:** Minister what we did is we looked at the existing TIEA, because that is what we had to do. We did not have a model in which Trinidad and Tobago could have looked at because we are not on the same footing with Barbados or Jamaica. Even though we are on the same footing with St. Lucia, St. Lucia took a very procedural approach in their legislation, and they have the Minister throughout. The Minister does everything in their legislation. So, we really drafted from scratch using our TIEA.

**Mr. Chairman:** You have answered the question. I would like now for the people who have not been speaking to get a chance to speak. So, let me start on my left, Sen. Shrikissoon.

**Mr. Shrikissoon:** Chair, again, having been privy to the information today, I have read the Bill before. There are one of two concerns I have, but I think they are very minor issues that we can raise as we go through the Bill, and a couple clarification issues that I have, I think we got through with that this morning.

**Mr. Chairman:** Very good. Sen. Roach.

**Mr. Roach:** I am going along as we proceed.

**Mr. Chairman:** Thank you very much. Can we go to Minister Rambharat?

**Mr. Rambharat:** I am fine, Chair.

**Mr. Chairman:** You are good? Sen. Coppin?

**Mr. Coppin:** I am also fine.

**Mr. Chairman:** Nice. Okay, let us get to the final order of business today, which is to hear from Dr. Tewarie and Dr. Gopeesingh and whoever else may wish to say something as to who you think we should call before us.

**Dr. Tewarie:** Since the BIR is the centrepiece of the execution responsibility within the jurisdiction of Trinidad and Tobago—

**Mr. Chairman:** You want the Board of Inland Revenue.

**Dr. Tewarie:** Yeah. So them and also the Central Bank because of their particular role in relation to the banks.

**Mr. Chairman:** The Central Bank.

**Dr. Tewarie:** I think it is important to discern if there are any differences, let us say, between an FCB on the one hand and a Royal Bank or a Bank of Nova Scotia and an institution, let us say like the UTC. So I think maybe we should get a kind of perspective from that. I would say some of the people who have been talking on the issue. I would say the Chambers, AmCham.

**Mr. Chairman:** Do you want to finish it this year?

**Dr. Tewarie:** They need not be long.

**Mr. Chairman:** So you want AmCham, Trinidad and Tobago Chamber of Commerce.

**Dr. Tewarie:** Well, I mean, there may be smaller chambers.

**Mr. Chairman:** And them too? Penal/Debe, Couva/Tabaquite, Chaguanas, Tunapuna. All that?

**Dr. Tewarie:** They do not have to all come. They could represent a point of view.

**Mr. Chairman:** Yes, Sen. Roach.

**Mr. Roach:** If I could just read Dr. Tewarie. Is it not that those persons would have spoken publicly already on the matter and given a clear position through the Bankers Association and the various chambers that have been on the media and so forth saying, basically, they were in support of what they would have seen at that point as regards the Bill?

**Dr. Tewarie:** Yeah, all of that may be true, but I think it is important. I mean, when I think, as I said, I have not read the last version of this Bill, but when I think of where this Bill started in relation to the IGA and where it is now and the evolution of the process, and when I think of the engagement that has taken place and what has transpired, it is clear to me that, you know, some of the thinking was not necessarily driven by thoughtfulness about the implications of the Bill. I think interrogating these players about it, I think would be valuable, but I started with the BIR and the Central Bank because I think those are critical, and dealing with the banks themselves as individual banking entities and the varieties among them would be vital.

**Mr. Chairman:** Can we just limit it to the banks, the Board of Inland Revenue and the Central Bank?

**Dr. Gopeesingh:** I want to humbly suggest two other areas, the insurance companies –

**Mr. Chairman:** You see, I want to just make a point. This thing affects institutions where US citizens have bank accounts. A US citizen is not going to have a bank account in an insurance company. So, I mean, we could ask the whole world for their view, but we have really some tight timelines here. I would really like to limit it to the actual institutions that have to report. Only those institutions that have to report is who we should talk to.

**Dr. Gopeesingh:** I think it would be good to hear the views of other people as well. If you want to write them and ask them for their views.

**Mr. Chairman:** We could ask for written submissions from anybody, but in terms of oral examination, just the Central Bank, BIR and the banks, if you do not mind.

**Dr. Gopeesingh:** What about the Securities and Exchange Commission?

**Mr. Chairman:** They have no role in this. They do not have any obligations with respect to reporting on bank accounts.

**Dr. Gopeesingh:** Well, then, may I suggest that we write some of these people. I have seen the Dean of the Faculty of Law has been making some statements, we could probably ask her to submit in writing her consideration.

**Mr. Chairman:** I want to agree on oral examination, members. Members, in order to meet our deadline, we really have to keep this thing tight. So I would like agreement from the Committee that we ask the Central Bank, the Board of Inland Revenue and the banks – and whether they come as three banks come or whether they come as Bankers



Association, but whoever is coming to represent the banks come, are to be examined orally and everybody else we ask them to send in written memorandum.

**Dr. Gopeesingh:** And the Chambers.

**Mr. Chairman:** Ask them to send in something in writing. The Chamber does not monitor bank accounts and AmCham neither.

**Dr. Tewarie:** On the banks, the only thing I would say is that, I mean, we know the Bankers Association's position, but I think what I am interested in is: What is the difference between an FCB, a Bank of Nova Scotia, operating in jurisdictions –

**Mr. Chairman:** Let me explain. I meet with the banks from time to time and they have raised this issue with me on every occasion that we meet and they act as one. They are in unison. There is no divergence between any bank in terms of the importance of this legislation. I have not been able to discern a contrary view or a divergent view among any banks. They are a block coming as one. Okay?

**Dr. Gopeesingh:** Chair, for consideration, UTC may have –

**Mr. Chairman:** Well, if it does. That is why I say let us limit it. I will now do a search and find out which institutions would be affected by this legislation. Let us agree as a principle, it is just the institutions that would have to report to the BIR for onward reporting to the US that we would orally examine.

**Dr. Gopeesingh:** Find out whether credit unions and UTC would have any reporting.

**Mr. Chairman:** I would check it out, sure.

**Mr. Ramdeen:** Chair, just one suggestion that might be time efficient for all of us. It may well be that if the Attorney General were to disclose to us the correspondence that he would have received in his consultations with these groups –

**Mr. Chairman:** No, problem. I see no problem with that.

**Mr. Ramdeen:** – it may well be that having read it –

**Mr. Chairman:** You may not even need to examine them. Thank you very much, Sen. Ramdeen. So, yes, I give that undertaking as well. All right?

**Dr. Gopeesingh:** It calls for dissemination of information as quickly as possible.

**Mr. Chairman:** Yeah. So at our next meeting, I would give you a status report on that matter taking into account all of the views here. Okay? And if we could really limit the time we spend interrogating people, I would really appreciate that. So, are we agreed that Sen. Ramdeen will make his best effort by Wednesday midday to give us – what exactly are you giving us? A copy of the Bill with marked-up changes and so on?

**Mr. Ramdeen:** I would try to do with the Bill a note. It does not make sense I just mark it up.

**Mr. Chairman:** Okay.

**Mr. Ramdeen:** I would try and do something that is a little bit more explanatory so that people will understand what the position is.

**Mr. Chairman:** What are your issues and what are your recommendations and so on.

**Mr. Ramdeen:** And if I could do the same with the agreement, but I would try to concentrate on the legislation.

**Mr. Chairman:** Do the Bill first, and we could deal with the agreement after. Okay?

**Mr. Roach:** Just for clarification purposes which will be for Mr. Ramdeen, the position

of the Opposition.

**Mr. Chairman:** Well, I hope so. He did say that he was going to seek a caucus and so on. I am glad Sen. Roach has brought that up so when we get it we are assuming this is the official position of the Opposition.

**Dr. Tewarie:** We will do the internal consultation to make it an Opposition document.

**Mr. Chairman:** Okay, good. All right. What time on Friday can we meet? We will not have a sitting of the House of Representatives. What date is that? Is it the 20th? So, give me a time, 10 o'clock? We are coming to do work on Friday. I mean no filibustering, grandstanding and no misconduct. [*Crosstalk*] "Is joke ah makin."

I am sure now that you are hearing that the reciprocal arrangements for Trinidadians would depend on President Trump, that might never happen, and we are not going to have any other agreements except this one and so on. I am sure, I am confident, unless you all change your minds that we will be able to get through this thing by the 3<sup>rd</sup> of February. I really would like to report on the 3<sup>rd</sup> of February that we have reached an agreement. Okay, thank you very much. This meeting is adjourned.

**Miss Eversley:** Chair, just to point out to Sen. Gopeesingh that if he looks at the document as amended in the House, the Explanatory Note has the changes in that document.

**Mr. Chairman:** All of them?

**Miss Eversley:** Not all of them, all the ones that were taken.

**Mr. Chairman:** No, let us put aside that document because, remember, I withdrew that so that no longer exists. Let us move with the final CPC version with an amended Explanatory Note as well.

**Miss Eversley:** Okay.

**Mr. Chairman:** Who is now going to take responsibility to look at all the undertakings given here by myself, by the Attorney General—well, we know what Sen. Ramdeen agreed to do, what the CPC has undertaken to do and to inform each person of the commitment that they made? Who is going to do that? You will do that Keiba?

**Miss Jacobs:** Yes.

**Mr. Chairman:** Thank you very much. The meeting is adjourned.

**11.47 a.m.:** *Meeting adjourned.*

**VERBATIM NOTES - THIRD MEETING  
FRIDAY, JANUARY 20, 2017**

**PRESENT**

Mr. Colm Imbert	Chairman
Mr. Faris Al-Rawi	Member
Mr. Stuart Young	Member
Miss Marlene Mc Donald	Member
Dr. Tim Gopeesingh	Member
Dr. Bhoendradatt Tewarie	Member
Mrs. Paula Gopee-Scoon	Member
Mr. Clarence Rambharat	Member
Mr. Gerald Ramdeen	Member
Mr. H. R. Ian Roach	Member
Mr. Taurel Shrikissoon	Member
Miss Keiba Jacob	Secretary
Mrs. Angelique Massiah	Asst. Secretary
Miss Simone Yallery	Legal Officer

**ABSENT**

Mr. W. Michael Coppin	Member [ <i>Excused</i> ]
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**CHIEF PARLIAMENTARY COUNSEL**

Ms. Ida Mariana Eversley	Deputy CPC
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Ms. Donna Marie Neaves-Ronstant  
Ms. Paula Hender

Legal Counsel II  
Legal Counsel I

**OFFICE OF THE ATTORNEY GENERAL**

Ms. Vyana Sharma

Legal Counsel II

**MINISTRY OF FINANCE**

Ms. Nnika Watson

Senior Legal Officer

**Mr. Chairman:** Let us call the meeting to order. I am advised that – well, we have a quorum – Sen. Coppin has asked to be excused. So can we go now to the Minutes of the meeting of January 17<sup>th</sup>? Are there any corrections required on page 1? First page. Any corrections required on page 2? Any corrections on page 3? Okay. Can I have someone who was present move –

[Confirmed by Mr. Roach]

[Seconded by Mr. Young]

Matters Arising from the Minutes. I really wanted to refer to 2.1. I will wait for Dr. Tewarie to come back. I had some information on item 2.1.

**Dr. Gopeesingh:** I think that is captured – 2.1 is captured later on.

**Mr. Chairman:** No, but I want – [Interruption] [Ringing of cell phone] Even when he is not here – eh, Dr. Gopeesingh, even when he is not here he is making confusion. We are waiting on you, eh.

Okay! While we are waiting on Dr. Tewarie, item 4.3, the note from Mr. Ramdeen was in fact received on Thursday, not Wednesday. Item 4.4. Item 4.5 on page 2, it is my understanding –

**Dr. Gopeesingh:** Can I ask, Chair, which is the amended version of the Bill? Which one are we speaking about?

**Mr. Chairman:** It is perhaps a misleading word. It is the consolidated version of the Bill. This one with the strike-out and so on.

**Dr. Gopeesingh:** This one?

**Mr. Chairman:** The one that has the strike-out on the first page. So that has been circulated to members and I am advised also that there is a spreadsheet with respect to what has occurred in other Caricom FACTA countries, what they have done, the reasons why they have done what they have done, and the difference between what they have done and what we need to do in Trinidad and Tobago. So everybody should have received this. Has everybody received this?

**Hon. Members:** Yes.

**Mr. Chairman:** The Chief Parliamentary Counsel is the author of this.

**Dr. Gopeesingh:** Is this the complete list, or if there are any exclusions that we have not been able to obtain?

**Mr. Chairman:** We can ask them that when they come. But we have Antigua, Bahamas, Barbados – let me just go through myself. I think I am familiar with every Caricom country – Dominica, Grenada, Jamaica, Montserrat, St. Kitts, St. Lucia, St. Vincent. So I am not seeing Guyana, I am not seeing Suriname. That is about it. But we can ask the CPC if there are any another countries within Caricom.

**Dr. Gopeesingh:** I think if we examine it, there is a Model 1B that Bahamas signed. I do not think we had mentioned anything about a 1B model, and then also on the last page they have Trinidad and Tobago signing Model 1, but you indicated it was Model 1A.

**Mr. Chairman:** We will clarify that. Let us go back now to item 2.1. I have sought advice and I have been advised that the entities that may have persons, US persons that is, individuals and US corporations – so US citizens, US corporations, the entities that may hold accounts of these persons are as follows:

- the commercial banks;
- trust companies;
- credit unions;
- merchant banks; and
- insurance companies.

That is the complete list of financial institutions that might have US citizens or US corporations holding accounts here in Trinidad and Tobago, who would be the subject of this legislation; and therefore, I do not think it is appropriate with the tight timelines that we have – and I am going to elaborate on that in a short while – to invite every single trust company, every single commercial bank, et cetera, et cetera.

The bankers have an association who speaks for them and we can ask the credit unions, I think they have a league. So we can ask their omnibus arrangement to speak for them. The commercial banks and the merchant banks are more or less one and the same as far as I know, but if there are any merchant banks that are outside of the commercial bank framework, we can ask them to come. The insurance companies have an association, so we can ask them to come. Trust companies, I am not certain whether they are individual companies or –

**Mrs. Gopee-Scoon:** In the case of Republic Trust –

**Mr. Chairman:** No, that would be within the –

**Mrs. Gopee-Scoon:** – would be within the group?

**Mr. Chairman:** Yes. So any trust company that is not within a bank, I think we could perhaps ask them to make a presentation, and those are my recommendations. Dr. Tewarie?

**Dr. Tewarie:** Yes, that is reasonable. The matter of engaging by way of submissions, institutions that you should call, that remains, right?

**Mr. Chairman:** Yes, yes. And even these institutions may write us and tell us unless there is some compulsion to bring them, they may write and say, “Look, we good. Whatever all yuh decide, we good with that”. Okay?

**Dr. Tewarie:** All right.

**Dr. Gopeesingh:** Sorry, I would have missed the point that Dr. Tewarie would have been speaking with you about.

**Dr. Tewarie:** No. What I asked is, if besides these institutions –

**Mr. Chairman:** Outside of these groups we will write everybody else, like UWI and all these people.

**Dr. Tewarie:** The people we discussed last time.

**Mr. Chairman:** Invite written memorandum.

**Dr. Gopeesingh:** Just one point. Dr. Tewarie had mentioned amongst the banks in Trinidad and Tobago there are one or two, well two that we are aware of that are international banks, whereas two are local banks and would we want to hear their views individually –

**Mr. Chairman:** They are all part of the bankers association. I have met with them, Bank of Baroda, Citibank – all of them – JMMB, and the bankers association is authorized to speak on their behalf. Okay?

**Dr. Gopeesingh:** All right. Okay.

**Mr. Chairman:** So we will fine-tune this. We have the general principles resolved, we will fine-tune it and I will circulate the final list for your ratification or information.

**Dr. Gopeesingh:** Chairman, with 5.2 as I was trying to mention earlier on, that the AG was asked to submit written submissions and concerns received during consultations with stakeholders.

**Mr. Chairman:** No, I agreed. We have not reached there yet.

**Dr. Gopeesingh:** Okay.

**Mr. Chairman:** I was now coming to that. The Attorney General is not here. The AG has just text messaged me and asked me if we need him, and I said yes. So we are waiting for him. So he is the only person who could tell us about what he has done with these stakeholder comments. Nobody else. I am not qualified. Mr. Young can endeavour to –

**Mr. Young:** I do not know.

**Mr. Chairman:** You do not know? Do you think in his absence, if he never shows up to this meeting, can you go and find out what sort of feedback he had because I know he met with the bankers association? He wrote them, they wrote him. If he does not show up, if you could gather that for us?

**Dr. Tewarie:** Do we have 4.6?

**Mr. Chairman:** What is 4.6? Oh, I am so sorry. I have been able to find the communication that we received from the US – the United States – which I only found it a few minutes before I got here, so I will have to reduce it to printed form and circulate it. I may have to circulate it by email a little later in the afternoon, but I have a document. I will read it in the record. It is long, but I am going to read it into the record. This is from Elena Virgadamo from the United States Treasury – that is the counterpart of our Treasury Solicitor – and on the 27<sup>th</sup> of September, 2016, in response to our request for a further extension of time, she responded as follows:

Subject: Trinidad and Tobago United States of America Intergovernmental Agreement.

Dear Treasury Solicitor

I apologize for my delay in responding. I want to clarify the current status of the US Trinidad and Tobago IGA. First, there cannot be an obligation to obtain and exchange the information required under the IGA until the IGA is in force and the notifications under Article 3(8) of the IGA have been exchanged.

**Dr. Gopeesingh:** Has been?

**Mr. Chairman:** Have been exchanged. So in order to further inform yourselves, go and take a look at what 3(8) is. I cannot tell you off the bat what it is.

On the date of the later of those Article 3(8) notifications, the obligation to obtain and exchange information under Article 2 takes effect.

So this paragraph essentially says, until and unless we incorporate the Inter-Governmental Agreement into our domestic law, there is no obligation to exchange anything.

Second, announcement 2016–27 which the Treasury and the Internal Revenue Service of the US issued on the 29<sup>th</sup> of July and I sent you on the 1<sup>st</sup> of August, references previous Treasury and IRS announcements and notices that provide that a jurisdiction that has signed an IGA with the US will continue to be treated as if it has an IGA in effect so long as the jurisdiction continues to demonstrate firm resolve to bring the IGA into force. Trinidad and Tobago currently has this status and is treated as if it has an IGA in effect.

A previous notice, Notice 2016–55 had required that in addition to the jurisdiction demonstrating firm resolve to bring the IGA into force, in order for foreign financial institutions to continue to be treated as complying with and not subject to withholding under FATCA, any information that would have been reportable under the IGA on September 30, 2015, which is to say 2014 information, would need to be exchanged by September 30, 2016, together with any information that would be reportable under the IGA on September 30, 2016, that is to say 2015 information. Announcement 2016–27 clarifies that the Treasury does not intend to find foreign financial institutions to be in significant non-compliance with the IGA as long as any information for prior years is exchanged before the next September 30 after the obligation under the IGA has taken effect.

For example, if the obligation under the US Trinidad IGA takes effect by February 01 as per your letter, then Trinidad and Tobago foreign international institutions will not be significant non-compliance with the IGA as long as the information is exchanged by September 30, 2017. This is consistent with Article 3(5) of the IGA. Therefore, the extension requested in your letter is not necessary as the IGA and the Treasury and the IRS already provide for this.

And then they just go on to give further clarification.

But most importantly, they say after the 1<sup>st</sup> of January, 2017, the Treasury intends to evaluate all the explanations and plans received, and to communicate to jurisdictions whether the explanation and plan demonstrate that the jurisdiction continues to demonstrate firm resolve to bring its IGA into force. If it is determined that a jurisdiction is not demonstrating firm resolve to bring its IGA into force, the jurisdiction's name will be removed from the Treasury's website.

Treasury will reach out to the jurisdiction before taking the step. To provide notices to foreign financial institutions, jurisdiction will not cease to be treated as having an IGA in effect until the 60 days after the jurisdiction's status on the Treasury website is changed. Now, I am going to send you a copy of this.

So what they are essentially saying – now, I am seeing it is February 1<sup>st</sup>. I actually thought it was a little later than that, but I will explain why that is not fatal at this point in time. So what they are saying is that after January 1<sup>st</sup> they are going to look at what

Trinidad and Tobago is doing and conclude whether we are demonstrating firm resolve to bring our agreement into force.

**Dr. Tewarie:** That is January 1<sup>st</sup> –

**Mr. Chairman:** January 01, 2017, yes.

**Mr. Young:** They are watching us all now.

**Mr. Chairman:** They are watching us now and I am going to update you on that. I am going to give you an update. If it is determined that a jurisdiction is not demonstrating firm resolve, they will remove our name from the website and 60 days after that they will start to introduce sanctions on Trinidad and Tobago. Okay?

Now, since the 1<sup>st</sup> of January, I have been contacted by the US Treasury directly to ask me what is going on.

**Mr. Young:** They have contacted –

**Mr. Chairman:** They have contacted me. The US Treasury has contacted me directly so say what is going on in Trinidad and Tobago because January 1<sup>st</sup> has arrived so they are now reaching out to jurisdictions to find out what is going on. They contacted me on several occasions. I explained to them that we have sent the legislation to a Joint Select Committee which is meeting, and as recently as this morning the Chargé d’Affaires at the US Embassy, who is now the Head of Mission, contacted me for an update and told me that he wants me to have a telephone call with a senior official in the US Treasury. That call could not happen today because they are inaugurating Trump today – so Washington is shut down – but we have scheduled the call for as early as possible next week. So I may speak to the person Monday, Tuesday, Wednesday, depending on our respective schedules.

I told the Chargé d’Affaires what the status was, that the matter is before a Joint Select Committee and we are pushing to have it out of this committee by the 3<sup>rd</sup> of February and then have it passed in both Houses of Parliament as quickly as possible after that. So he is going to inform the US Treasury of this, but they still wish to speak to me directly because they are very concerned that we have not enacted this legislation, and they made a point to me this morning that they do not understand because this only affects US citizens. That is their perception of this whole thing, that this thing only affects the United States citizens and United States corporations. So they cannot understand what the problem is. So I am simply reporting what I was told this morning by the US Embassy. Okay? So I will send you this email so you will see it for yourself.

**Dr. Gopeesingh:** Thank you for that, Chair. Just one or two issues. Do you think that it would be advisable to – bearing in mind you are going to have conversation later, would it be important for you to communicate with them in writing?

**Mr. Chairman:** I am going to. I intend to write them and tell them we convened a meeting. We had our preliminary meeting. We have had a first working meeting, we are now second working meeting, by the time I write them we might be into our third working meeting and we are making progress and so on and we will see what they have to say. Sorry, I just want to give you more information. Go ahead.

**Dr. Gopeesingh:** What would give them the impression that it is only the United States citizens that are under this agreement and that –



**Mr. Chairman:** That is their opinion, that the only people affected by this are United States citizens.

**Dr. Gopeesingh:** But bearing in mind what we were educated about by both the Attorney General and yourself, that basically under our IGA – well, of course, we do not have a double treaty arrangement, but it allows for reciprocity but the US laws have not incorporated it.

**Mr. Chairman:** Not only that. That is not going to be put in our law; we will put no obligation on them in our law.

**Mr. Young:** No, we cannot.

**Mr. Chairman:** No, we cannot anyhow. And in any event, agreement or no agreement, they could share that information anyway. The United States could be sending information to our Board of Inland Revenue anyway, whether you have anything, legislation or no legislation.

**Dr. Gopeesingh:** Why do you say that?

**Mr. Chairman:** No, it is an important point.

**Mr. Young:** It is. The Chairman is correct as we heard from the AG on the last occasion. Of course, these relationships can also be from financial institution to Treasury, meaning financial institutions domiciled in Trinidad to Treasury. That was one of the availabilities. With respect to the last statement he made and the point of reciprocity, this legislation is only to make it legal for the provision by the Board of Inland Revenue to transmit information to the IRS and the Treasury. It does not allow for them to transmit to our Board of Inland Revenue, our Treasury. The only way that can take place in law would have to be via either some sort of MOU agreement between the Treasury and our BIR to enter into some direct agreement with the Treasury, the IRS and the BIR in Trinidad, or –

**Dr. Gopeesingh:** [*Inaudible*] – that on.

**Mr. Young:** It would not have to be legislated on by us. It would have to be legislated on by them, but what becomes relevant in those circumstances with respect to our Board of Inland Revenue if it is income tax information is – remember section 4 of our Income Tax Act clothes the Board of Inland Revenue with secrecy and anybody inside of there sharing information would be in breach of that section and there are criminal penalties and liabilities attached to it. So they would have to have an arrangement that takes into consideration section 4 – I do not have section 4 in front of me.

So one would wonder whether you can have an MOU to be able to do that. And quite honestly and frankly that is the whole reason for this legislation, to get around to allow the board – and when we get down to the clauses you will see it deals directly with the section 4 of the Income Tax Act to allow the Board of Inland Revenue to share the information. So one question on their side whether they have a similar secrecy provision and I am certain they do, and therefore, that would be their domestic legislation to allow their IRS and Treasury to provide the information.

Now, under some FATCA-type agreements and arrangements, there are MOUs in place between various law enforcement agencies for the sharing of information, and that may include Board of Inland Revenue, the IRS, US Treasury. I can tell you I had attended

meetings at the US Treasury last year in Washington, and they made it very, very clear what their domestic law is and it is very similar to our BIR law and this type of thing. So for the reciprocity to take place in this circumstance, and the AG could confirm when he is here, it is my belief that they need to pass domestic legislation giving the US Treasury and IRS the ability to provide that information to Trinidad and Tobago, and it cannot just happen via a request.

**Dr. Gopeesingh:** So, Chairman, what you have just mentioned that there is the possibility that the information could have been shared, but what Minister Young has indicated that it is a remote possibility or almost non-existent based on—

**Mr. Chairman:** Not only that. Even if the US Treasury on its own volition just decided to send information, I am not even sure the BIR could use it because there would be no law allowing the US Treasury to do that.

**Mr. Young:** Remember to introduce evidence, you always have to have an evidential foundation. So you cannot just say well look, where did this piece of paper come from, and it has to come through legal means and channels.

I refer to the FATCA-type of arrangements. There is one way legally this type of information can be shared and that is via the MLAT process, which is the mutual law enforcement transaction treaties and this type of thing, where law enforcement agencies ask through the central authority in the country for certain information to be provided, but of course, that has to be legitimate, there has to be an ongoing criminal investigation. The law enforcement officer has to then ask its central authority to transmit a request to the central authority of the foreign jurisdiction—in this case the United States—which would be the Department of Justice, the Department of Justice will then have to ascertain that there is an ongoing criminal investigation and that it is legitimate, and then they in turn would go to court in the United States because, of course, that is one way to get around the secrecy provision in legislation. Someone can go to court in Trinidad and get an order that the BIR provide information. So it is the same thing in the US.

So the process that exists now with the lack of domestic legislation in the US for FATCA's reciprocity with Trinidad is that MLAT process. The central authority would request of the Department of Justice, who is the central authority in United States, this information is needed on Stuart Young and then they will have to go to court to a judge in the United States, satisfy that judge that this information must be provided. That judge would then make an order to the US Treasury or the IRS to provide the information and it comes back through those official channels, through the central authority which is merely a postbox, straight to law enforcement. So that exists now. That is the framework that exists now—

**Mr. Chairman:** In order to clear this up, there is nothing in this Bill—there is nothing in this Bill we propose to amend that creates an obligation for the United States to report on Trinidadians holding accounts in the United States.

**Mr. Young:** And even with the reciprocity in the IGA that is no obligation on them.

**Mr. Chairman:** The clarification I wanted to give, Dr. Tewarie, is that the United States has clarified a point that was raised here, past meeting, that they—let me see if I could put this in the bluntest language. They are not interested in our internal problems. They

have a process and if we are not compliant they are going to take sanctions against us. That was cleared up this morning. Whatever issues we have with Government and Opposition and special majority, they have no interest in that. Okay? They made that very clear to me in the conversation this morning. Is either we compliant or we not complaint, and the words used that they are getting frustrated and impatient. Those are the words used.

What I would like to do now is call in the public servants and let us start the examination of the Bill clause by clause.

**Dr. Tewarie:** While you are doing that, could I ask if the attached Bill to the Minutes is the exact same thing that was circulated last time?

**Mr. Chairman:** This thing here with the strike-out?

**Dr. Tewarie:** Yeah.

**Mr. Chairman:** I think so.

**Mr. Young:** Mr. Chair, Mrs. Gopee-Scoon has raised, I think, a pertinent point. We use very loosely here in the Parliament, et cetera, "US citizens", but, of course, it is not really US citizens. It is those who are obligated to pay the US authorities tax. So it could include green card holders, it could include entities that are not only domiciled but incorporated like in Delaware and in US states. So it is not only US citizens. The right phrase is those who have liability to the IRS and the Treasury Department.

**Dr. Gopeesingh:** And companies operating –

**Mr. Young:** Correct. Correct.

**Mr. Ramdeen:** I want to start with that Minister Young. When you look at the definition section of the 2016 IGA definition section, how you all have split the Bill, there are certain categories of persons who are defined who can be Trinidad citizens by virtue of an indirect means as holding interest in companies; I think there are about four of them when you look at the Act.

**Mr. Young:** The account holder.

**Mr. Ramdeen:** Account holders who could be citizens of Trinidad because the message has been put out there. I think actually when I was reading your *Hansard*, in the first debate, the first time the Bill was introduced, I think the impression is being given that Trinidad citizens are cut out totally from the application. I think ex facie, on the face of it, that may have been the intention, but I think by an indirect route there are Trinidad citizens that can be caught by the provisions.

**Mr. Young:** And that is why you are correct, but that is why I use the phrase that it is those who have liability to the US Government for tax. So a green card holder may very well be a Trinidad citizen but is a holder of a green card, and by that is now liable to the US authorities for tax. So you are right, it may affect citizens who are not US citizens and it really comes down to, do you have a liability to pay tax –

**Mr. Ramdeen:** To the United States.

**Mr. Young:** – to the United States.

**Mr. Chairman:** All right, the Bill now. I will retrace our steps from last meeting. Can we go to the first page of this version? Let us use this one. Even though we are supposed to go through this, this and this are similar. So let us use the scratched-up version that

everybody would have got.

**Dr. Gopeesingh:** Chair, I crave your indulgence. Just to clear up the matters arising out of the Minutes. As the hon. Attorney General is here, perhaps he can just give an answer to—

**Mr. Chairman:** Attorney General is here?

**Dr. Gopeesingh:** Yes. I know you are concentrating. On 5.2, AG, under matters—

**Mr. Chairman:** Oh yes, let me handle this. In the last meeting, Attorney General, there was an undertaking to give details of your interaction with stakeholders, and the comments made, like the bankers association, what they have to say about FATCA and whatever they have told you.

**Mr. Al-Rawi:** Sure.

**Mr. Chairman:** You gave an undertaking to provide a package. All right? So just take note of that.

**10.55 a.m.**

**Mr. Al-Rawi:** If I may, when we checked, the bankers' association, apart from the physical meetings that we had, reduced their positions into writing and wrote both Opposition and Government.

**Mr. Chairman:** So it is the same letter?

**Mr. Al-Rawi:** It is the same letter because it is cc'd to both parties.

**Mr. Chairman:** Well, let us produce a copy of that.

**Mr. Al-Rawi:** I will produce the letters and correspondence that we have and make sure that we literally have the same document.

**Dr. Gopeesingh:** Letters and correspondence from the previous stakeholders who have submitted in writing.

**Mr. Al-Rawi:** Correct.

**Mr. Chairman:** You are saying bankers' association.

**Mr. Al-Rawi:** Yes.

**Mr. Chairman:** The only stakeholder you had interaction with was the bankers' association?

**Mr. Al-Rawi:** We had bankers' association, we had Central Bank and we had SEC.

**Mr. Chairman:** No, I am talking about reporting institutions, like the foreign financial institutions as they are referred to in the Treaty so this would be the banks.

**Mr. Al-Rawi:** That is it. So the banks are the external aspects only.

**Mr. Chairman:** All right. Okay, Dr. Gopeesingh?

**Dr. Gopeesingh:** Yeah. So we are clear that it is the bankers' association, Central Bank and SEC that have sent submissions.

**Mr. Chairman:** Dr. Gopeesingh.

**Dr. Gopeesingh:** Sorry.

**Mr. Chairman:** I am trying desperately to get to page 1.

**Dr. Gopeesingh:** Yeah, yeah, go ahead. I am not trying to prevent you—

**Mr. Chairman:** About a month now, you are trying to prevent me from getting to page 1. *[Laughter]*

**Mr. Al-Rawi:** Mr. Chairman, just to confirm that everybody got the Schedule of the

TIEAs and – right.

**Mr. Chairman:** Yeah. Okay and AG, just for your update, I read into the record an email which I will share with everyone which says that from January 1st, 2017, the US Treasury is going to look at jurisdictions to see if we are demonstrating firm resolve to have the IGA enforced – in full effect and enforced. Okay? And I have been contacted by them.

Page 1, can we go to the Explanatory Notes? CPC, is this the corrected Explanatory Note now?

**Ms. Eversley:** Yes, we did send the corrected one.

**Mr. Chairman:** No, this document that I have here, does it contain the corrected Explanatory Note?

**Ms. Eversley:** Well, I cannot see – yes, that is it.

**Mr. Chairman:** So this is it? Right. So this is our source document. Right. So if we go to the top of the Explanatory Notes, the first paragraph, the words “other States” have been deleted and replaced by the “United States of America”, and this is to make it clear that this law will only apply to the agreement between Trinidad and Tobago and the United States. I assume that that is clear. Right.

If we go down now to clause 2, this is a new Explanatory Note – Dr. Gopeesingh, “yuh doing surgery ah wat?”

**Dr. Gopeesingh:** [Laughter] No, no, “ah cyah do surgery, we working.”

**Mr. Chairman:** “Is you ask for this yuh know” [Laughter] so I expect you to follow. If you go now to the bold clause 2, this is a new Explanatory Note that came in because a new clause came in. So:

Clause 2 of the Bill would provide for the commencement of the Act by Proclamation of the President.

**Dr. Gopeesingh:** I was just making sure that I had the correct thing.

**Mr. Chairman:** Had the correct thing? Okay, all right.

**Dr. Tewarie:** Can I ask a question? Will we have a proclamation date on the Bill?

**Mr. Chairman:** No, it will just say it comes into effect by – well, let us go to the actual clause and I will read it for you. Even though we are on the Explanatory Notes. It says: this Act comes into operation on such date as is fixed by the President by proclamation. Okay? That is basic form. All right.

Clause 3 would provide that the Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

I think that is just tidying up the language; that statement was already there. And then clause 3 now becomes clause 4 and then a whole bunch of explanatory notes have gone out because a whole bunch of clauses have gone out. So 4, 5, 6, 7, 8 – all those clauses are going to be deleted from the Bill so therefore you no longer need –

**Mr. Al-Rawi:** And they are going to be put in the separate bracket so this originally was where the 1989 law was so it is being parked – you will see it appear later under the sections for 1989.

**Mr. Chairman:** All right. Can we go to the second page down to the one that is clause 7, strike out 11 and we are just tidying up the language. Instead of requests being made by the United States Internal Revenue Service, it will now be made by the Secretary to the

Treasury which is a different individual. Clause 8 would provide that specified provisions of the Income Tax Act and the Data Protection Act and other law do not prevent disclosure for the purpose of giving effect to the – [Interruption] Yeah.

**Dr. Tewarie:** Could I ask a question? What is the substantial difference between Internal Revenue Service and Secretary to the Treasury? What does that broader –

**Mr. Chairman:** I will explain. One is a person, it is an individual and the other one is an organization. Okay? It is like equivalent of the Minister.

**Mr. Al-Rawi:** And the IGA refers to it in that expression so we have kept with the most current version which is the 2016 IGA.

**Mr. Chairman:** And the Secretary to the Treasury will delegate this responsibility to one of his officers. Okay?

**Dr. Tewarie:** But would that not require ministerial correspondence on our part?

**Mr. Chairman:** No, because we are defining the competent authority as the Board of Inland Revenue. They do not have these problems that we have, so they have no problem with the Secretary to the Treasury being the competent authority. They are not like us.

**Mr. Young:** The Secretary to the Treasury office is a massive place with all different –

**Dr. Tewarie:** No, no, I understand it, I am just –

**Mr. Chairman:** Yes, so it will not require – subject to correction but it would not require the Secretary to the Treasury to communicate with a Minister. Okay?

**Dr. Tewarie:** Okay.

**Mr. Chairman:** He can communicate with the Board of Inland Revenue.

**Dr. Gopeesingh:** Could you just clarify the last sentence? This clause goes on to restrict the disclosure of certain information by –

**Mr. Chairman:** No, what I would like to do, Dr. Gopeesingh, these do not form part of the Bill, this is just new Explanatory Notes. We will get to that clause in due course. Okay?

**Dr. Gopeesingh:** Okay, fine.

**Mr. Chairman:** So what I would like to do now, in the interest of time, what this has done is simply tidied up the Explanatory Notes to correspond to what we are doing with the Bill itself. So I would like to just go straight to the Bill now, if you all do not mind and that is now – let us go straight to that with the title. The title is an Act to repeal Tax Information Exchange Agreements, et cetera and you will see in the title, that is – I will tell what page that is, Dr. Gopeesingh. Well it has no page number but it is immediately after Roman (iv). Okay? The start of the Bill. “Yuh” have it, right? Okay? So again, we now delete “other States” and put in “United States of America” to make it clear it is just one entity that we are communicating with, and similarly when you go to the Preamble, that change is then made again in the first recital. Delete “other States”, replace it with “United States of America”. Skipping over the page.

**Mr. Shrikissoon:** Chair, just for clarification purposes on that same aspect of the Bill, the second to last line of the first paragraph says after:

“...States of America providing for the exchange of information for the purposes of taxation, to validate the sharing of personal information...”

Would that cover the information that companies are also to provide?

**Mr. Chairman:** Where are we?

**Mr. Shrikissoon:** The first paragraph about the fifth line down.

**Mr. Chairman:** Where are you seeing personal information?

**Mr. Al-Rawi:** In the Preamble?

**Mr. Chairman:** Where is that?

**Mr. Shrikissoon:** It is just above the Preamble.

**Mr. Chairman:** Or, you mean the title.

**Mr. Shrikissoon:** Yeah, sorry, my apologies.

**Mr. Chairman:** Yes, personal information is a person can be a corporate person or an individual. Yeah, it covers companies.

**Mr. Al-Rawi:** It is defined in the Interpretation Act as to what a person is and Companies Act describes it as well.

**Mr. Chairman:** All right. So going on to page 2, bottom of the page, a big number 2, we are deleting part of the Preamble that spoke to us entering into similar agreements with other States so that is consistent with the amendment to make this only with the United States. The next part of the Preamble is being deleted because it is redundant. Okay? The fact that this is inconsistent with the Constitution is already there. So let us go now to page 3, clause 1 and all we have in there in brackets in bold is "United States of America" which is just for completeness. Right?

**Mr. Al-Rawi:** We have put "agreement" in plural because it is now the two agreements: the 1989 agreement and the 2016 agreement, and because this is standalone just for the USA, we are putting the USA in brackets.

**Mr. Chairman:** Okay. Anybody has any problem with clause 1? Right. Clause 2, this is standard commencement clause as Sen. Ramdeen reminded us. Anybody has any problem with clause 2? Right. Clause 3, again, the words have just been tidied up to make it more elegant.

**Mr. Al-Rawi:** Yes, the current terminology used by the drafters and therefore we have just used the current words.

**Mr. Chairman:** Fine. Anybody has any problem with clause 3? Okay, moving on. Clause 4. AG, explain what we are doing here.

**Mr. Al-Rawi:** In clause 4, we have deleted "competent authority", "contracting States", "tax information exchange agreement" and "agreement" and "Minister" and if you look and jump forward to page 6, you will see the 1989 has, in clause 5, specific definitions, competent authority, tax. And what we have done is to confine the definition clause only for the '89 agreement and where you pitch now to the 2016 agreement, which is on page 9, you will see that there is another definition clause at clause 9 and that then goes through each of the individual references obtained from the IGA. So this original definitions clause now to be clause 4 covered a much broader range of definitions contemplating the use of other Orders and other IGAs and what we did is to separate them out entirely, leave only the very basic agreement definitions here and then to divide it between clause 5 and clause 9 as lifted directly from the IGAs 1989 and 2016.

**Mr. Chairman:** Okay, and the Minister has been extracted to the point that all that remains is a definition of the Minister as being the Minister of Finance but he has no

authority or power under this clause.

**Mr. Ramdeen:** Chair, you have an error under the definition of “former Act”, you have to have an s after “agreement”; it is “agreement”.

**Mr. Chairman:** What page?

**Mr. Ramdeen:** Page 4.

**Mr. Chairman:** Where on page 4?

**Mr. Ramdeen:** At the top. The definition of “former Act”.

**Mr. Al-Rawi:** Technically, if I am not mistaken, the former Act was described that way so we have kept it that way, because we have amended the definition on this end. Is that correct, Ida?

**Ms. Eversley:** Yes.

**Mr. Chairman:** Well, it is neither here nor there to me.

**Mr. Al-Rawi:** Well, that was the name of the actual law; it is the format.

**Mr. Chairman:** I know, it is neither here nor there to me. So Mr. Ramdeen, you are okay with that explanation? All right, we good.

**Dr. Gopeesingh:** What is scratched, 76:61, that was errata?

**Mr. Al-Rawi:** The drafters have confirmed that it is “agreements”. Sen. Ramdeen is correct. I relied upon whatever the name actually is.

**Mr. Chairman:** Good, now we have a question from Dr. Gopeesingh. Because we have scratched out 76:61 and replaced it with 76:51, was that a typographical error? Fine. Okay, can we now sign off on clause 4? Moving along. Clause 5 is gone. Clause 6 is gone. Clause 7, (1), (2) and (3) are gone which now confuses me because when I go to Sen. Ramdeen’s document, I think he talked about 7(4), so which 7(4) you are referring to? A different number?

**Mr. Ramdeen:** No, because I was not—

**Mr. Young:** The version.

**Mr. Ramdeen:** The wrong version.

**Mr. Chairman:** So what is this clause? It gone?

**Mr. Ramdeen:** I think it would now be what would be your new 7.

**Mr. Chairman:** My new 7? All right, no problem, so let us move along. So 5 gone. Anybody has a problem with 5 coming out? Okay. Anybody has a problem with 6 coming out. Okay. Anybody has a problem with 7 coming out? Right. And 8, anybody has a problem with 8 being deleted? Right.

**Mr. Al-Rawi:** And 8 reappears later in the two separate sections.

**Mr. Chairman:** No problem. So we now reach to Part II which used to be Part III and the 1989 TIEA. So 9 now becomes 5. Okay, AG, could you explain why you have an “and” here on the top of page 7?

**Mr. Al-Rawi:** On the top of page 7.

**Mr. Chairman:** A big bold “and”.

**Mr. Al-Rawi:** That is a very good question.

**Mr. Chairman:** Could you all explain that?

**Ms. Eversley:** It is now the second to last definition in the section because we would take out—



**Mr. Chairman:** It is a list with only two.

**Mr. Al-Rawi:** No, it is three. "Tax" follows under the struck off "national".

**Mr. Chairman:** All right, okay. So everybody good with the new 5? Right. Six, everybody good with the new 6? Right. So we go now to 7 which I assume is the one that you think we have a problem, Sen. Ramdeen. Okay, no problem. So let us look at what Sen. Ramdeen had to say. All right, take a few minutes, Sen. Ramdeen, look at the new 7. Is this the one?

**Mr. Ramdeen:** It is.

**Mr. Chairman:** All right. What part of it is concerning you?

**Mr. Ramdeen:** Well, what was concerning me is that it seems as though it makes the board have a power but really no enforcement—sorry, the board has a power to simply require that the financial institution provides the board with the information and the financial institution shall so provide. But I think I set out in the draft there that you should have perhaps make the drafting a little more tighter to give the board a certain degree of enforceability of that request because it simply seems—

**Mr. Chairman:** Understand. AG, what is the penalty if you do not comply?

**Mr. Al-Rawi:** Well, the FIA has a regime under it and the CBTT also has a regime which can give sanctions. That does not now address—so I am just saying the sanctions to the bank and a reporting-through entity is there. I understand Sen. Ramdeen's point to be, well, okay, what is the board's sanction to the institution that ought to be conducting this out.

**Mr. Chairman:** Well, let us read his point: how is the request to be made from the BIR to the institution? There is no timeline fixed for the provision of information. What is the penalty and what powers does the board possess to enforce its request? Now I just want to say off the top, AG, in principle, I have no problem in tightening up this. Sen. Roach, what "yuh" think?

**Mr. Roach:** I have no problem.

**Mr. Chairman:** Right.

**Mr. Al-Rawi:** Here is the submission just for thought now as we mull this through. The Act is framework as opposed to prescriptive. The moving of the target is so wide in the range of application that how the US structure has done it is to develop memoranda of understanding, a guideline, a book and regulation factors. It is actually a manual that has been printed off by the United States Department of Treasury as to how IGAs should be operationalized. The obligation on the BIR to build out how this thing is going to be done is a work in progress right now because it has to match up with what the US Department of Treasury is saying. So the request to be made from BIR to financial institution is stated in a framework fashion rather than a prescriptive fashion which is why we just say just the board shall request. The timeline again, because timelines are very wide, in how this thing is going to be regulated across entities, putting one time frame may not fit all. The good point at 3, what is the penalty for the financial institution's failure and what powers does the board possess, if any, to enforce its request, those are very genuine points.

**Mr. Chairman:** I would just like us to look at it.

**Mr. Al-Rawi:** Yeah.

**Mr. Chairman:** So the issues you have raised have merit so let us take a look and see if we could do some drafting.

**Mr. Ramdeen:** I just want to make the point that we should always bear in mind, this is automatic exchange of information.

**Mr. Chairman:** Sen. Ramdeen, I said your point had merit.

**Mr. Ramdeen:** No, no, I accept that. I just wanted to make the point that the value of putting in a timeline is to really help us in terms of compliance, simply that, because if the date passes and you do not have automatic compliance, then you fall into default again.

**Mr. Chairman:** Sen. Ramdeen, your point has merit. So could you all just think about this and we will deal with this at the next meeting.

**Ms. Eversley:** Also, if I may also just add that we are making amendments to both the Central Bank Act and the Securities Act as regulators.

**Mr. Chairman:** What I would like you all to do—I got that from the AG—let us explain what we are doing because if it is not necessary to put it in here and it can be picked up somewhere else, and there is a direct connection from this law to those other laws so this activates those other laws, let us explain it to the Committee so that they understand, so that we may not need to put it inside of here. Right?

**Mr. Al-Rawi:** We have noted the point, we will have it ready for the next meeting.

**Mr. Young:** What I would like to suggest, if I may, Mr. Chair, based on Sen Ramdeen's point, is we could always—flip through to the back and there is no criminality provision in this law whatsoever so that is one way you could consider doing it. Right?

**Mr. Al-Rawi:** Yeah.

**Mr. Young:** That if somebody fails to provide—

**Mr. Al-Rawi:** Well, off the bat, I could tell you that there are multiple ways to deal with it. One is general offence, non-compliance, certain other aspects, do all such things. So we will answer it comprehensively on the next occasion.

**Mr. Chairman:** I think we have general agreement. Sen. Roach, you have general agreement?

**Mr. Roach:** Agree.

**Mr. Chairman:** And Sen Shrikissoon?

**Mr. Shrikissoon:** Chair, just for a second. Just on the same point, I just noted 7(3) where the wording of it says: the board shall take all relevant measures. I am not too sure if I am comfortable with that, given the powers of the board, I am unsure of what the powers of the board will be and whether or not all relative measures will really be—

**Mr. Chairman:** Noted. Yes, Dr. Tewarie.

**Dr. Tewarie:** Yes, I want to suggest an amendment right where he is pointing. That is to say: shall take all relevant measures within the laws of Trinidad and Tobago to provide the Secretary to the Treasury with the requested information. I would like the insertion—

**Mr. Al-Rawi:** Sorry, Dr. Tewarie, just to jump in. The board can only act within the confines of its powers under the laws that it operates under.

**Dr. Tewarie:** Yeah, but you see exactly what you said here, the issue of all relevant

measures, it makes it rather broad and interpretive – subject to interpretation and I would be much more comfortable if we operated within the laws of Trinidad and Tobago.

**Mr. Al-Rawi:** We will look at it and provide a response as an issue –

**Dr. Tewarie:** And in 7(4) after that contribution there where the board, et cetera, to provide, I would like to suggest that we add a short sentence: this shall be done in writing.

**Mr. Chairman:** Sure, no problem with that. All right, so you all have noted these points?

**Mr. Al-Rawi:** Yeah.

**Mr. Chairman:** One presumes that the board will act reasonably when it is taking all the relevant measures, so let us find some appropriate form of words to capture that concept. Okay?

**Dr. Gopeesingh:** Chair, I crave your indulgence just to go back to one and to seek some information on the 6(3). Could you give me an education of what that actual means?

**Mr. Chairman:** It is federal taxes. It means it only applies to federal taxes. Taxes imposed by the Federal Government.

**Mr. Al-Rawi:** This is what the IGA in 1989 asked us to do so we are incorporating their request as Trinidad and Tobago signed on to in the schedule to the old law which says only these things, a, b, c, d and e.

**Mr. Chairman:** Because in the States, as you may know, they have all kinds of different taxes. If you go to 6(1) –

**Dr. Gopeesingh:** Yeah, I got it. I got it.

**Mr. Chairman:** No, but look at 6(1), it will help you. It defines the taxes we are talking about. Okay?

**Dr. Gopeesingh:** All right.

**Mr. Chairman:** All right. So I think that settles 7 unless anybody has any other issue with 7. Okay? Can we move to clause 8 now? Sen. Ramdeen, you had anything to say about what is now clause 8?

**Mr. Ramdeen:** It actually takes you back to 7(7).

**Mr. Chairman:** Sen. Ramdeen, I was trying to run pass that. [*Laughter*] I was hoping you missed it. It is all right, we have to go back then. Go ahead.

**Mr. Ramdeen:** The point that – and perhaps it might be clarified by the drafters but I just saw that the way in which 7(7) was drafted, it may cause –

**Mr. Chairman:** Well, this would now be 7(7)(b) or it is the whole of 7(7) that is bothering you?

**Mr. Ramdeen:** No, 7(7)(a). No, when you compare what –

**Mr. Chairman:** Just now, we are looking at (7)(a), (7)(b) and (7)(c).

**Mr. Ramdeen:** Well, let us deal with 7(7)(a) in terms of 7(7)(a) at the bottom of page 8:

Nothing in the section requires the Board to –

- (a) carry out administrative measures which conflict with the laws and administrative practices of Trinidad and Tobago.

**Mr. Chairman:** Well, that is good.

**Mr. Ramdeen:** I know, but then you come to 8 and when we come to 8 –

**Mr. Chairman:** Again, it says it does not require them to do this, to supply information which is not obtainable under the laws of – so this is good.

**Mr. Young:** If I may, I do not think Gerald was here. Dr. Gopeesingh, this goes to your point and the discussion we were having about the section 4 of the Income Tax Act and this is where it comes up here in (a) because section 4 of the Income Tax Act is a secrecy provision that they do not have to provide information to anyone unless a court orders otherwise, et cetera. So this is now giving them the legal ability to do it so they would have to have a similar domestic provision in American domestic law for them to do likewise unless we go through what the AG was explaining.

**Mr. Chairman:** No, but there is a wider point. Let us go –

**Mr. Young:** The way it works, right now, AG, is through the MLAT process is what you were explaining –

**Mr. Chairman:** Minister Young, there is a wider point. If you go to page 8, it says that: Nothing in this section requires the board to – and let us read it:

(b) supply particular information which is not obtainable under the laws of Trinidad and Tobago.

So it is crystal clear. This gives all the protection that you need. It means we are not going to go and violate other laws of Trinidad and Tobago. Okay?

**Mr. Young:** I was on a different point, Chair. I was pointing out that this is now the reciprocity and allowing the BIR to be able to provide the information in section 8, subsection (1). That reference to section 4 of the Income Tax Act. Right now, the BIR cannot provide the information unless –

**Mr. Chairman:** No, but let us deal with it clause by clause. So we are good on clause 7 now?

**Dr. Gopeesingh:** Just one point. Why was the issue of – under 7(6), the “taxation” –

**Mr. Al-Rawi:** Sorry, what is that?

**Mr. Chairman:** Yes, he is asking why in 7(6) on page 8 on the last line of 7(6), why the word “taxation” was deleted.

**Dr. Gopeesingh:** The board shall provide the information to the same extent as it can be provided under the taxation laws of Trinidad and Tobago. So it gives you a wide ability rather than just under the taxation laws, if you remove “taxation”.

**Ms. Eversley:** If I may, Sir? The TIEA agreement did not say taxation laws of Trinidad and Tobago, it just said the laws of Trinidad and Tobago, so we kept it in conformity with what the 1989 TIEA said.

**Mr. Chairman:** This is the one that has been existing for the last 20, 27 years.

**Mr. Al-Rawi:** What we are doing is to also take account of what the actual practice was between 1989 to 2016 and what the Board of Inland Revenue did was to act spontaneously when it should not have. It acted outside of the provisions of section 4 of its legislation and also what it did is that it provided information generally in keeping with the laws of Trinidad and Tobago. So it is not so much an issue of the power of the BIR but more so the method by which they supply the information.

**Dr. Gopeesingh:** So basically on other laws, if the laws correspond to what is required of them, they can provide that information.

**Mr. Al-Rawi:** Yes.

**Mr. Chairman:** But it is within the laws anyhow so it should not be a problem.

**Mr. Al-Rawi:** So to give an example. Under evidence, a document can be electronic or in paper. Does the Board of Inland Revenue Act say that? No. But another law says you could provide it electronically and it is as good as if it is a document in paper form. So that is just an example of the laws of Trinidad and Tobago which the BIR can use as opposed to a specific statement in the BIR power.

**Mr. Chairman:** Gentlemen and Dr. Gopeesingh, I want to entreat you, let us not let that detain us. All right.

**Dr. Gopeesingh:** No, no, no, I will move on and I appreciate what Ms. Eversley said.

**Mr. Chairman:** All right. Let us go to clause 8. Sen. Ramdeen, tell us what bothers you with clause 8.

**Mr. Ramdeen:** I think it would be clarified by the new clause (7)(b).

**Mr. Chairman:** Or okay. So we are okay then?

**Mr. Ramdeen:** Well, 8(b). You have the application of all of these sections of the Data Protection Act that are not proclaimed, they are not enforced.

**Mr. Chairman:** So true.

**Mr. Al-Rawi:** We are actually looking at a proclamation schedule right now for the Data Protection Act and what we do is we anticipate these are the sections of the Act which would be infringed. In particular, 6—well as they are and this is the right to share information, reproduce information, et cetera, receive and also — [Interruption] Yeah, that is it. It is receive, share and process.

We anticipate that the law will become operational. If we were to leave out the bits that are not yet proclaimed, we would be in trouble, have to come back. In any event, the application of the fact that they are not yet proclaimed would save us from having to comply but we are looking at it right now. It was partially proclaimed in 2014 —

**Mr. Chairman:** I understand.

**Mr. Al-Rawi:** And we are coming along that line.

**Mr. Chairman:** Sen. Ramdeen, this is really a core clause because it is making it clear that these other laws do not apply if the information is being disclosed in accordance with the 1989 TIEA. I do not think we could object to that.

**Mr. Ramdeen:** No, I am not saying that —

**Mr. Chairman:** No, I am not saying that you are.

**Mr. Ramdeen:** — I am objecting. I just said I do not know how proper it is —

**Mr. Chairman:** You mean to refer to provisions that are not yet —

**Mr. Ramdeen:** — to make provision that are not yet the laws of Trinidad and Tobago.

**Mr. Chairman:** Well, I think it is for convenience.

**Mr. Ramdeen:** I mean, it is a matter of convenience but I am not sure that —

**Mr. Al-Rawi:** Well, the propriety I think is answered by the fact that that law exists under an existing of Act of Parliament, albeit certain sections have not yet been proclaimed. It is on the law books of Trinidad and Tobago and therefore we have to answer the issue.

**Mr. Chairman:** What I would ask Sen. Ramdeen, if you are not violently opposed to this.

**Mr. Ramdeen:** I am not.

**Mr. Chairman:** Citing sections. You are not, right?

**Mr. Ramdeen:** No, I am not.

**Mr. Chairman:** So, we could move on. Sen. Roach.

11.25 a.m.

**Mr. Roach:** I am okay with that.

**Mr. Chairman:** You good? Sen. Shrikissoon? Right, Dr. Tewarie.

**Dr. Tewarie:** Question, through you, to the AG. Does it matter that the Data Protection Act is a later law than the 1989 TIEA, that you are, under this piece of legislation, making all reference to the 1989 Act and, therefore, asking to be absolved from the implications of the later Act? Is that a problem?

**Mr. Al-Rawi:** Subsequent law affects previous law, but the period between the assent of certain provisions of the Data Protection Act applied whilst the 1989 IGA was in operation. So there is a little gap period when the Data Protection Act became the laws of Trinidad and Tobago that we would have to attend.

I catch your point. Your point is look, the past period should be in relation to the past laws. If that is part of the consideration that you are asking us to have. But because the Data Protection Act would have applied in the period 2014, '15 and '16, we need to make reference it to.

**Dr. Tewarie:** What I am really asking, Chair, through you, is, okay, I mean your legislative programme evolves over time, your country becomes more and more enlightened and focused in the law that it brings. And the general tendency is that the new law would in fact affect old laws. But here we are taking an older law and asking for the new law not to affect what we are doing under the old law. I do not know what these provisions are. I mean, I would be quite frank with you. I cannot recall that these are and I did not look at the legislation. But I am just raising this issue because—  
[*Interruption*]

**Mr. Chairman:** Dr. Tewarie, can I assist?

**Dr. Tewarie:** Yes.

**Mr. Chairman:** Let me help. Could the CPC, because I too have no clue what is section 38 of the Data Protection Act. Could the CPC provide a brief to members, for the next meeting, to tell us what are these sections?

**Ms. Eversley:** A brief or a copy?

**Mr. Chairman:** No. I want you to explain them to us.

**Ms. Eversley:** Well, we have it here at hand.

**Mr. Chairman:** What is 6, 30, 31, 38? Do not just send us a copy of—[*Interruption*]

**Mr. Al-Rawi:** Receive, share and process.

**Mr. Chairman:** We want to know what does it mean, so we can understand, you know, the implications of all of this. Would that satisfy you, Dr. Tewarie?

**Dr. Tewarie:** Yes, I think that would be helpful.

**Ms. Eversley:** Can we go back a minute, please, Chair?

**Dr. Gopeesingh:** Similarly, can we have some idea of what any other law of like effect? It is very vague.

**Mr. Chairman:** No, well that was a point made by Sen. Ramdeen. So, could you, CPC, try your best, make your best effort, to give the compendium of laws that might be affected by this thing? Okay? So in your brief explaining what are all these sections here,

also give examples of other laws as best as you can. [Interruption] There might be.

**Mr. Al-Rawi:** Mr. Chairman, what happens is the courts, very often, interpret laws and they may be constructively read as being other than stated in the books itself. That is option one. A judge may say to you, this law is to be read this way.

Secondly, the clause is intended to be prospective for laws that we may bring forward like official secrets laws, like whistleblowing protection. There are a couple other laws, which we must cater for, cybercrime laws, whatever they may be, which are prospective in speaking. So it is a catch-all phrase, intended to take care of the circumstance where a court may be invited to consider, look, it is only these two pieces of laws and a new law that has come about is not caught because Parliament “in its wisdom” did not intend for any other law of like effect to apply in relation to this. And, therefore it is to cater for a hindrance by way of operation of the law that we put a catch-all phrase.

**Dr. Gopeesingh:** Okay, are we legislating for the future now?

**Mr. Al-Rawi:** Putting catch-all phrases is common in drafting.

**Mr. Chairman:** Gentlemen. “Wha is dat?” We have work to do. So CPC, would you kindly address your mind to the fact that there is a question as to what is the meaning of any other law of like effect, okay, and explain. Can we move on now? Clause 9. No?

**Dr. Tewarie:** At 8(2).

**Mr. Chairman:** “Wha’m tuh 8(2)?”

**Dr. Tewarie:** The liability, the summary conviction to a fine.

**Mr. Chairman:** Do you have a recommendation?

**Dr. Tewarie:** Yes. I want to suggest \$250,000 and five years.

**Mr. Chairman:** Okay, no problem.

**Dr. Tewarie:** This is a violation of – [Interruption]

**Mr. Chairman:** Dr. Tewarie, your suggestion is noted.

**Dr. Tewarie:** Right.

**Mr. Chairman:** I would like the CPC – gentlemen and ladies.

**Mr. Young:** The sum of \$250,000 and – ?

**Dr. Tewarie:** Five years.

**Mr. Chairman:** CPC, could you educate this committee at the next meeting on the proportionality of that request?

**Mr. Al-Rawi:** We would give you the matrix and proportionality.

**Mr. Chairman:** We want the proportionality of that request. Okay? So find a similar offence and let us see what we have in our laws with respect to that. Okay? So that we know we would not be “vooping”.

**Dr. Tewarie:** It would be a violation of power.

**Mr. Chairman:** Dr. Tewarie, you are infecting the committee. Everybody behaving like you. “Ah calling Stuart Young doctor just now.” So, let us move on to clause 9. Did you all have any issues with clause 9? I gather you did not but I do not know. Let me hear, Opposition.

**Mr. Al-Rawi:** Just to let you know this is be straight out of the IGA.

**Mr. Chairman:** Opposition, do you have any objection to clause 9?

**Dr. Tewarie:** No.

**Mr. Chairman:** Good.

**Dr. Tewarie:** Just one issue though.

**Mr. Chairman:** Yes.

**Dr. Tewarie:** In terms of the people we invite, I think you addressed that this morning by talking about the insurance companies and the other things. The one issue you did not address though was the Securities Commission, because this is mentioned in here.

**Mr. Chairman:** No, we had said before that we would invite the Board of Inland Revenue—*[Interruption]*

**Dr. Tewarie:** Yes.

**Mr. Chairman:** Central Bank and now to make it crystal clear, we would invite the Securities Commission.

**Dr. Tewarie:** Well, then fine. No problem.

**Mr. Al-Rawi:** And the SEC sent a document in writing, which I will send across.

**Mr. Chairman:** We good with clause 9?

**Dr. Tewarie:** Yes.

**Mr. Chairman:** Let us move on now to clause 10. “That is plenty pages, boy”. It takes us all down to page 19. We are going good. All right, clause 10. Opposition, Sen. Ramdeen, Dr. Gopeesingh, Independents, let us hear you on clause 10; the new clause 10 on page 19.

**Mr. Ramdeen:** Chair, I think there was just a standard am—*[Interruption]*

**Mr. Chairman:** You had some issues?

**Mr. Ramdeen:** Standard issue like what we dealt with just now, which is the fact that we are making provision for these sections 38, 40, 30, 31 as we go along—*[Interruption]*

**Mr. Chairman:** Right, right, right.

**Mr. Ramdeen:**—that are not really. I mean, they become very superfluous, if you ask me.

**Mr. Chairman:** So, AG, this is the same point he is making, that look these things have not been proclaimed—*[Interruption]*

**Mr. Al-Rawi:** We could take the skinny version like clause 18, which is nothing affects this or the breakout, which is the processing, receipt, et cetera.

**Mr. Chairman:** Well, let us address our mind to it. So we would deal with this philosophical point on the next occasion. I think we can go, unless there is any objection from the Independent Bench. Can we go straight to new clause 18?

**Mr. Shrikissoon:** Chair, could I ask a question on that same clause?

**Mr. Chairman:** Sure.

**Mr. Shrikissoon:** I just need clarity.

**Mr. Chairman:** No, problem.

**Mr. Shrikissoon:** Because as everyone else, I am not unsure of what the aspect of the Data Protection Act are. But it says:

“Notwithstanding sections...a financial institution may, for the purpose of the IGA, process sensitive personal information collected by it in the normal course of business in relation to an account holder for Reportable Account is a United States person.”



**Mr. Ramdeen:** It is defined in the interpretation section.

**Mr. Chairman:** All right. CPC, this is something that we really need to nail down, because even though Minister Young told us who this Bill affects, we really need to put it in layman's language. Explain what a reportable account is, what a United States person is and the whole category of persons who are affected by this legislation.

**Ms. Eversley:** It is in the definition section.

**Mr. Shrikissoon:** Yeah, but Chair, I am just trying to see if it makes sense, the wording of it. From the read of it: to an account holder of a reportable account is a United States person?

**Mr. Al-Rawi:** We will look at that.

**Mr. Chairman:** Yes, it may be a language problem.

**Mr. Ramdeen:** I think I addressed it, you know.

**Mr. Chairman:** You did?

**Mr. Ramdeen:** I think it is a typographical.

**Mr. Chairman:** Okay, so you all agree to that? Let us go to 11.

**Dr. Tewarie:** At 11(2), all right. Something about this clause, I do not know if I am getting it right or not:

“Where the Competent Authority receives sensitive personal information under subsection (1)...”

All right, and subsection (1) is:

“Notwithstanding” –so and so and so–“shall for the purposes...receive sensitive...”

Right?

“...in respect of Reportable Accounts – all right – “it shall keep such information confidential and unless the Competent Authority is permitted to disclose that information under this Act, it shall not disclose that information without the consent of the person to whom that information relates.”

What is the net effect of these two clauses? Under the Data Protection Act you are getting the information. It is sensitive information. But if it is sensitive information, you are not supposed to disclose it and if you do disclosure it you are to ask, basically notify, the person or seek permission. Explain this to me.

**Mr. Al-Rawi:** Sure.

**Dr. Tewarie:** Let us say it is me involved. Explain it to me.

**Mr. Al-Rawi:** Okay. So you are correct. Everything that you have said so far is absolutely correct. The Data Protection Act requires expressed consent to disclose. There are exceptions in the Data Protection Act, which have not yet been proclaimed. For instance, if the information is for public purpose you do not have to worry with the expressed consent and the sensitivity, et cetera. So this provides, out of an abundance of caution, the obligation for secrecy. It is only permitted in the lawful circumstance where this law, as applied, says you can do it without consent and in every other case you have to get the consent of the person.

**Dr. Tewarie:** Okay.

**Mr. Al-Rawi:** So, it is to make sure – [Interruption]

**Mr. Chairman:** It is a form of protection.

**Mr. Al-Rawi:** – that the blanket giveaway in section 8 and the blanket giveaway in section 10, et cetera, is not too wide; it circumscribes.

**Dr. Tewarie:** Okay.

**Dr. Gopeesingh:** Chair.

**Mr. Chairman:** Yes.

**Dr. Gopeesingh:** I am a little confused on this issue of what the Attorney General is saying, in terms of the Data Protection Act, which certain areas are not proclaimed and we are looking at legislation in anticipation of the proclamation. What areas of the Data Protection Act that are not proclaimed? Can we use those that are not proclaimed?

**Mr. Al-Rawi:** Yes, we are bound by drafting standards to deal with laws that exist on the books of Trinidad and Tobago if they have been assented to but not yet proclaimed.

**Dr. Gopeesingh:** You can use those?

**Mr. Al-Rawi:** You have to use them. So, for instance, the land package laws were passed as Acts of Parliament but none of them were proclaimed at all. We still make reference to some of those positions. You see, in the laws of Trinidad and Tobago they specifically make reference to them and then the laws of Trinidad and Tobago, when they are revised, have a little asterisk and say these have not yet been proclaimed.

**Dr. Gopeesingh:** So you can use certain laws that have been – what was the word you used just now?

**Mr. Al-Rawi:** Assented to.

**Dr. Gopeesingh:** Assented to?

**Mr. Al-Rawi:** You have to.

**Dr. Gopeesingh:** – but not proclaimed.

**Mr. Al-Rawi:** Correct.

**Dr. Gopeesingh:** You can.

**Mr. Chairman:** No, they would have no effect. You are simply identifying it but it is not activated until the law is proclaimed. Do you understand?

**Mr. Young:** And you have to – *[Interruption]* Correct. Because remember once the law is passed and it has been, as the AG said it is a two-stage process with some legislation. So it is assented to, that means it is now the Act. It is not implemented until proclamation, but we cannot then pass subsequent legislation that it could capture without referring it to.

**Mr. Al-Rawi:** And it is to take care of the fact that proclamation is done by Cabinet but laws are passed by Parliament. So as we are passing a substantive law, we have to deal with the laws on the books. We need to put it there because somebody else, without reference to Parliament, does the proclamation and that is the Cabinet.

**Mr. Chairman:** Okay? Can we go straight to clause 18, please?

**Mr. Shrikissoon:** Chair, before you go on – *[Interruption]*

**Mr. Chairman:** Yes.

**Mr. Shrikissoon:** – could I just look at 11?

**Mr. Chairman:** Sure.

**Mr. Shrikissoon:** Just for clarification again:

“Notwithstanding sections 6, 30 and 31 of the Data Protection Act, the Competent Authority shall for the purposes of the IGA, receive sensitive personal information on a United States person in the possession of a financial institution...”?

**Mr. Chairman:** Oh, no, the information is in possession.

**Mr. Shrikissoo:** Correct.

**Mr. Chairman:** Not the financial institution. All right, for the third time, can I go to clause 18, please? Sen. Ramdeen has told us that since the agreement will affect the way in which financial institutions have to operate, we should consult with them. And we are going to do that, right? Good. So we are going to consult with them. So that takes care of the point on 18 and can we go. Clause 19 looks like – *[Interruption]*

**Dr. Gopeesingh:** Chair, I am a bit slower than the legal minds to this.

**Mr. Chairman:** There are only three legal minds here; four sorry.

**Dr. Gopeesingh:** Just on the top of page 20 – *[Interruption]*

**Mr. Chairman:** I do not consider myself a legal mind, go ahead.

**Dr. Gopeesingh:** You did two masters degrees.

**Mr. Chairman:** Two LLM, yes, but they do not make me a legal mind. Go ahead.

**Dr. Gopeesingh:** I did two years in law too but I did not finish the third year.

**Mr. Chairman:** With distinction, eh.

**Dr. Gopeesingh:** The disclosure of sensitive –

**Mr. Chairman:** Both, that is on record. Go ahead.

**Dr. Gopeesingh:** “Doh boast nah”.

**Mr. Chairman:** “Ah boasting, yes”. Go ahead.

**Dr. Gopeesingh:** The disclosure of sensitive, personal information under this section shall be done annually on an automatic basis. Could you – *[Interruption]*

**Dr. Tewarie:** Where is that?

**Dr. Gopeesingh:** At the top of page 20.

**Mr. Chairman:** Yes, what is wrong with that?

**Dr. Gopeesingh:** I thought that sensitive personal information is defined by permission.

**Mr. Chairman:** No, no, hold on. This is after you satisfy all of the other steps first that it is within the framework of the law; it is within the powers of the competent authority; it is within the ambit of the IGA. After that, the information is provided on an automatic basis.

**Mr. Al-Rawi:** Let me just point out something, perhaps, to answer. Two is in reference to 12(1); 12(1) addresses the large elephant in the world, not in the room, that is that the Data Protection Act says you can only exchange information with another jurisdiction if it has a comparable law. The United States of America does not have data protection laws. This is the argument that the UK had with them, that Europe had with them, and then they all went and signed IGAs and did it because the US simply said “Well, we would stop banking with you”. So 12(1), at the end of it, you see:

“...or the United States does not have comparable safeguards as required by the Data Protection Act.”

Right, so I just wanted to point that out. This is really a take-it-or-leave-it sort of position by the United States.

When you get to subclause (2) – [Interruption]

**Dr. Gopeesingh:** So even if the individual to whom the information relates has not consented to the disclosing of the information or the United States does not have the required Data Protection Act.

**Mr. Al-Rawi:** Correct. Right?

**Dr. Gopeesingh:** How does this automaticity come in?

**Mr. Chairman:** Well, that is the point I was driving at. Right now, the sharing of information is not automatic. It is on a voluntary or spontaneous basis. So the IRS or the Treasury may write the BIR, “Look we want information on XYZ.” BIR might say: “Well, no we are not giving it to you”, or “Yes we are giving it to you”. With this FATCA, every year, once per year, they just provide a list of information, automatic. Right? So the BIR will compile the information in the format required by the US Treasury and then automatically transmit it once per year. That is all it means.

**Dr. Gopeesingh:** But if I, as the affected person, give you authorization to provide the information, sensitive information, at a particular year – [Interruption]

**Mr. Chairman:** Yes.

**Dr. Gopeesingh:** – do you not think that in a subsequent year I should be asked again? Why is there the automatic – ?

**Mr. Al-Rawi:** No, it is every year on 30<sup>th</sup> September, the information is provided.

**Mr. Al-Rawi:** That is how the IGA is built.

**Mr. Chairman:** Once per year, every year, on 30<sup>th</sup> September.

**Mr. Young:** Just like the Integrity Commission.

**Dr. Tewarie:** Mr. Chair, if you would permit me. These are US tax liable citizens or residents. It really is covered by the FATCA law in the US and we are simply proceeding with that.

**Dr. Gopeesingh:** So on an annual basis the information is provided.

**Mr. Chairman:** Once per year, whatever information they have in their possession, they automatically. So as 30<sup>th</sup> September reach, an email or whatever goes out or whatever method used to communicate and it goes.

**Dr. Gopeesingh:** But I heard Minister Young mention just like the Integrity Commission but the Integrity Commission, every year you have to fill out your information which may differ from the previous year.

**Mr. Young:** No, I am using the analogy, Dr. Gopeesingh, of like with the Integrity Commission, they have set the date. Every year persons who are caught by that Act have to provide their information as at 31<sup>st</sup> of December. Right? So it is the same thing here. So you would be sending the information as at 30<sup>th</sup> September and I wanted to just tie it into what Dr. Tewarie said. Understand this is their legislation. This is to give effect to their tax laws. So really what it is, is us assisting them by the provision of this information to US tax liable persons and they will then look at it. So they may look at it and see well you had \$1 million in your account this year. You have 10 now. Look at their IRS or whatever returns – [Interruption]

**Mr. Chairman:** They did not pay any tax.

**Mr. Young:** – and see that they did not pay any tax and then dive into it. It is really a net

system.

**Dr. Gopeesingh:** I hear you, but perhaps I am missing the point because if you are asked to give permission, to give this sensitive information in a particular year, or that the US has requested – *[Interruption]*

**Mr. Al-Rawi:** Okay, let me answer your question.

**Mr. Chairman:** Let him finish his question.

**Mr. Al-Rawi:** You want to know why you do not need consent every year.

**Dr. Gopeesingh:** Why do you not need permission?

**Mr. Al-Rawi:** I got the point. The simple point is, it is a – my answer to that is that it is a continuing obligation to obtain consent.

**Dr. Gopeesingh:** Yeah.

**Mr. Al-Rawi:** This law gives an exception to that in a general sense and then it circumscribes itself, as we saw in the previous clause where they say: Look, you cannot do it in certain circumstances. So if somebody challenges and says look you have acted too wide, this law provides the platform for that. But this clause is dealing with the obligation to send. The aspect of obtaining consent is always a continuing one unless the exception applies.

**Dr. Gopeesingh:** But you do not think that the US Secretary to the Treasury should be asking in a subsequent year for that same information from the person?

**Mr. Al-Rawi:** What the US Treasury says to Trinidad and Tobago is you go and get the information and you send it to us. So, they are only speaking to the Board of Inland Revenue.

**Mr. Chairman:** I understand what he is saying. Yes, every time they are required to get consent they will have to get it.

**Mr. Al-Rawi:** Unless excepted.

**Mr. Chairman:** In other words, it is not they get it once and then that – *[Interruption]*

**Dr. Gopeesingh:** But Chair and AG and colleagues, this section shall be done annually on an automatic basis.

**Mr. Chairman:** Yes, but what is provided automatically is information that they have. There is some information they cannot get without consent. So every time they go to get it they have to get consent. There is some information that they would get without consent.

**Dr. Gopeesingh:** That they have already, that they have given.

**Mr. Chairman:** No, no. There are some types of information they will get without consent and there are some types of information that requires consent and every year that they provide it, they will have to get consent for that type of information.

**Mr. Al-Rawi:** The US never really needed the consent. It is the financial institution who has to get the consent if the Data Protection Act is not exempted or excepted. So the recipient, the United States of America, technically ought to have a law which compares with our Data Protection Act. We know it does not and we know that it is never going to happen.

**Mr. Chairman:** No, it is a different point, AG.

**Mr. Al-Rawi:** So they do not need to obtain consent.

**Mr. Chairman:** He is making a different point. He just wants to be clear that if a certain type of information requires consent, on each occasion that you procure this information you will go and get the consent. Is that what you are saying Dr. Gopeesingh?

**Dr. Gopeesingh:** Yes, but this here, No. 2 does not capture what you are saying there.

**Mr. Al-Rawi:** Because it does not need to.

**Mr. Chairman:** What this means is that this only refers to information that is lawfully gathered.

**Mr. Al-Rawi:** That fits into the pot.

**Mr. Chairman:** It is not any kind of information. Maybe Dr. Tewarie, perhaps you could explain that.

**Dr. Gopeesingh:** Could you put an addendum or a little phrase inside there to capture –  
[*Interruption*]

**Mr. Al-Rawi:** It works in sequence with how it happens. The collection of sensitive personal information is either done with or without consent, depending upon the application of exceptions to section 4 of the Inland Revenue Act, the Data Protection Act and that actually constitutes a pot of information collected by the BIR.

That pot either has consent or no consent but it constitutes information obtained. That consent and provisions came earlier. This clause here now is only dealing with the obligation of the BIR to send to its counterpart the pot which it collected, in respect of which there is either consent or no consent because there was an exception. So this deals with now the obligation to make sure you send it once every year, the full pot that you have, by this particular date, which is compliance with what the IGA says.

**Dr. Gopeesingh:** I heard you, AG. Are you comfortable with the wording of the clause?

**Mr. Chairman:** I think it is clear. I think it is clear.

**Dr. Tewarie:** If I can assist, I would try.

**Dr. Gopeesingh:** I think it is an important point because sensitive information requires consent.

**Mr. Chairman:** Only certain types of sensitive information.

**Dr. Tewarie:** Under this law there are two types of information affecting US taxpayers. One is the banking information that has to do with the accounts, which the United States needs in order to see if they paid all their taxes. Right? That is considered automatic information which is provided – [Interruption]

**Mr. Chairman:** Correct.

**Dr. Tewarie:** – every year and you do not have to ask permission for that.

**Mr. Chairman:** Correct.

**Dr. Tewarie:** If, however, you go into these provisions here having to do with the Data Protection Act, which is what we had asked about, and sensitive information is required and the United States wants that, they have to write you and ask you for that and the BIR then has to, within the laws of Trinidad and Tobago, which is why I wanted that section put in, that little clause put in, under the laws of Trinidad and Tobago, determine whether it could provide that information. So there is a distinction between the two types of information.

**Mr. Chairman:** Let me short circuit this. CPC, could you give us a little brief, another

one, distinguishing the type of information that will be automatically transferred without consent and the type of information that requires consent? Okay? And that will clear this all up.

**Dr. Gopeesingh:** You have done well.

**Mr. Chairman:** “A-A, ah getting frightened now”. Let us move on now. Can we move on to page 22, please? Because I think there is no issue with 19 or 20. Can we go on to page 22, clause 22? Okay, Sen. Ramdeen do you have any issues with this clause 22 here?

**Mr. Al-Rawi:** Sen. Ramdeen, just to flag out to you. In light of his point made earlier about powers and sanctions, we are going to re-look at clause 22 to see if it should also have a power to do something.

**Mr. Chairman:** But do you have any other issues with these general clauses? Because you had some issues I am seeing.

**Mr. Ramdeen:** Chairman, it had to do with some of the powers given to the Minister.

**Mr. Chairman:** All right, so that is way down, then. Okay, that is – *[Interruption]* no, no, that is on page 24. That is an example. Why would you not want me to approve the guidelines, Sir?

**Mr. Ramdeen:** Well, the first thing is I think that we should see the guidelines first.

**Mr. Chairman:** Now that is hard because that is going to take a long time. That is why we have this lapse of time between February and September. It would take them months to produce the guidelines.

**Mr. Al-Rawi:** Because they have to be done in conjunction with US.

**Mr. Chairman:** And they cannot produce the guidelines until we pass the law. I understand what you want. You want to see but you cannot see until we pass the law.

**Dr. Gopeesingh:** And probably when those guidelines are provided by the Central Bank, is that going to be okayed by what? By negative resolution?

**Mr. Chairman:** No, they are subject to my approval.

**Dr. Gopeesingh:** To the approval of the Minister of Finance.

**Mr. Al-Rawi:** As they are with all other guidelines that the Central Bank produces. So it is not that this is a unique guideline which only the Minister sees for this case.

**Dr. Gopeesingh:** But you see this affects – privacy rights.

**Mr. Chairman:** I have a solution here. AG, I want you to think about this. I am not making a commitment but I want the AG to think about this. I can lay them in the Parliament to make them subject to negative resolution, you know.

**Dr. Gopeesingh:** That is fine.

**Mr. Chairman:** What do you think?

**Dr. Gopeesingh:** It is Parliament’s responsibility to – *[Interruption]*

**Mr. Chairman:** Do you think that is going to create a problem for us?

**Mr. Al-Rawi:** I have no objection in principle at all – *[Interruption]*

**Mr. Chairman:** All right, so consider it.

**Mr. Al-Rawi:** – if it falls under a financial obligations rule.

**Mr. Chairman:** Consider the implications of that, and that solves this problem.

**Mr. Roach:** Actually that is a good thing. I think Barbados does that.

**Mr. Chairman:** Cool.

**Dr. Gopeesingh:** That will satisfy –

**Mr. Chairman:** They have to bring a Motion to negative it.

**Dr. Gopeesingh:** – the transparency that is required.

**Mr. Chairman:** So let us consider that and at the next meeting we will settle that point. Okay?

**Dr. Gopeesingh:** Sure. I am not going further for affirmative resolution. I think we can be satisfied with negative resolution.

**Mr. Chairman:** Well, I think that is it. “We done.” Maybe the meeting, is over.

**Dr. Gopeesingh:** No, no, no.

**Mr. Chairman:** “I done.”

**Dr. Tewarie:** Mr. Chairman, 27.

**Mr. Chairman:** What is 27 now? “Aye yi yi, last page yuh going good. Leh meh hear yuh.”

**Dr. Tewarie:** Sorry, clause 27. I had something here, just bear with me.

**Mr. Chairman:** I know what your problem is.

**Dr. Tewarie:** What?

**Mr. Chairman:** Sen. Ramdeen had raised that; that I should not just be able to do that willy-nilly.

**Dr. Tewarie:** No.

**Mr. Ramdeen:** There is so much distrust. Why is there so much distrust?

**Mr. Chairman:** But why are you all making this an issue? Let Dr. Tewarie make his point. I thought it was the same point Sen. Ramdeen made. Maybe it is a different point. “We reach de last page. So all yuh just cool it.”

**11.55 a.m.**

**Dr. Tewarie:** The question I have is this. Is it constitutionally permissible for the Minister to do this without reference to the Parliament? I think that is what I want to ask.

**Mr. Chairman:** All right, okay. Will a negative resolution satisfy you?

**Dr. Tewarie:** Yes.

**Mr. Chairman:** Good. Consider that AG.

**Mr. Al-Rawi:** Hold on. I have to caution you, Minister. A Government and an Executive has to have the power to forge its policy.

**Mr. Chairman:** I know that. So what I want – I asked Dr. Tewarie if he would like these amendments subject to negative resolution. I want you to look at that and if it does not make any sense, I want you to produce a position paper for us telling us it makes no sense.

**Mr. Al-Rawi:** Sure. You know the answer to that.

**Mr. Chairman:** If we amend the agreement and we have an Order, he wants that Order to be subject to a negative resolution.

**Dr. Tewarie:** Now, there is a reason for that. Chair –

**Mr. Al-Rawi:** Could I just clarify, so I make sure I am responding to the right thing? Is it only the amendments to the IGA or is it an IGA in and of itself? [*Crosstalk*]

**Mr. Chairman:** Just a second, just a second. Let us go to clause 27, let us see what it says:  
“The Minister may by Order, where the parties modify the IGA or its



annexes...amend the IGA or its annexes contained in Schedule 2.”

What it is saying is that if the Government goes ahead and signs a new agreement or signs an amended agreement, this clause is saying that would find its way into this law as the amended Schedule 2.

**Mr. Al-Rawi:** Noted. I got the point. Is that the clear? Is that the clear point?

**Dr. Tewarie:** Yes.

**Mr. Al-Rawi:** Okay, I would get a response for you.

**Mr. Chairman:** Wait, wait, wait. What we need to look at is that the Government having already gone ahead and signed and modified an agreement, having done that, can it just reach straight into the law or – [Crosstalk] You hear it? You got it?

**Mr. Young:** And the analogy would be, for example, when you look at IFC and the World Bank and these other institutions, the answer would have to be yes, because you have signed on. If they come with amendments, it then becomes a Schedule to the law, et cetera. The same way you all would have agreed to sign the IGA and not –

**Mr. Al-Rawi:** I do not mean to disagree, but I understand Dr. Tewarie’s point. The thing which Parliament approved by way of a positive process being amended, which could essentially be the whole guts of it, even if you wanted to be wicked, that –

**Mr. Chairman:** I do not know what we are arguing about.

**Mr. Al-Rawi:** That should come for some scrutiny because it may in fact affect your rights.

**Mr. Young:** I disagree because, of course, that is the Government’s policy. [Crosstalk]

**Dr. Tewarie:** This is not meant to be contentious at all.

**Mr. Chairman:** Gentlemen, I need to get one of these hammers you know. Gentlemen, would you all please stop? I have asked the Attorney General to put this in writing. Okay? Right. I am bringing a gavel next time.

Now, hold on, wait. Stop, stop, stop. I want to set the date for the next meeting.

**Dr. Gopeesingh:** Just for clarification, could you just bear – I crave your indulgence to explain, on page 25, at section (c) – (ii):

“by deleting the words ‘or similar legislation of a foreign jurisdiction’ and substituting the words ‘similar legislation of a foreign jurisdiction or a declared agreement’”.

Could you just clarify?

**Mr. Chairman:** CPC, could you just tell us what the difference there is?

**Ms. Eversley:** Chair, this came out in amending the Securities Act to give the TTSEC the ability to develop guidelines for the implementation of IGAs. This was this amendment. So it has to do –

**Mr. Chairman:** Dr. Gopeesingh, if you look at the top of the page, it is specific to the Securities Act.

**Mr. Al-Rawi:** Dr. Gopeesingh, remember we are going to have various throughputs to do this, so the banks or the entities who are reportable entities have to filter through somebody who has the power to lash them – if I could put it that way – CBTT, SEC, et cetera, because the Board of Inland Revenue did not have that power to lash the ultimate end product. So because we are contemplating the ability to apply a sanction by the

financial institutions supervisor – if I could put it that way – we had to amend the SEC Act and the CBTT Act. What we are specifically doing now is we have to think broader than just this TIEA for the US, because we have got Global Forum next on deck. So that is why the broader language for another declared agreement. Let me translate that, for instance, a declared agreement to deal with Global Forum, one for Japan or one for Ireland, however it may be. So that is why that language is built out that way.

**Mr. Chairman:** Dr. Gopeesingh, what this does is anticipates future arrangements with the Global Forum. AG, I know you have to run, but I just want to ask you a question. Let us look at this and see whether it is absolutely necessary in this law, and we will address it at the next meeting. Can we set a date for the next meeting please, because the next meeting is to talk to stakeholders? We need a whole day for that. So we need a day where everybody is free. So could you all give me a day please?

*[Discussion of date for next Meeting]*

So, I am thinking about a Monday or a Wednesday. The Wednesday I was really contemplating was next week Wednesday, but we will come to that in a “lil” while.

*[Discussion of date for next Meeting]*

We can adjust Parliament. This is important, you know. Do you know what the Treasury tell me this morning? If we do not get our act together, they are going to impose sanctions on us for real, you know. They tell me that, you know. I am not playing with this, you know.

*[Discussion of date for next meeting]*

So, we now have a whole range of dates here, I am going to consult with the members individually in due course. I would talk to our Leader of Government Business and, perhaps, we do not have to have a sitting of the Parliament.

**Dr. Gopeesingh:** No, it is Private Members’ Day.

**Mr. Chairman:** So that cannot work.

**Dr. Gopeesingh:** Well, let us start early and finish at 12.30.

**Mr. Chairman:** Hold on. Hold on.

**Dr. Tewarie:** I think the Chair is right, we need a whole day.

**Mr. Chairman:** We need a day. My experience tells me we need a day. All right. Let us go back. Is Monday the 23<sup>rd</sup> good for everybody here?

**Hon. Members:** Yes.

**Hon. Member:** No.

**Mr. Chairman:** Ramdeen, so it is not good for you. All right. Is Wednesday the 25<sup>th</sup> good for everybody here?

**Hon. Members:** Yes.

**Hon. Members:** No.

**Mr. Chairman:** Well, Friday – it is not, that is Private Members’ Day. The following Monday the 30<sup>th</sup>? I am just going through the possibilities here. *[Crosstalk]* Well, we will have to go with a half-day meeting then. It looks as if we cannot get a full day. So which one of the half days is best for everybody?

*[Discussion of date for next Meeting]*

**Mr. Ramdeen:** Chair, we also have to consider that we have to give the people who are

coming notice to do what they want to do. They have to be prepared.

**Mr. Chairman:** Much to my great reluctance, because this affects me, let us start early on Friday morning of next week. Okay? How early can we come?

**Hon. Members:** Nine.

**Mr. Chairman:** Everybody will be on time? And we go to twelve o'clock minimum. Let us go 12.30. So, let us agree, 9.00 to 12.30 next week Friday the 27<sup>th</sup>. Is that good for everybody in this room? I know the AG said it is good for him.

**Ms. Eversley:** Chair, I just remember we have a CPA meeting on that day.

**Mr. Chairman:** That is all right man. You could excuse yourself from that. So 9.00 a.m. next Friday, and we are going right down to 12.30 and we would try our best to finish the consultations on that day. All right?

**Dr. Gopeesingh:** Just Chair, could the AG send to us the written submissions that they made already.

**Mr. Chairman:** Now, we really have to make our best effort to provide the information required of us. I am going to send out this email so everybody could see. I would do this by today or Monday for the latest. The AG is gone, but I would put pressure on him to do it. CPC, you have a lot of work to do. When are you going to provide the information?

**Ms. Eversley:** We will try and do our best for Wednesday by midday.

**Mr. Chairman:** That is too late. Tuesday? Tuesday four o'clock?

**Ms. Eversley:** Unless we provide the information in pieces. We could send whatever we finish and then—

**Mr. Chairman:** All right, send as much as you can by Tuesday and send the balance by Wednesday midday.

**Ms. Eversley:** Yes.

**Mr. Chairman:** Okay? Agreed. So the AG, we will have to put pressure on him to do what he has to do. I will provide my information, and then when we examine the Board of Inland Revenue, one of the things we will ask them to do is come and tell us what they have done in terms of providing information that nobody knows about. Okay. So that settles that.

**Dr. Gopeesingh:** And Chair, the other issue is, there are some people you still have to write to and ask them—

**Mr. Chairman:** Yes, we will send out invitations next week as quickly as possible. Maybe by Monday or Tuesday we will send out these invitations inviting written memorandum.

**Mr. Ramdeen:** I do not know, only the AG perhaps or Minister Young might be able to tell us, but the consultation material that would have come in from the different stakeholders—the material that would have come in from the persons who are coming orally—if we could have shared that among themselves because different institutions might have given a different view, and it may be more useful for each institution to understand what the other one has said. They are all reporting.

**Mr. Chairman:** So give it to them?

**Mr. Ramdeen:** Give it to them as well.

**Mr. Chairman:** No, problem. You took a note of that, Keiba? So whatever letters the Bankers Association wrote will be shared with the credit unions and the Central Bank.

**Mr. Ramdeen:** So, we would not be asking the same questions to different people, and save time.

**Mr. Chairman:** Very good. Now, gentlemen and ladies, I really would like to finish the consultations next week Friday, so we have to keep it tight, because it is a lot of them and we would have to go like half an hour for each one and try and get it out of the way, and then the following week we will finalize our deliberations on this matter. I want to meet that February 3<sup>rd</sup> deadline. Yes, Dr. Tewarie.

**Dr. Tewarie:** Could I suggest that in terms of sequencing that we have in the following order that I want to suggest: the BIR, Central Bank, SEC and then we move on?

**Mr. Chairman:** No objection. Okay. Everybody good. Meeting adjourned.

**12.11 p.m.:** *Meeting adjourned.*

## VERBATIM NOTES - FOURTH MEETING FRIDAY, JANUARY 27, 2017

### PRESENT

Mr. Colm Imbert	Chairman
Mr. Faris Al Rawi	Member
Mr. Stuart Young	Member
Miss Marlene Mc Donald	Member
Dr. Tim Gopeesingh	Member
Dr. Bhoendradatt Tewarie	Member
Mrs. Paula Gopee-Scoon	Member
Mr. Clarence Rambharat	Member
Mr. Michael Coppin	Member
Mr. Gerald Ramdeen	Member
Mr. H. R. Ian Roach	Member
Mr. Taurel Shrikissoon	Member

Miss Keiba Jacob	Secretary
Mrs. Angeliqne Massiah	Asst. Secretary
Miss Simone Yallery	Legal Officer

### CHIEF PARLIAMENTARY COUNSEL

Ms. Ida Mariana Eversley	Deputy CPC
Ms. Donna Marie Neaves-Ronstant	Legal Counsel II
Ms. Paula Hender	Legal Counsel I

### OFFICE OF THE ATTORNEY GENERAL

Ms. Vyana Sharma	Legal Counsel II
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### MINISTRY OF FINANCE

Ms. Nnika Watson	Senior Legal Officer
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**Mr. Chairman:** We have a quorum. We have no excuses. So everybody is supposed to be here. Can we go straight to the Minutes, please? This would be the Minutes of the

meeting of the 20<sup>th</sup> of January. Are there any corrections on page 1? Page 2? Page 3? In particular, may I ask if members have read the appendix which is – or, we dealt with certain matters?

**Dr. Gopeesingh:** Chair, could I have five minutes to –

**Mr. Chairman:** I have no objections. Go head. I would like to just pay particular attention to the appendix. I think the other aspects are routine.

**Dr. Gopeesingh:** We will have to do a comparative study looking at the appendix and what we went through on the Bill.

**Mr. Chairman:** What did you say?

**Dr. Gopeesingh:** I said, we would have to do a comparative study looking at what is on the appendix here with the Bill before us. So this will take a little time just to confirm. So I do not know what the Chairman wants to advise on that issue.

**Mr. Chairman:** I have a suggestion to Dr. Gopeesingh's statement. Can we rely on the staff of the Parliament to look at the verbatim record and just make sure that what is here is a faithful reproduction of what we discussed? Can we do that? Dr. Tewarie?

**Dr. Tewarie:** Yeah, I have no problem.

**Mr. Chairman:** Yes, I think it would help us because I obviously cannot remember everything. I do not know if members can.

**Dr. Gopeesingh:** You see, we do not have to go through clause by clause from what was corrected last time.

**Mr. Chairman:** Yes, that is what I am saying. So let us rely on the staff. Secretary, could you get them to go through the verbatim record and make sure that the appendix faithfully represents what we discussed because it speaks to agreement on certain clauses, deferral of certain clauses and things like that? I know you would have done that already. I want you to do it again. Okay? So satisfy members that this is accurate, all right?

**Dr. Gopeesingh:** Just a double check.

**Mr. Chairman:** So let us defer the confirmation of the Minutes pending that further check.

**Dr. Gopeesingh:** Could you go through Matters Arising?

**Mr. Chairman:** Sure. So even though we have not confirmed them, let us go through Matters Arising on page 2.

**Dr. Gopeesingh:** Chair, on 4.01, stakeholders to be interviewed. I think we had the Board of Inland Revenue inside there –

**Mr. Chairman:** Correct.

**Dr. Gopeesingh:** – and the bankers – well, the bankers association is there.

**Mr. Chairman:** Could I just ask what happened there? Did we not ask for the BIR to come?

**Miss Jacob:** Yes.

**Mr. Chairman:** No, but it is not in the Minutes.

**Dr. Gopeesingh:** I see them outside. They are outside.

**Mr. Chairman:** I know they are here. Is it an omission from the Minutes?

**Dr. Tewarie:** We also agreed that in sequence BIR, Central Bank and SEC –

**Mr. Chairman:** I think so, yeah. I think that is what it was. But there is a notice that two of them would like to be out of here by 10.30 a.m. I think it is bankers and who?

**Miss Jacob:** The credit unions.

**Mr. Chairman:** The credit unions. The Bankers Association, the Co-operative Credit Union League –

**Dr. Gopeesingh:** Central Bank.

**Mr. Chairman:** No, I am just saying of the people that we have asked to speak to us, two of them have asked if it is convenient to the Committee that we dispense with them by 10.30 a.m. I believe they must have some other engagement. Is there any problem with that? Because could deal with bankers first, then credit union and then we go back to BIR, et cetera, et cetera. You all are okay with that, or you prefer to do it the other way, Dr. Tewarie?

**Dr. Tewarie:** I would have preferred BIR –

**Mr. Chairman:** First.

**Dr. Tewarie:** Yes.

**Mr. Chairman:** Okay. So we would do BIR, bankers and the credit unions. Okay? All right. Good. Any other matters arising?

**Dr. Gopeesingh:** Yes. Chair, we had indicated that we would write to some of these stakeholders and ask them to submit –

**Mr. Chairman:** Yes, that has been done as far as I am aware.

**Dr. Gopeesingh:** I am looking for it here, but I am –

**Mr. Chairman:** Hold on. Have you been checking your email?

**Dr. Gopeesingh:** Yes. In fact, I spoke to one of my colleagues, Mr. Ramdeen, this morning and I was asking him if the letter was sent that you read out from the Treasury. I double-checked my emails this morning and I am not finding it, but he told me that it was sent.

**Dr. Tewarie:** It was.

**Mr. Chairman:** I saw an email either last night or this morning that gave a status report on everything.

**Dr. Gopeesingh:** My email, the last instance is at 9.17, but I do not have it. Keiba, you probably –

**Mr. Chairman:** Keiba, you had sent it in an email giving us a status report? [*Discussion between Mr. Chairman and Miss Jacob*] Two emails?

**Miss Jacob:** Yes.

**Mr. Chairman:** Okay. Could I ask: have the members received those emails that give you a status report on what documents have been circulated and what has been done? I certainly got it.

**Mrs. Gopee-Scoon:** Yes, I did.

**Mr. Chairman:** You saw it, right?

**Mrs. Gopee-Scoon:** Yes.

**Mr. Chairman:** You have a copy of that? Do you have a copy of the email that you sent? Just email it to me now.

**Dr. Gopeesingh:** I am now seeing it in hard copy.

**Mr. Chairman:** But I did see that the Secretary had emailed everybody, had sent a copy of the email that we received from the US Department of the Treasury –

**Mrs. Gopee-Scoon:** Yes, we have all of those.

**Mr. Chairman:** –had also sent out the responses from the CPC, et cetera, et cetera, et cetera. I saw that and that the Committee had also written a number of people. Could you tell us who has been written to? Who did we write to? [*Discussion between Mr. Chairman and Miss Jacob*] Okay. I am advised that the Committee has written the Chamber of Commerce, the Law Association, AMCHAM and the Faculty of Law at the University of the West Indies.

**Dr. Gopeesingh:** Just repeat those, Chair.

**Mr. Chairman:** The Chamber of Commerce, Law Association, AMCHAM and the Faculty of Law, UWI.

**Mr. Young:** That is who we have written to ask them if they want to contribute to –

**Mr. Chairman:** No. We are asking them to send in submissions.

**Dr. Tewarie:** Written submissions.

**Mr. Chairman:** Written submissions.

**Dr. Gopeesingh:** Chair, if I am not mistaken, there might have been a few other individuals we had suggested. I am not too sure whether the meeting grasped the names of those individuals. Perhaps I think Mr. Ramdeen –

**Mr. Young:** If I may assist, Mr. Gopeesingh? I saw outside – from what I have seen we have BIR, we have the credit union, we have Bankers Association and a couple of –

**Mr. Chairman:** Minister Young, those are the ones who are going to make oral presentations. He is talking about the ones that we wrote and asked them to send in any comments if they wish to.

**Mr. Young:** Sorry. Sorry.

**Mr. Chairman:** All right, we will check the record. Dr. Gopeesingh, we will check the verbatim record and see if we missed any. Okay?

**Dr. Gopeesingh:** Chair, can I crave the indulgence of colleagues and the meeting. There are some other correspondence – [*Cell phone rings*] I am sorry – within this email from the US Department of Treasury to the Ministry of Finance, to your Ministry, and there was some correspondence inside of there, is it possible if what correspondence relevant to this, which preceded this letter –

**Mr. Chairman:** Could you be more specific?

**Dr. Gopeesingh:** If we can have a little glimpse of some of those so that –

**Mr. Chairman:** What are you talking about in terms of –

**Dr. Gopeesingh:** I have not read it properly yet.

**Mr. Chairman:** So you are referring to notices that they might have sent and so on?

**Dr. Gopeesingh:** Yeah.

**Mr. Chairman:** All right. Okay.

**Dr. Gopeesingh:** Yeah. If it is possible to give us.

**Mr. Chairman:** I will gather the documents.

**Dr. Gopeesingh:** Greatly appreciate it, Chairman.

**Mr. Chairman:** So are there any other matters arising?

**Mr. Roach:** Chair, matter arising, just specifically dealing with this. It is just out of abundance of concern for me, right? Parliamentary time is critical. It is quite a bit of time being invested in this Joint Select Committee. I am ignorant. I am not a politician and I do not consider myself a politician. I am concerned with what I have read. What I have heard on the news recently is that—I am asking. Probably the colleagues on the Opposition could advise or you could probably advise me—what is the effect of the Opposition Leader writing to the President of United States with the intent? Is it that this would be stymied or stopped? What is the implication for this? Because I would like to know if it is an exercise in futility after going through and investing all this time that this is not going to go anywhere. I just wanted to know.

**Dr. Gopeesingh:** I can assure you, and I am sure my colleagues would agree with me that, Senator, this is not in any way to stymie the work of this Committee, and the Committee is resolved to completing this exercise as quickly as possible.

**Mr. Chairman:** Okay?

**Mr. Roach:** I appreciate that. Thank you very much.

**Mr. Chairman:** So that settles that. Sen. Ramdeen.

**Mr. Ramdeen:** Sorry to be late. I apologize. We had agreed that the documentation that was submitted to the Office of the Attorney General would be provided to us. I do not know if it was raised before.

**Mr. Chairman:** Just before you came, I said I saw an email that indicated that everything had been circulated. Is this true? Okay, what is missing? [*Discussion between Mr. Chairman and Miss Jacob*] What exactly is that? You are talking about letters, the exchange with the Bankers Association. It is simply one stakeholder. It is the Bankers Association and the last comment I saw on that from the Attorney General is that he just wanted to make sure that he could disclose this correspondence.

**Mr. Ramdeen:** Can we make it—is it agreed that when we talk about stakeholder correspondence being submitted before this Joint Select Committee was established, that the only correspondence that we received was a piece of correspondence from the Bankers Association because that was not the impression that I got.

**Mr. Chairman:** It may be more than one. My understanding is that the correspondence is between the Attorney General's Office and the Bankers Association. Whether it is one letter, or two, or three, I do not know. But that is the only stakeholder with whom there was a back and forth exchange of correspondence.

**Mr. Ramdeen:** Okay.

**Mr. Chairman:** And I have just been told by the Secretary that we received the document about half an hour ago. So it is being printed and it will be circulated to members as soon as it is ready.

**Mr. Ramdeen:** I am obliged, Chairman. Thank you very much.

**Dr. Tewarie:** Chair, did you just confirm that the only stakeholder with whom there was active correspondence between the AG's Office and that stakeholder was the Bankers Association?

**Mr. Chairman:** That is my memory of our last meeting. We can always get the Secretary to check that my recollection is correct. That is what I remember him saying.



**Mr. Young:** Out of abundance of caution, I think he is on his way here. Let us wait for him to answer that because I know definitely there is correspondence between himself and the Bankers Association.

**Mr. Chairman:** When he comes in we will ask him, but that is my understanding.

**Dr. Tewarie:** Just clarification.

**Dr. Gopeesingh:** Chair, in the piloting of the Bill, it must have been the AG or one of the contributors mentioned that there was consultation between various groupings and stakeholders previously, would there be any information on that? Probably Minister Young or yourself might be able to indicate whether there was any correspondence relating to those previous consultations that went on prior to the Bill being laid in Parliament and being piloted?

**Mr. Chairman:** This is before the 9<sup>th</sup> of September?

**Dr. Gopeesingh:** Yeah.

**Mr. Chairman:** I cannot remember that statement being made, but again the Attorney General will clarify that.

**Dr. Gopeesingh:** Within the presentation there were statements made as to the previous statement.

**Mr. Young:** Dr. Gopeesingh's memory is correct, Mr. Chair. We did have consultation with the BIR, the Central Bank –

**Mr. Chairman:** Oh, you mean that. Okay, I thought you meant independent stakeholders, not those –

**Mr. Young:** Those were the stakeholders that we had met with and I think the AG may have done some more. So again, let him speak to that when he comes.

**Mr. Chairman:** I can correct that. Yes, we had meetings with the Board of Inland Revenue, the Central Bank and so on.

**Dr. Gopeesingh:** Is it possible then, out of courtesy to the Committee, that if you would consider having some of the information gathered from those consultations to be –

**Mr. Chairman:** I am not sure how it was recorded, but whatever is available I will make available. Okay?

**Dr. Gopeesingh:** Appreciate it.

**Mr. Chairman:** I am not sure how that was recorded. I would like to move straight into the presentations by the stakeholders if you do not mind?

**Dr. Gopeesingh:** Chair, just one area. You directed the CPC to provide some information for us and clarifications on some areas – example, the BIR – what matters they may have considered to be needing or necessitating legality by virtue of this piece of legislation being enacted? That is one. And two, what other laws are going to be impacted upon by this Bill and the extent of the impact?

**Dr. Tewarie:** It is recorded in the document.

**Mr. Chairman:** Dr. Gopeesingh, I think you better check your email, you know.

**Dr. Gopeesingh:** Ah?

**Mr. Chairman:** You better check your email.

**Dr. Gopeesingh:** No, I did not get anymore.

**Mr. Chairman:** I definitely saw an email with this document, which is a response,

because I received it from the Attorney General. I sent it to the Secretary. I asked her to circulate it immediately. This would have been Wednesday or Thursday.

**Mr. Ramdeen:** I got it.

**Mr. Chairman:** So you got it. So it was yesterday. So you need to start checking your email. Too many surgeries. [*Laughter*]

**Dr. Gopeesingh:** Listen, I do surgery but even in the operating theatre I check my emails.

**Mr. Chairman:** But obviously something wrong. So the CPC has responded point by point –

**Dr. Gopeesingh:** I will check with my colleagues for this.

**Mr. Chairman:** – changes to the Central Bank Act; Securities Act quite comprehensively as well; proportionality of the fines; look at the various clauses, clauses 10 to 12. These are all arising out of our deliberations. They have responded. So, for the third time, may I start the examination of the persons who wish to come before us and we will start with the Board of Inland Revenue. Keiba, could you tell bankers and credit union we will deal with them immediately after BIR? [*Discussion between Mr. Chairman and Miss Jacob*] I am told that there is not enough space in this room so we have to get up and move apparently. All right. Members, I am told we have to get up apparently and walk to next door, but I am told that you have received a submission from the Bankers Association, and received a submission from the Central Bank, and a submission from the Board of Inland Revenue. Okay? Let us go.

**9.30 a.m.:** *Meeting suspended.*

**9.35 a.m.:** *Meeting resumed.*

#### **OFFICIALS FROM THE BOARD OF INLAND REVENUE**

Ms. Allison Raphael	Chairman
Mr. Ramnarine Bedassie	Commissioner
Ms. Sharon Boodoosingh	Field Auditor V
Ms. Neela Ram	ICT Director

**Mr. Chairman:** Good morning. I would like to welcome the representatives of the Inland Revenue Division to this meeting. The purpose of this meeting of this Joint Select Committee on the Tax Information Exchange Agreements Bill 2016 is to discuss clauses of the Bill, or the Bill itself, its philosophy, its intent, with key stakeholders. You are the first stakeholders that we are meeting with. Could I ask the Chairman of the Board of Inland Revenue to introduce herself and her team, please?

**Ms. Raphael:** Sorry.

**Mr. Chairman:** Could I ask the Chairman of the Board of Inland Revenue, you Allison, to introduce yourself and the members of your team, the people next to you?

**Ms. Raphael:** Okay. I will let them introduce themselves. Of course, I am Allison Raphael, Chairman of the Board of Inland Revenue.

[*Officials from the Board of Inland Revenue introduce themselves*]

**Mr. Chairman:** Thank you very much. Now, we have received this submission from the Inland Revenue Division dealing with various issues and clauses with respect to the Bill that is the subject of this Committee, examination by this Committee. Could you make a brief opening statement? Is there anything that you would like to say in terms of this

legislation?

**Ms. Raphael:** Of course, well the legislation is something that has to happen. I mean, when we look at the country as a whole, we need to have this Bill passed because of the effect it will have if it does not go forward with the threat of the blacklisting. And whereas we realize that it may be a little difficult – it is not an easy Bill to administer from the Inland Revenue Division’s point of view – it is something that we are going to put resources behind in order that it happens. That is our view with regard to the administration.

**Mr. Chairman:** Could I open the floor immediately to questions? Sen. Roach, you have a question?

**Mr. Roach:** No, not right now.

**Mr. Chairman:** All right. Dr. Gopeesingh?

**Dr. Gopeesingh:** Chairman, I submitted my questions in writing. I do not know if you received them. Five or six questions.

**Mr. Chairman:** Can you recall what your questions were?

**Dr. Gopeesingh:** I am looking for them here.

**Mr. Chairman:** Well, do you have the –

**Dr. Gopeesingh:** The responses?

**Mr. Chairman:** – document relating to the Board of Inland Revenue?

**Dr. Gopeesingh:** JSC tax information, written submissions from the BIR?

**Mr. Chairman:** Yes.

**Dr. Gopeesingh:** Yeah.

**Mr. Chairman:** Can you look there and see if you see any questions that resemble yours?

**Dr. Gopeesingh:** Yes, No. 27, what is your degree of readiness for implementation of the processes required as the custodians of financial information for –

**Mr. Chairman:** Okay. Could the BIR tell us about your degree of readiness to implement the requirements of FATCA?

**Ms. Raphael:** Yes. We are quite ready. We are still in the process of doing the testing for the information, but we have put resources. We have a unit that would manage it. We already have a unit, which we call the Exchange of Information Unit, which deals with information sharing with respect to double tax treaties. We have to extend that unit in order to cater for the FATCA legislation.

**Mr. Chairman:** I have looked at your written response. Dr. Gopeesingh, I think their response is quite comprehensive. I do not know if there is anything else you wish to know, based on what they have said?

**Dr. Gopeesingh:** I think the other part, question 29 impacts upon – just one question. When you speak about No. (b), staffing, this says staff from IRD, what department is that, Chairman? IRD, meaning?

**Mr. Chairman:** Inland Revenue Division. That is the entire division.

**Dr. Gopeesingh:** I had asked the question, 29: the resources – financial, human and administrative – are they available at present; and if not, how do you propose to satisfy this requirement? And you answered: financial: additional costs are minimum; human resource: existing staff are being utilized, reassigned in the short term. In the medium to

long term, what – because if you move existing staff in the short term to this area you will be depleting staff from other areas – how do you propose to run the BIR efficiently when staff are deployed from other areas to this area to ensure that this area works, but other areas might not work as efficiently and effectively as you would like to?

**Ms. Raphael:** That is a good question. Well, actually next week we are having – and it has been going on for some time – meetings with the Service Commissions Department in terms of bringing on more staff. We have some vacancies and right now we are in the process of trying to fill those vacancies and we expect that –

**Dr. Gopeesingh:** Is it possible that you can give us some idea how many vacancies you have within the BIR at the moment, and what positions, from the senior positions down?

**Ms. Raphael:** Yeah. Well the technical, which will be the ones who would be dealing with this, we are at about 45 per cent filling – well 60 per cent – 65? – 65 per cent vacancies.

**Dr. Gopeesingh:** 65 per cent vacancies –

**Ms. Raphael:** In the technical field.

**Dr. Gopeesingh:** 65 per cent of what number?

**Ms. Raphael:** It is about 170 and 190, about 300/320.

**Dr. Gopeesingh:** So 60 per cent of that is about 180 people vacant. Well, Madam Chair, I see difficulty in you being able to effect this because if you are pulling out from the 120 that are there now, you might in effect be having something close to 80 per cent in the other areas – 80 per cent depletion. Could you give us an idea of the administrative positions that 180 persons missing would be impacting upon?

**Ms. Raphael:** This is something that has been ongoing. We have been dealing with shortages for some time and we are able to deal with it because we use IT. We change around a lot of the organization to deal with it really and truly, and in spite of the challenges we face with the resources, we are still able to produce and to offer services. So I do not see anything different in this case.

**Dr. Gopeesingh:** What will differ from you is that I had a Ministry to run as well and I had to be behind the Teaching Service Commission to assist. I know you are very efficient, Madam Chair, and your team, but with a vacancy of 180 out of 300, it leaves a lot to be desired. Have you approached the Public Service Commission to fill those vacancies; and if so, could you give us a status of what the situation is?

**Ms. Raphael:** What we have done in the interim with respect to the vacancies, we have contract officers that assist us, and I should have mentioned that. Well, that is how we deal with some. We still have a bit of a shortage, yes, but we are able to manage that way and we always look to that avenue to fill resources when we need them.

**Dr. Gopeesingh:** I am not convinced that this FATCA piece of legislation, when it is enacted, whether you will have enough personnel to deal with the matter. You said you would be shifting in the short term, but the medium to long term I am unclear as to what pathway would be taken. I am just trying to get if anyone, or you as the Chairperson, have approached the Public Service Commission in terms of filling the vacancies, and what has been their response? If not, it is something the President will have to address because he is the one who appoints the Public Service Commission and the Teaching

Service Commission, Judicial and Legal Service Commission. And if they are not functioning the way that institutions under their remit are not having the vacancies filled, something has to be done with them as well.

**Mr. Chairman:** All right, Dr. Gopeesingh—

**Ms. Raphael:** Well, I want—

**Mr. Chairman:** Just let me intervene here. I think you could give us a written submission on this.

**Ms. Raphael:** I can.

**Mr. Chairman:** Okay then. You understand the question?

**Ms. Raphael:** I understand it. I just want to say—

**Mr. Chairman:** This is additional responsibilities, how you are going to manage it. Okay?

**Ms. Raphael:** That is right. And just to say that we can do it. You do not believe that we could but I do.

**Mr. Chairman:** No problem. I would like to ask a question. When I look at 32 on the final page, it seems to be somewhat in conflict with some of the things we have been told.

**9.45 a.m.**

This speaks to illegalities the BIR might have committed and you say there are none.

**Ms. Raphael:** That is correct.

**Mr. Chairman:** So the BIR has not breached any law with respect to the sharing of tax information?

**Ms. Raphael:** That is correct.

**Mr. Chairman:** Fine.

**Dr. Tewarie:** Could I ask a follow-up question? It is related. Would you be able to say how many times since 1989 you have provided information to a US authority; what US authority it is; and has the provision—which is pointedly to the question the Chairman asked—has the provision of such information been in strict compliance with the law? I want to ask the question that way.

**Ms. Raphael:** The number, I am just trying to consult here to find out the number, but with respect to in accordance with the legislation yes, we do it. It is in accordance with the legislation. With respect to the sharing of information, I think we could quote section 93 of the Income Tax Act and even to some extent section 4 of the—

**Mr. Chairman:** But do you have an idea of the number?

**Ms. Raphael:** I am just asking here.

**Mr. Chairman:** This would be since the 1989 TIEA has been in effect so that will be for the last 16 years or so.

**Ms. Boodoosingh:** And it is based on the question.

**Mr. Chairman:** But do you have the information with you? Ms. Raphael.

**Ms. Raphael:** Oh, okay, I am forgetting a point here. Let me answer that. Could I? It is a normal situation under section 93 where we provide information with respect to payments made to foreign persons. Remember, there is a withholding tax issue and, therefore, we get that information; so on a yearly basis, we send to all the countries that

we have that information on and we have a double tax treaty agreement with.

**Mr. Chairman:** Yes, but do you have the numbers?

**Ms. Raphael:** Yeah, the number of countries or the number of times?

**Mr. Chairman:** No, the number of pieces of information. The amount of data. How many entities have you reported on? We are not asking you for the names of the entities, just how many.

**Ms. Raphael:** No, I know that. Well, it is countries.

**Mr. Chairman:** If you do not have it—

**Ms. Raphael:** Yeah, I can get it to you.

**Mr. Chairman:** If you do not have it, could you tell us? From 1990, I think is when this thing came into effect, to 2016, how many entities have you reported on? If you do it per year—five, six, nine, 29—from 1990 coming up and to whom. I assume it is the US Treasury or is it some other organization. *[Interruption]* We are dealing only with FATCA—only with the US.

**Ms. Raphael:** Only with the US, all right, okay.

**Mr. Chairman:** Sen. Ramdeen, when we do the Global Forum matter, we will deal with that, okay, so just the United States.

**Mr. Roach:** Entities and individuals.

**Mr. Chairman:** Well, okay, the persons, corporate and individual.

**Ms. Raphael:** Chair, I do not have that information.

**Mr. Chairman:** Can you provide it, please?

**Ms. Raphael:** I can provide it.

**Mr. Chairman:** How long would it take you to provide it?

**Ms. Raphael:** Not too long. Not too long.

**Mr. Chairman:** What does not too long mean?

**Ms. Raphael:** Well, you tell me a date and I will get it for you.

**Mr. Chairman:** Monday?

**Ms. Raphael:** No, give me Friday then.

**Mr. Chairman:** Next week Friday?

**Ms. Raphael:** Friday, yes.

**Mr. Chairman:** No problem. Unless anybody has an objection to that? Next Friday is okay?

**Dr. Tewarie:** No, I do not have an objection. Chair, I asked the question because I suspect the number is not large and I wanted to confirm that. Do you have any idea or would you be able to give us the information of how many of these people that you might have reported on were US taxpayers? And I wanted to ask the question: has there been in that time any instance in which you have not complied with a US request, and why, since 1989?

**Mr. Chairman:** Are you clear on the question?

**Ms. Raphael:** I believe so.

**Mr. Chairman:** Of all the persons that we have asked you to report on where information has been shared with a US authority, how many of them were US taxpayers and did you ever get a request that you did not comply with in the period and why?

**Dr. Gopeesingh:** Chair, question 31, there was a (b) part of it: the value of taxes that might be under consideration. Chair, or BIR, you said the information is not available.

**Mr. Chairman:** Well, I do not know if that is a documentation problem or a secrecy problem. Which one is it, Ms. Raphael?

**Ms. Raphael:** It is a documentation in terms of information that we have.

**Mr. Chairman:** Difficult to get?

**Ms. Raphael:** Well, the first question, the one with respect to the non-nationals, right, of course, the persons have to be registered with the Inland Revenue so we are looking at— to give you a figure of—

**Mr. Chairman:** You are saying your records make it difficult to provide this information in a timely manner?

**Ms. Raphael:** No, but we provided this. We provided the information with respect to the non-nationals.

**Mr. Chairman:** No, (b).

**Ms. Raphael:** Oh, (b), the value of taxes, yes, yes, yes.

**Mr. Chairman:** And how long will it take you to do it?

**Ms. Raphael:** No, no, we would not be able to give you that figure.

**Mr. Chairman:** Would not be able to give it, too difficult or is it a privacy provision?

**Ms. Raphael:** No, it is not a privacy.

**Mr. Chairman:** Well, then why can you not give it?

**Ms. Raphael:** No, the value of the taxes that might be under consideration in terms of the—remember, this is a US thing we are talking about here. What, our taxes? I am not clear.

**Dr. Gopeesingh:** Somebody would have given the answers there, Madam Chair, so perhaps I do not know if—

**Ms. Raphael:** Yeah, I will ask—

**Mr. Roach:** Just to be guided, is it the amount of money that is being transferred from Trinidad to the information? Is that it? No?

**Mr. Chairman:** No, the question refers to the value of taxes and the Chairman is making the point that those would be taxes imposed by the United States, it is impossible to get the information. Is that what you are saying?

**Ms. Raphael:** Yes, that is correct, yes.

**Mr. Roach:** Is that what Dr. Gopeesingh is asking? I do not think so.

**Mr. Chairman:** Yes, that is what the question says. So it seems that we are not able to get that information.

**Dr. Gopeesingh:** You see, we asked that question in relation to what is happening as well. Part of the issue is the foreign exchange issue.

**Mr. Chairman:** No problem. Any other questions?

**Dr. Gopeesingh:** So if you have an idea on, maybe, how that impacts upon the foreign exchange.

**Dr. Tewarie:** Yeah, I have a couple, you know, I sent in 21 questions.

**Mr. Chairman:** You sent 21 questions to the BIR?

**Dr. Tewarie:** On BIR.

**Mr. Chairman:** You did?

**Dr. Tewarie:** Yes.

**Mr. Chairman:** Miss Jacobs, 21? I am not seeing 21 here.

**Ms. Raphael:** No, we did not get those.

*[Discussion with Secretary]*

**Mr. Chairman:** The Secretary is saying that not all of those 21 questions were for the Board of Inland Revenue. You are saying they were?

**Dr. Tewarie:** No, I sent 21 questions for Board of Inland Revenue, very specific and very focused, and I sent 10 questions on the Central Bank. I did not have the time to send any on the SEC.

**Mr. Chairman:** You got those? Well, you all can answer, you know. Did you all get them or not?

**Dr. Tewarie:** No, I have the questions here, “yuh” know, it is no big deal, I could –

**Mr. Chairman:** No, not you. I know. I am just asking the parliamentary staff. Did you all get the questions? You got 10, you did not get the 21. All right, so there is some administrative mix-up there.

**Dr. Tewarie:** Well, I have the email here.

**Mr. Chairman:** I do not doubt what you are saying.

**Dr. Tewarie:** All right, okay. Could I get the opportunity to ask them?

**Mr. Chairman:** Sure, go ahead.

**Dr. Tewarie:** All right, okay. I wanted to ask, how many times since 1989 has the BIR asked for information from a US authority on a Trinidad and Tobago taxpayer and has the US authority ever refused to give the information and if the –

**Mr. Chairman:** Hold on, let us get the answer.

**Ms. Raphael:** We do not have an exact figure, it is not many.

**Dr. Tewarie:** Yes, I would think it is small.

**Mr. Chairman:** But it has occurred?

**Ms. Raphael:** It is small.

**Mr. Chairman:** It has happened? So you will provide that information.

**Ms. Raphael:** It has happened and they do provide the information. That is correct, they do.

**Dr. Tewarie:** Have they ever not provided the information?

**Ms. Raphael:** No.

**Mr. Chairman:** What I would like you all to do in order to speed us along because we have to examine a lot of people – if you do not have the information, just indicate you will provide it in writing, okay, rather than guessing. Just say, “We do not have that information with us and we will provide it in writing”.

**Ms. Raphael:** All right, okay.

**Mr. Chairman:** If anything you say, be precise, either it is or is not. It is not what you think or might be. Okay? Clear?

**Ms. Raphael:** Yes.

**Dr. Tewarie:** What increased demands – all right, you said you are setting up a special unit and you have moved people from parts of BIR to this unit, what increased demands



do you anticipate that you are going to be preparing for? I mean, I know it is easy to say that you are preparing for the consequences of the passage of the FATCA legislation, but based on your experience and knowledge and given what the FATCA legislation demands, what kind of capacity do you think you need to sustain the work that you would need to do under this?

**Ms. Raphael:** Well, you know the transfer of the information to the US IRS, it will be done electronically. What we envisage is that there may be some requests with respect to the information that they would have received and queries with respect to it, right, and that is – so it all depends on if they have queries and in those cases, we will have to put resources to gather the information that they are asking for – further information, I should say.

**Dr. Tewarie:** Okay. And the automation of the BIR is such that you have a high level of efficiency basically using computer systems that are capable of dealing with information like this for research both nationally and in relation to transfer to the US, you have the level of automation that is required?

**Ms. Raphael:** We have it. They call it the Rolls-Royce of systems, all right, so we have it.

**Dr. Tewarie:** I wanted to confirm that because I do not think you can comply with FATCA unless you have something equivalent. I will be quite frank with you.

**Ms. Raphael:** We have, we have, yeah.

**Dr. Tewarie:** There is a provision in the law having to do with privacy which, for instance, makes it very difficult for the Auditor General to access information on particular entities from the BIR, and I know that that matter is now receiving attention by Government. But does that particular piece of legislation or that clause in the legislation have any bearing at all on anything included in the FATCA legislation and how does it affect it?

**Ms. Raphael:** That section is very important and part of the requirement from the IRS, you know we have a reciprocal arrangement, is that we need to have the proper safeguards for information and that section 4 is a safeguard.

**Dr. Tewarie:** Yeah, but how does the section 4 affect your ability to comply or not comply or to exercise judgment under the law in complying with a request from a US authority?

**Ms. Raphael:** No, that is the whole purpose of the Act.

**Mr. Young:** Now or going forward?

**Mr. Chairman:** Dr. Tewarie, I think Minister Young is making a point that currently, they would have a discretion but with this FATCA legislation, there would be no discretion.

**Mr. Young:** But further than that, Dr. Tewarie, as you are aware, in the current Bill before us, we make specific provision with respect to section 4 of the Income Tax Act to allow the Board of Inland Revenue to do exactly what is required of them under FATCA. That is why I am asking, are you talking about the law in its current form or the Bill that is before us that we intend to pass?

**Dr. Tewarie:** Well, I asked her the question so that she would give me her understanding of how –

**Mr. Young:** No, but now currently or – because I myself, I am confused. Are you asking about how they operate now or how do they intend to operate FATCA obligations?

**Dr. Tewarie:** That section 4, I know how it operates. I used the example of the Auditor General because it is a continuing issue. When the FATCA law – she said it was very important and that there were conditions which apply in the relationship between the US authorities and Trinidad and Tobago which basically indicate that you are to respect the privacy provisions of the law. Did I get you right?

**Ms. Raphael:** Yeah, that is correct.

**Dr. Tewarie:** If that is so, the FATCA legislation, in fact, does what Minister Young and the Chair are saying, but how do you as Chair of the Board of Inland Revenue view the situation that you will be in, in the BIR, given the FATCA law after it is passed and given that the law which prevents you from giving information to the Auditor General as an example will still apply in the local situation? So I want your view, your thoughts, your feelings, if you want.

**Mr. Chairman:** Dr. Tewarie, could I ask if you have any other questions.

**Dr. Tewarie:** Yeah, I have plenty you know.

**Mr. Chairman:** I am just looking at the time. So could you just –

**Dr. Tewarie:** Hear “nah”, this is a serious piece of legislation as we all know.

**Mr. Chairman:** Dr. Tewarie, it is all right, there is no need for that. I just wanted to know if you had a lot of questions.

**Dr. Tewarie:** The reason I asked for the BIR as the first entity is because I think the entire legislation hangs on the BIR.

**Mr. Chairman:** So you have a lot of questions?

**Dr. Tewarie:** Yes.

**Mr. Chairman:** So could you try your best, make your best efforts, to make your questions concise since you have a lot?

**Dr. Tewarie:** Well, I made my questions concise but people did not want clarification.

**Mr. Chairman:** Okay, no problem. BIR, do you understand the question?

**Ms. Raphael:** I think so, yes.

**Dr. Tewarie:** I am sure she does.

**Mr. Chairman:** Okay, could you answer it?

**Ms. Raphael:** Yes. With respect to the – the section 4, the whole idea of the Bill is to allow us in light of section 4 to provide the information to the US.

**Mr. Chairman:** You mean in spite of section 4?

**Ms. Raphael:** In spite of – well, the whole idea. There is a part in section 4 as it exists right now that the information can be provided with respect to a TIEA. The current TIEA with the US allows us to provide information to them.

**Dr. Tewarie:** And you have no discomfort on the matter? That is what I am trying to find out.

**Ms. Raphael:** No, we do not have any discomfort on the matter at all.

**Dr. Tewarie:** Right, okay.

**Mr. Chairman:** Right, so you will go to the next question?

**Dr. Tewarie:** Yes.

**Mr. Ramdeen:** Dr. Tewarie, just before you go to the next question, could I just ask the Chairman. Chairman, I think what Dr. Tewarie was getting at is the fact that although

we have laws that protect the privacy of that information that is vested in the BIR and that the BIR has its records, you have no reciprocal protection in the United States for information that would be exchanged on persons, that information that would move from the BIR to the United States. And I think if I understand Dr. Tewarie correctly, what he is getting at is, is the BIR comfortable with a situation where we have laws to protect that information here but when that information moves to the United States, there is no – to use the word in inverted commas, there is no “reciprocal” protection of that data when it reaches there.

**Ms. Raphael:** There is a reciprocal protection, there is it. It is embedded in their law and with the other double tax treaties that we have, all that remains the same as well. Information that we send or they send, it is embedded in that law as well so it is not a problem.

**Mr. Ramdeen:** I think that just conflicts with what we were told on previous occasions.

**Mr. Chairman:** But it is all right, I do not think we need to belabour that point. Could you just explain that in writing where the reciprocal protection exists and is applied?

**Ms. Raphael:** No problem, I could do that.

**Mr. Chairman:** Okay, fine.

**Dr. Gopeesingh:** Chair, just a follow-up on that question to two of my previous colleagues. I briefly heard that you speak about a double taxation treaty. Do we have a double taxation treaty with the United States?

**Ms. Raphael:** Yes, we do.

**Dr. Gopeesingh:** We do.

**Ms. Raphael:** And the TIEA also exists as well.

**Dr. Gopeesingh:** But I heard that, Minister Young –

**Mr. Chairman:** Chairman – members, let us not confuse the issue. We have the Board of Inland Revenue before us, they are answering questions. If it conflicts with something said by somebody else, we will deal with that. Let us just examine them and move on; otherwise we will be here whole day. So, Dr. Tewarie, next question.

**Dr. Tewarie:** Okay. Well, I would like to confirm that answer which is that we have double taxation treaty with the United States.

**Mr. Chairman:** Yes, you will get confirmation of that. Yes or no?

**Ms. Raphael:** Yeah, it is on the website as well.

**Dr. Tewarie:** Okay. What does the term “competent authority”, included in the legislation, the FATCA legislation, mean to you in terms of the authority granted by that Bill to the BIR?

**Ms. Raphael:** Well, the competent authority, what it grants us?

**Dr. Tewarie:** What does that mean to you?

**Ms. Raphael:** Well, we have always been the delegated competent authority. It means that we are the ones that we are dealing directly with the US or whatever country we have, for example, a double tax treaty with. So it means that we liaise with them. They also have a competent authority as well, so it is strictly between the two competent authorities.

**Dr. Tewarie:** Okay. I want to ask you two questions that are very important and I want

to ask them transparently because I do not want to hide what I am trying to ask.

**Mr. Chairman:** Dr. Tewarie, there is no need to editorialize, get straight to the question, please.

**Dr. Tewarie:** Chair, you are telling me how to ask my question, do not do that.

**Mr. Chairman:** Could you ask the question, please?

**Dr. Tewarie:** Yes. The first thing I want to know is that as you go about the business of securing your information, will the need possibly arise for the engagement of any other institutions other than the BIR? That is the first question.

**Ms. Raphael:** No, once we get the information, that is it. We deal directly with the – in terms of the FATCA Bill I am talking about, once we get that information from the banks or the financial institutions, we deal straight with the competent authorities, there is no in-between person.

**Dr. Tewarie:** No, no, but in order to gather your information, you may have to go to other entities, that is what I am trying to ask. Will BIR have all the information on hand within the resources under their domain or will there be any need for them to go to any other institution to make sure that the information that they are providing is accurate?

**Ms. Raphael:** Right now, how the system works is that the financial institutions are supposed to send the information to us. There is a whole registration process and all that. So once we get it, we will send it up. If the competent authority in the US has a problem, they will query it and send it back down to us and ask us for clarification. I think you are asking whether we are going to check the information that is sent. Is that the question?

**Dr. Tewarie:** No, no, you know, the US asked for X and I want to know if you, under the BIR, will always have X or will you have to go to other entities, whether that is a bank, whether that is the Central Bank, whether that may include engagement of the SEC or any other entities such as that, in order to complete the accuracy of your information?

**Ms. Raphael:** Okay, I understand. So the important thing is for us to get the information and therefore, if we do not get the information, well, we could ask the umbrella bodies to ensure that their associations provide the information. To that extent, yes.

**Dr. Tewarie:** So that clarifies very clearly that the competent authority means the entity which has the power and the authority to secure the information from accessible institutions to make sure that as competent authority, it can provide the correct information. Right? Am I accurate in interpreting you?

**Ms. Raphael:** Well, yes, you are more or less, I mean, and then we have the section 4. You want to add something?

**Mr. Chairman:** Just hold one second, please. Sen. Roach, I will allow you to come in. I think I would like to clarify this issue so that we could move on. I believe what Dr. Tewarie is asking is that if information is required, in other words, the United States tells you, look, I would like to get information on X and when you look in your database, you do not have information on X, what would you do?

**Dr. Tewarie:** Or partial information.

**Mr. Chairman:** Yeah. What would you do? Would you go to the bank and say, look, I have a request from the US for this, you did not give me the information or you did not give me complete information, would you kindly comply? Is that what you would do?

**Ms. Raphael:** We will do that. That is correct.

**Mr. Roach:** Just to complete what Chairman has said and what Dr. Tewarie was asking, in other words, would you at any point in time have to solicit the assistance of an agent outside your competence?

**Mr. Bedassie:** When you say “agent”, right –

**Mr. Roach:** Agent being anybody that you will have to delegate now to get that information for you.

**Mr. Bedassie:** Now, we looked at the Bill and we saw that where a request under this section is made for information in the form of a deposition of a witness or authenticated copies of unedited original documents including books or what, the board shall provide the information to the same extent as it can be provided under the laws of Trinidad and Tobago. So that is part of the – when you look at the Bill, the proposed Bill, this is what it has there.

**Mr. Chairman:** Yes, but the question Sen. Roach is asking, would you engage a third party to acquire the information for you or would you seek to enquire it yourself? – there is no intermediary.

**Mr. Bedassie:** We will do it ourselves.

**Mr. Chairman:** Direct contact.

**Mr. Bedassie:** Direct contact, Sir.

**Mr. Chairman:** Okay, good.

**Dr. Tewarie:** Okay, the second part of the question is who – in your understanding of competent authority, with the BIR being the competent authority, does the competent authority get direction from any source within the nation state of Trinidad and Tobago? Can you be directed as the competent authority locally?

**Ms. Raphael:** No, it is strictly –

**Mr. Chairman:** I do not think so, no.

**Dr. Tewarie:** So you are saying that as competent authority, you are autonomous in your functions?

**Ms. Raphael:** With respect to this, yes. With respect to this Act, yeah.

**Mr. Chairman:** I believe that is correct.

**Dr. Tewarie:** That is correct from your point of view, you are autonomous in your function as competent authority?

**Ms. Raphael:** That is correct.

**Dr. Tewarie:** Okay, I can hold the rest of my questions now and later –

**Mr. Chairman:** Nice, thank you very much. I just to want to clarify that, as Minister, I cannot instruct the Board of Inland Revenue to do something of this nature, to go and look for information on someone or provide it to me or anything like that.

**Ms. Raphael:** No.

**Mr. Roach:** But the courts can?

**Ms. Raphael:** The courts can.

**Mr. Roach:** Right.

**Mr. Chairman:** Excluding the courts. Anybody has any other questions for BIR?

**Mr. Ramdeen:** Commissioner, the first answer that you gave in answer to the question

of Dr. Gopeesingh was that the BIR has not breached any law in the provision of information since 1989.

**Ms. Raphael:** That is correct, yes.

**Mr. Ramdeen:** On this Bill, the BIR was consulted before – during the draft of this Bill?

**Ms. Raphael:** Yes, definitely. That is correct.

**Mr. Ramdeen:** And the old TIEA was a law that was enacted without a special majority, just a simple majority piece of legislation and the exchange of information between 1989 and now, before the Act, was without the consent of the person whose information was being provided. Correct?

**Ms. Raphael:** That is correct, yes.

**Mr. Ramdeen:** And you will accept that those persons would have a right to privacy of their information.

**Mr. Chairman:** Sen. Ramdeen, I would not go down that road. Let us just find out from them what happened and then we as a Committee can interpret what happened rather than interrogating them as if they are on the witness stand in front of a judge in a judicial review application.

**Mr. Ramdeen:** Okay, I am obliged. Commissioner, what I am getting at is there is a validation clause in this Bill. You accept that?

**Ms. Raphael:** Yes.

**Mr. Ramdeen:** Why is there a validation clause if the BIR has done nothing illegal to validate the Acts of the BIR between 1989 and today? What is the purpose of that validation clause? What is it that we are being asked to validate as a Parliament?

**Ms. Raphael:** Well, you just mentioned that they had some issues with the original TIEA. Right? That is not under – it is not for me to say whether that is in fact so –

**Mr. Chairman:** Let me see if I can clear this up and bring an end to this. Your answer is predicated on the premise that the 1989 TIEA allowed you to share that information and did not infringe any of the laws of Trinidad and Tobago.

**Ms. Raphael:** That is correct.

**Mr. Chairman:** Okay? “Yuh good now?”

**10.15 a.m.**

**Mr. Chairman:** We as a committee will decide what the facts are. All right? But their answer that they are committing no illegality based on that premise. But you have shared information.

**Ms. Raphael:** We have shared.

**Mr. Chairman:** And you have indicated to Sen. Ramdeen that you shared it without the consent of the persons involved.

**Ms. Raphael:** That is correct.

**Mr. Chairman:** Okay? I do not think you need any more information.

**Mr. Ramdeen:** As you please, Chairman.

**Dr. Gopeesingh:** Can I ask a follow-up on that? If there were any individuals or organizations who might have been affected as a result of the privacy situation, is there any matter before the courts at the moment, from individuals, in relation to the information being disseminated?

**Ms. Raphael:** With respect to the fact that they did not want it to be disseminated?

**Dr. Gopeesingh:** Or any matters related to any questionable illegality. Is there anything before the Board of Inland Revenue Appeal Board or any matter that is related to this FATCA legislation?

**Ms. Raphael:** No.

**Dr. Gopeesingh:** There is no matter. No illegality between 1990 and now.

**Ms. Raphael:** That is correct.

**Mr. Chairman:** Has anybody challenged the BIR, with respect to the transmission of information to the United States between 1990 and now?

**Ms. Raphael:** No.

**Mr. Chairman:** Right.

**Mr. Ramdeen:** Commissioner.

**Mr. Chairman:** Sen. Ramdeen, I do not want to see you in court challenging the BIR.

**Mr. Ramdeen:** Commissioner, if I am wrong then correct me in my understanding of the legislation and how it is supposed to work according to the understanding of the BIR. There are certain financial institutions in whom information is vested and pursuant, when FATCA is implemented, that information has to be transferred from those financial institutions to the BIR and the BIR as the competent authority will transfer that information to the US— *[Interruption]*

**Ms. Raphael:** That is correct.

**Mr. Ramdeen:**— in relation to persons who are “caught” by the legislation. Has the BIR done any research on the suitability or the readiness of those financial institutions who are to provide information to the BIR for the BIR to transmit to the US as to their readiness to provide that information on persons who are caught by the terms of FATCA to the BIR?

**Ms. Raphael:** That has been going on for a number of years now, you know, that readiness factor with respect to the financial institutions and, of course— *[Interruption]*

**Mr. Ramdeen:** Sorry to cut you into the answer, but despite the fact that it is going on for a long period of time, what do you consider, as the Commissioner of Inland Revenue, to be the readiness, not of the BIR but of those institutions whom the BIR will depend upon in order for the BIR to carry out its duty as the competent authority and comply with its obligations under FATCA?

**Ms. Raphael:** It is a process that has to be followed. For all the financial institutions, there is a format that they have to follow, in terms of providing the information. As far as we know, we have been doing some testing as well, most of the financial institutions are ready for the transmission of the information in that particular format. We would be dealing with the Central Bank, in respect of that, in terms of getting them ready as well.

**Mr. Ramdeen:** Why I am concerned about it, Commissioner, is that I think, everyone around this table, is because if they do not perform their duty then the BIR would not be able to satisfy its obligations under FATCA to the US. I think that is a given.

**Mr. Chairman:** Sen. Ramdeen, just let me come in here. I think the thing has to be done in stages. The first we have to do is to pass this Bill.

**Ms. Raphael:** Well, that is true.

**Mr. Chairman:** Then we have to operationalize the provisions. Then, if the US is unhappy or dissatisfied with the quality or completeness of the information provided then I think we will get to the point that you are talking about. My understanding of this, in my discussions with the US authorities, over the last couple of weeks, is that they are quite understanding of the fact that it will take some time to perfect all of these processes. Now, I do not think that we will be deemed to be non-compliant if all of the banks are not doing what they are supposed to do in the time frame they are supposed to do it. I think they will give us time to put all of this in place.

**Mr. Ramdeen:** Well, I mean – *[Interruption]*

**Ms. Raphael:** We hope so.

**Mr. Ramdeen:** And I hope so too. I think what is effective is that when the legislation – I think I do not agree that we move backward, if I want to put it that way, in terms of implementation. I think once the legislation is passed, the obligation of the BIR kicks in at that point in time and no matter what we say about our readiness, the BIR will have an automatic obligation to the US under the terms of the legislation.

**Ms. Raphael:** That is correct.

**Mr. Ramdeen:** I do not think that it is proper for us to say that: well, we will pass the legislation and we will operationalize it after and see how well we operationalize it because the breach is not going to be a breach by the financial institution. It is going to be a breach by the BIR, if the BIR does not provide that information. What I am concerned about is that – sorry, I see you shaking you head.

**Ms. Raphael:** It is a process, remember. The financial institutions have to register and then they provide the information to us. Once we get the information we are going to send it to the US. It is an automatic thing. So, therefore, we cannot send something that we do not have.

**Mr. Ramdeen:** Of course. I take the point that Dr. Gopeesingh is getting at is this. You depend upon the integrity of the information provided to you by the financial institutions to carry out your information.

**Ms. Raphael:** That is correct.

**Mr. Ramdeen:** And I think what Dr. Gopeesingh is getting at is that if you have delinquent financial institutions who do not provide information on persons who are caught as account holders or by the terms of the legislation itself, what really is the remedy that the BIR has in a situation like that?

**Ms. Raphael:** Well, first once the US determines that the financial institution is non-compliant they face the consequences.

**Dr. Gopeesingh:** You will report to United States Treasury these institutions who are in breach?

**Ms. Raphael:** No, no, well if they discover that there is some breach.

**Dr. Gopeesingh:** We want to clarify this, Commissioner. Is there a time frame that is given to you all to provide this information and then if the time frame has gone beyond that where you are supposed to have provided the information and the financial institution did not provide it to you, what is your recourse?

**Mr. Al-Rawi:** If I could just intervene for a moment, please. Good morning everyone.



We have to separate the 1989 go forward position to date from the prospective intended compliance under the new IGA. The response that I just heard the Commissioner give is that the banking institutions themselves, who are in relationships through their corresponding services, those banking institutions are affected as a matter of practical consequence. That is the position in Trinidad and Tobago right now. So, I just wanted to point out what we are dealing with in the 2016 go forward position is where we put in the powers in the FIA, in the SIA for the management of sanctions to flow. So there are two separate positions.

**Mr. Chairman:** AG, gentlemen, just let me intervene here. I do not know if any of you all have seen the response from the Central Bank, and if you look at what the Central Bank is saying, the Central Bank is saying that 28 banks or non-banks and financial holding companies and 34 insurance companies are required to be compliant with the information-sharing legislation. And then they go on to say that as at December 26, 2016, 22 of the 28 banking institutions and financial companies and 28 of the 34 insurance companies were registered, and this is registered with the US IRS. So it is a two-stage process, Sen. Ramdeen. It is not just the BIR that will be monitoring institutions. The US IRS will also be monitoring them and the US IRS will and have two bites at the cherry, as it were. They can come through the competent authority or they can directly deal with one of these institutions because they have to register with the IRS.

**Dr. Gopeesingh:** Let me ask for clarification, Chair. Madam Chair, from the IRD, your response to question 27 indicated on software application on page 3 an application for the receipt of data and onward transmission to the United States Inland Revenue System has been developed. Testing will begin on February 02, 2017. So what we have been speaking about and what has been operating in the past, that the sharing of information, what Sen. Ramdeen has asked and what the Chairman, Minister Imbert, has been trying to clarify, is this something that is going to be different from what the Attorney General has been speaking about from 1990 to the present; what has been operating, and then what is going to take place now from February 02, 2017, you said testing will take place from 2017? What is different now from February 02<sup>nd</sup> that you would be testing, that has been occurring in the past?

**Ms. Raphael:** Now, remember this is – in the past it was just a request situation. Now it is automatically we have to provide this information. Right? So it is a different process. I do not know if you want to know the details. I could ask Neela to go through that if you want the details.

**Mr. Chairman:** But that is the basic difference; that it is automatic?

**Ms. Raphael:** Whereas it was on request.

**Mr. Chairman:** Previously it was a manual system.

**Ms. Raphael:** Previously, yes it was a manual system. That is correct.

**Dr. Gopeesingh:** Based on request.

**Ms. Raphael:** On request.

**Mr. Chairman:** And now it is an automatic system.

**Ms. Raphael:** Right. And it is automatically – *[Interruption]*

**Mr. Chairman:** So that is what they are testing, how well the automatic system would

work.

**Dr. Gopeesingh:** Go ahead, you want to answer? I think your colleague wanted to answer, the IT person.

**Ms. Ram:** So the specifications from the US IRS Department of Treasury is the XML Schemer and what they have indicated is that there is a platform that is required. So early on we knew that we had to develop this application, which will automatically receive the data, package it and send it to the US IRS. What happens now is that the query for the current agreement or the 1989 agreement, the data is extracted from our system and placed in formats that have been agreed to between the competent authority and sent through a different channel. So this process is a process improvement from what we have right now.

**Dr. Gopeesingh:** To facilitate the automatization of the information?

**Ms. Ram:** Yes.

**Mr. Chairman:** So the way that you would gather the information and store it is in the same format as is required for transmission.

**Ms. Ram:** Yes, that is correct.

**Mr. Chairman:** This is what you are doing now?

**Mr. Al-Rawi:** It is called electronic handshaking to make sure that we have the same matrix that they have. That is it. We are putting that in that system.

**Mr. Chairman:** So, to put that into English, Dr. Gopeesingh – [*Interruption*]

**Dr. Gopeesingh:** I understand it. One more question. The information that you are providing in this automatic way that you give them the information as soon as you get the information, you give them that automatically, do the other 28 banks and the other financial institutions have the same approach, they have to provide the information? And if that is the information they have, do you have to provide that same information? Is there duplicity in it, or they provide their information and you provide yours?

**Mr. Chairman:** That is not duplicity, Dr. Gopeesingh. That is dishonesty. You mean duplication.

**Dr. Gopeesingh:** All right, well you get the answer, so you get the question. They have to provide those answers and you have to provide answers.

**Mr. Al-Rawi:** Dr. Gopeesingh, there are two separate matrices.

**Mr. Chairman:** AG, let them answer “nah”. It is all right, let them answer.

**Ms. Ram:** The XML Schemer is common. It is available. It is a public document. Both the banks and IRD have to follow the same schemer. So regardless of the type of institution they follow the same template, if you call it that. They would send it to us. We know what to expect from them, so we will verify that the information submitted fits the template that the US IRS wants. Once the system satisfies that requirement, they will package it, put in the Trinidad and Tobago ID and forward it to them.

**Dr. Gopeesingh:** I was just trying to get the answer. Do they submit that information since they have an exchange agreement themselves?

**Ms. Ram:** No, they send it to us.

**Dr. Gopeesingh:** To you?

**Ms. Ram:** Yes.

**Dr. Gopeesingh:** Based on the template, all right.

**Mr. Chairman:** Dr. Gopeesingh, the number—and AG, perhaps, you could come in here—that they have to get from the IRS allows them to then have correspondent banking relationships with banks in the United States. What would happen if they do not have the number or they are disqualified or struck off in some way? They would no longer be allowed to have these correspondent banking relationships. I am assuming that they would have to provide this TIN to their correspondent bank and make sure it is up to date and certified by the US IRS in order to continue their corresponding banking relationship.

**Dr. Gopeesingh:** I understand that, Chair, but the question is: do they supply information separately?

**Mr. Chairman:** No, no, she answered you; that the information goes to the Board of Inland Revenue and then the Board of Inland Revenue transmits it.

**Dr. Gopeesingh:** That is what I want to know.

**Mr. Chairman:** It does not go directly.

**Dr. Gopeesingh:** That is what I wanted to clarify.

**Mr. Al-Rawi:** Dr. Gopeesingh, under the law there will be one. But just to let you—maybe for us all to appreciate the nature of corresponding banking is by way of agreements between corresponding banking and local banking. And they in their passage of assurances, sometimes have the right to say well, is this happening or is this not, or and then they decide what the risk is, which is where having the number certifying, et cetera. So there is usually a corralling to make sure you are—*[Interruption]*

**Mr. Chairman:** I think what he is getting at is an important point. Would local banks send this type of information directly to banks in the States or to the IRS, and the answer is no from what I am picking up.

**Mr. Al-Rawi:** The answer is no because we adopted the Model 1 IGA.

**Mr. Chairman:** So we are going through a clearinghouse, a certified clearinghouse with integrity, which is Inland Revenue. So that you cannot have a malicious provision of private information from one bank to the IRS or a banking institution.

**Mr. Al-Rawi:** Had we not signed the IGA, the banks would have entered into a direct relationship. But Trinidad and Tobago, in 2013 did not take that approach and we signed the Model IGA.

**Mr. Roach:** Could I just get clarification, Chair? Any information coming from the institutions to you all is collected by you all and then you all send it. What I read this morning, probably from the exchange between you and the Central Bank, is there something encrypted again now to send out for further protection? Right, okay.

**Dr. Gopeesingh:** Mr. Chairman, I just want to ask a follow-up question to the AG.

**Mr. Chairman:** Dr. Gopeesingh.

**Dr. Gopeesingh:** I would not delay you.

**Mr. Chairman:** I know, I know.

**Dr. Gopeesingh:** But we need clarification.

**Mr. Chairman:** Dr. Gopeesingh, I just want to make a point. Dr. Tewarie has very kindly rested. Okay. I do not expect him to arise. I see Sen. Ramdeen has his finger over there

right. If you all do not mind, I do not want to muzzle anybody, I would like to wrap up this session with the BIR, unless there is some pressing matter.

**Dr. Gopeesingh:** All right, perhaps the AG can answer the question I want to ask.

**Mr. Ramdeen:** Thank you, Chair. Commissioner, the BIR has to sign a Competent Authority Agreement in order to effect this legislation. Has the BIR seen that agreement as yet?

**Ms. Raphael:** Yes, of course.

**Mr. Ramdeen:** Have they signed it?

**Ms. Raphael:** We have not signed it as yet, no.

**Mr. Ramdeen:** What is the keep back?

**Ms. Raphael:** Well, actually we just – I mean we do, we fall under the Ministry of Finance and we just want an okay from them to go forward with it.

**Mr. Ramdeen:** You are waiting on the Ministry of Finance?

**Ms. Raphael:** Well, this is our –

**Mr. Al-Rawi:** Protocol.

**Ms. Raphael:** – protocol. Thank you. That is the word.

**Mr. Ramdeen:** And why do you have to wait on the Ministry of Finance to sign off on the Competent Authority Agreement?

**Mr. Chairman:** I want to know as well.

**Mr. Al-Rawi:** Protocol.

**Ms. Raphael:** No, no. It is correct. That is the correct answer, protocol.

**Mr. Chairman:** Allow them to answer, “nah”.

**Ms. Raphael:** Protocol.

**Mr. Chairman:** Okay, fine.

**Mr. Ramdeen:** In here is like in the Senate.

**Dr. Gopeesingh:** Are you allowing protocol to supersede what is legality? Legality, you are the competent authority. You have to provide the information. But protocol is dictating that you have to go through your Minister.

**Mr. Chairman:** Dr. Gopeesingh, let me help you.

**Dr. Gopeesingh:** No, let me make the point, because I do not see it as a necessity. If the protocol supersedes – *[Interruption]*

**Mr. Chairman:** Dr. Gopeesingh, I am trying to help you.

**Dr. Gopeesingh:** Yeah, go ahead.

**Mr. Chairman:** I have just discovered this. I will deal with it. Okay?

**Dr. Gopeesingh:** Well, no you – *[Interruption]*

**Mr. Chairman:** I will get advice. Hold on. Let me tell you how I am going to deal with this.

**Dr. Gopeesingh:** I am saying it should not come through you at all.

**Mr. Chairman:** Yes, but one should not advise oneself. I will get competent advice and if I am not required to have any involvement in this matter, I will so advise the BIR, go ahead and do what you are supposed to do.

**Dr. Gopeesingh:** I just want to suggest to the BIR that protocol does not supersede what the legality is.

**Mr. Chairman:** I think we should not advise ourselves.

**Dr. Gopeesingh:** The Board of Inland Revenue is the competent authority. They should go ahead without waiting for the Minister providing any – *[Interruption]*

**Mr. Chairman:** Dr. Gopeesingh, your comments are noted. Dr. Tewarie, you had a few quick points.

**Ms. Raphael:** Just a little point. Normally most of these agreements go through the Treasury Solicitor and that is how we do our business.

**Mr. Chairman:** That is a point.

**Ms. Raphael:** And that is under the Ministry of Finance.

**Mr. Chairman:** The Treasury Solicitor is a creature of law and the duties of that person are to look at agreements and legislation. It is all right. I will seek advice and if I am required to be involved, I will not be involved.

**Mr. Al-Rawi:** Mr. Chairman, I just want to clarify one thing for Dr. Gopeesingh. The reason why I volunteered what I know to be the position is that we are dealing with the current law. So until the IGA 2016 comes into effect, via a proposed passage of this law, if we ever get there, the BIR has to work within, what it has always done, which is when it receives agreements, it is in-house. Legal department does what it does. It then goes to the Treasury Solicitor, which technically has a line Minister in the Ministry of Finance.

This has been the process from 1989 to date. So if we are going to change it, as the Minister says, he will look at it. It will be fresh, in respect of a new law, if it in fact arises. Just to clarify that that is why the statement was made.

**Dr. Gopeesingh:** For what period of time?

**Mr. Chairman:** Do not worry, Dr. Gopeesingh, it would be dealt with. I have a deadline, you know. We all have the same deadline.

**Dr. Tewarie:** I have two questions, which you need not answer now. If you send it in writing, that is fine.

I want to know to what institutions under the law are you currently allowed to ask information about taxpayers and I want to know which institutions, under the law, can ask the BIR for information about taxpayers. Now, at the end of the day it might be zero for the second one and a few. But I would like to have that in writing.

**Mr. Chairman:** And he has asked for it in writing, so you do not need to answer now. Okay?

**Ms. Raphael:** Okay, all right, okay.

**Mr. Shrikissoon:** A follow-up on Dr. Tewarie's last question. The new law says that:

Where the Board believes that this information requested under this section is in the possession of a financial institution, it may require the financial institution to provide the board with the information.

My question is simply this: does the Board have the legal authority to request the information from a financial institution?

**Mr. Chairman:** Is this now or in the future?

**Mr. Shrikissoon:** Well, this is in the proposed law, so under the new arrangement. Because I am not too sure if the Board has the authority to write and extract information.

**Mr. Chairman:** Are you talking about now or in the future?

**Mr. Shrikissoon:** Under the new agreement.

**Mr. Chairman:** I would think that is why we need the special majority.

**Mr. Shrikissoon:** I am not getting that, you know.

**Mr. Ramdeen:** I think what he is getting at is, under the new TIA, as we propose to pass now, does the Board of Inland Revenue have the power to compel someone to give that information? Not under the 1989 law.

**Mr. Chairman:** But did you not just read it out, the section?

**Mr. Al-Rawi:** Under the new law the exceptions to the law that we are seeking to effect is the Constitution, section 4 of the BIR Act, which is the prohibition clause against disclosure and the several sections of the Data Protection Act, which deal with processing, forwarding, et cetera. So the answer is yes to the limited circumstances specified within the Bill in the specific sections. So the answer will be yes.

**Mr. Ramdeen:** Commissioner, just building on what Sen. Shrikissoon has said, if you make a request from a financial institution; that is the BIR makes a request to a financial institution, and that financial institution refuses to provide the information, what are the sanctions that the BIR can impose upon that financial institution, under the proposed FATCA legislation? Are there any? Let me put it another way. Are there any as the legislation, as proposed, has?

**Mr. Chairman:** No. Let me handle that. That comes to one of the next people we are going to interview, Central Bank. Central Bank has the power to deal with it, either suspend the operations of that institution, cancel their licence, depending on how egregious the breach is. So we would speak to them about that.

**Mr. Al-Rawi:** Just to add, it is in the latter end of the Bill, in the miscellaneous provisions as we have. What added was the springboard power of the Central Bank and the springboard power of the Securities Exchange Commission to have the authority to supervise these agreements and then we added in the power to implement the sanctions that they would have.

The BIR, per se, would have no power. Their power is just to receive information. But if there is a complaint that is sent back to them as competent authority, they go next in line to the Central Bank or the Securities Exchange Commission and then they apply the relevant sanctions.

**Mr. Chairman:** It will be a reporting relationship. The Central Bank, in fact, raised that with me in a discussion yesterday, how they would deal with this and, obviously, it would be the Board of Inland Revenue reporting to the Central Bank that we have tried to get information from this bank, they have refused to give it to us, so take appropriate action. That is how it would work.

**Dr. Gopeesingh:** Two more short questions here.

**Mr. Chairman:** I thought you did not have anymore.

**Dr. Gopeesingh:** One is, we have signed the agreement on the option 1A, which allows for reciprocity. Have you, in the past, well based on the old law, the 1989, have you asked for information about nationals from the United States Security Division, and based – we have been advised that the IGA has a reciprocity clause but we heard that the United States does not have that in their local laws to give you the information. Have you in the

past asked for information on nationals from abroad?

**Ms. Raphael:** No.

**Dr. Gopeesingh:** No, you have not.

**Ms. Raphael:** No. But we would be getting under this new thing.

**Dr. Gopeesingh:** Ah?

**Ms. Raphael:** We would be getting under this reciprocity.

**Dr. Gopeesingh:** So would you be asking for information about nationals through the United States Treasury Department?

**Ms. Raphael:** At the present, we can.

**Dr. Gopeesingh:** You can. Have you been getting that information?

**Ms. Raphael:** No, you asked the first question if we asked and I said no, but we can.

**Dr. Gopeesingh:** No, you can.

**Ms. Raphael:** Yes.

**Dr. Gopeesingh:** But bearing in mind that they have no domestic legislation which allows that, we have been told that by the AG.

**Ms. Raphael:** That is true? I am not aware of that.

**Mr. Al-Rawi:** Let me put it clear. The IGA constitutes a reciprocity provision. Currently, we are dealing with our end of the equation. In the IGA the US version of its Parliament, has yet to enact one solitary piece of law which would allow for the production on a reciprocal spontaneous basis. However, the BIR has the ability, as a BIR, to ask questions of other jurisdictions and they may or may not receive it, depending upon how that jurisdiction treats with it. So they are two separate issues entirely.

**Dr. Gopeesingh:** Based on what the AG has said, do you want to make any comment on that; based on your experiences from the past and how do you see yourselves in the future, based on this new legislation when enacted?

**Ms. Raphael:** As he said, they have to put a piece of legislation in. Once we are expecting to get the information from them.

**Dr. Gopeesingh:** Once you are?

**Ms. Raphael:** We are expecting to get the information when the Act is passed.

**Mr. Al-Rawi:** Dr. Gopeesingh – *[Interruption]*

**Dr. Gopeesingh:** Let me just ask. Bearing in mind that there is no domestic legislation, would you be asking still for any information on any national of Trinidad and Tobago?

**Ms. Raphael:** We can.

**Dr. Gopeesingh:** You can.

**Ms. Raphael:** And we may.

**Mr. Al-Rawi:** Dr. Gopeesingh is one consolidated piece that I am talking about. There are individual states in the United States of America and there are arrangements that can happen, including under mutual legal assistance, which is a treaty between us and the United States of America. So the US IGA obligation is one consolidated position. That is different from saying that they are scattered little provisions otherwise.

**Dr. Gopeesingh:** So you are saying that, let us say 52 states and you go to – *[Interruption]*

**Mr. Al-Rawi:** Federal law versus state law.

**Dr. Gopeesingh:** Which one is overriding?

**Mr. Al-Rawi:** Federal law can unify with one approach. State law exists nonetheless.

**Dr. Gopeesingh:** Right. Now, do you think that it is important for the person who you are seeking the information on, from the foreign agency, bearing in mind the present non-enactment by the federal agency of any domestic law to allow that? Do you think that that individual should be notified that you are seeking that information?

**Mr. Al-Rawi:** The Bill has put an exception. The sensitive personal information is defined under the Data Protection Act. This type of information will be sensitive personal information. This Bill proposes that the consent is not obtained for the limited circumstances set out in the Bill for the types of information. If it goes beyond that, there is a clause in the Bill that says that you shall not comply and that Trinidad and Tobago law is supreme.

**Dr. Gopeesingh:** What I am getting at AG, if there is no domestic legislation in the United States, which allows – *[Interruption]*

**Mr. Al-Rawi:** There is domestic legislation. There is no federal legislation.

**Dr. Gopeesingh:** All right, no federal legislation, which allows for this and the federal overrides the domestic, then what is the necessity? Is there an exercise in futility in asking for the information?

**Mr. Al-Rawi:** No, because the domestic law still prevails. So there is no one unified law to say everybody must comply with this, which is a federal position. But the State law is the individual states.

**Dr. Gopeesingh:** Well an individual can now legally threaten a state law when the federal law overrides the state law, as happens with abortions and all of that.

**Mr. Chairman:** Dr. Gopeesingh, could be just try to crystallize the point? What are you asking? Whether the Inland Revenue will request information from the US authorities on Trinidadian taxpayers?

**Dr. Gopeesingh:** Yes, that is what I am trying to get.

**Ms. Raphael:** Yes, we can request it.

**Mr. Chairman:** And what the Chairman has said is that they can currently do that.

**Ms. Raphael:** That is correct.

**Dr. Gopeesingh:** Have you done that in the past?

**Mr. Chairman:** And they have not done that.

**Ms. Raphael:** Have not, but we can.

**Mr. Chairman:** But because the ability to do it exists they may in the future because the capacity exists.

**Dr. Gopeesingh:** But even with the knowledge that the federal law does not permit it? It is an exercise in futility.

**Mr. Al-Rawi:** I am saying to you that the domestic laws, in the individual United States of the 52 states of the United States of America do permit it.

**Mr. Chairman:** Hold a second, what is the relevance? I am getting lost here.

**Dr. Gopeesingh:** No, I am trying to find out, because this is a major concern by citizens of Trinidad and Tobago.

**Mr. Chairman:** Wait a minute. There is no reciprocity in this law, you know. There is none. That gone.



**Dr. Gopeesingh:** But you told us the IGA agreement – [*Interruption*]

**Mr. Chairman:** No, but the IGA, that is an agreement between the two countries.

**Ms. Raphael:** That is correct.

**Mr. Chairman:** But in this, we are not legislating in this law that the BIR will have the authority to request information from Trinidad and Tobago.

**Dr. Gopeesingh:** I understand that.

**Mr. Chairman:** That is not in this law. That is out.

**Dr. Gopeesingh:** I think it is important for you, the BIR to understand what the Chairman has just said.

**Mr. Chairman:** We made it clear.

**Dr. Gopeesingh:** He has made it pellucidly clear that you have no authority – [*Interruption*]

**Mr. Chairman:** Crystal.

**Dr. Gopeesingh:** Crystal clear that you have no authority to ask for any information on anything –

**Mr. Al-Rawi:** Dr. Gopeesingh, you are getting it wrong.

**Dr. Gopeesingh:** No, I am getting from what the Chairman is saying.

**Mr. Al-Rawi:** Hold on. Just allow me for a second. This law, this TIEA law, does not have as a core feature of it in the parent substantive law, not the model IGA. It does not have any parent law a requirement that the BIR can demand and get because, number one, they can do that in any event. Whether it is given or not is a different question, but they could ask. Current law, it would still prevail.

**10.45 a.m.**

**Dr. Gopeesingh:** Wait. The current law allows them to ask?

**Mr. Al-Rawi:** Yes, under their legislation they can, because they are concerning citizens –

**Mr. Chairman:** It was always there, but there is no requirement on the part of the United States to provide the information.

**Ms. Raphael:** That is correct.

**Dr. Tewarie:** In any case, there are international agencies outside of the financial system, for instance, Interpol. I mean, all these things are neither here nor there.

**Mr. Chairman:** I totally agree. I just want to move on from this point, because what this Committee is all about is the Bill that we are considering, and this Bill does not empower the BIR to receive reciprocal treatment from the US IRS.

**Ms. Raphael:** That is correct.

**Dr. Gopeesingh:** To receive or to ask for as well?

**Mr. Chairman:** They could always ask. The reciprocity is the automatic transmission of information. Okay?

**Mr. Al-Rawi:** Only the US law can do that.

**Mr. Chairman:** The US will have to enact a law compelling US banks to automatically transfer the information to the IRS to be automatically transferred.

**Dr. Gopeesingh:** So a bank may give that information on its own volition if they want?

**Mr. Chairman:** They can, but they may be in breach of many laws when they do that.

**Dr. Gopeesingh:** The question with the legality?

**Mr. Chairman:** Correct.

**Dr. Gopeesingh:** The last one is related to the same question of security. You said here, and the answer on 27 (c) or (b):

FATCA data is logically separated from other data and so on.

Access control:

Authorization to access the data are based on separation of duties. Unauthorized IRD staff are isolated from the system.

Now, within this piece of legislation, the proposed legislation, there is a penalty of \$30,000—we are thinking about increasing that—or some X amount of years of imprisonment for unauthorized release of information. Now, are you comfortable and how many individuals this type of information will be resting on? Would you have the information as to who controls the data? How many people and, therefore, if data goes outside of that somebody could be held responsible?

**Ms. Raphael:** Well first, I mean, under section 4 it is an offence to give out that information. The whole of Inland Revenue—anybody who is a staff member of Inland Revenue goes before a Magistrate and signs an oath of secrecy. I think the offence penalty is the same we are talking about, \$30,000 or two years or both. So that exists right now.

**Dr. Gopeesingh:** So the entire Inland Revenue staff?

**Ms. Raphael:** Down to everybody, everyone.

**Dr. Gopeesingh:** Okay.

**Ms. Raphael:** So that exists right now and that will continue to exist. With respect to what is happening here, we also have further security in the system—I would let Neela speak to it a little bit—with respect to access to information, because we are very highly computerized and, therefore, certain people could see certain things and certain people cannot see. So with FATCA and with the receipt of the information, not many people would be having access to that information. So, I do not know if Neela wants to speak to exactly how it works.

**Dr. Gopeesingh:** You have clarified it.

**Mr. Chairman:** May I be allowed to excuse the Board of Inland Revenue now? I am just asking a question. May I be allowed to excuse the Board of Inland Revenue? No? Sen. Ramdeen, okay, we will finish with you.

**Mr. Ramdeen:** Commissioner, we were told and I raised the issue about the sanctions that the BIR do not presently have in the proposed legislation as enacted in terms of asking for information, and if it is not received it is really a matter to be dealt with by the Central Bank and the other authorities, but as the present legislation stands, there is no direct sanction that the BIR can impose if there is a refusal by a financial institution to provide requested information.

**Ms. Raphael:** No, there is none.

**Mr. Ramdeen:** My question is this: do you not think as the Chairman and with the responsibility of being the competent authority under the IGA, it would be better for us to insert some type of sanction or power to the BIR directly so that the BIR will have the

power to impose some type of sanction directly by virtue of the BIR on the financial institution that refuses to comply with a request from the BIR, than simply saying – under the legislation as it presently stands you can make a request and, basically, you hope or moral suasion or whatever it is, but there is no legislative measure in place to give the BIR the power to compel the production of that information.

**Mr. Chairman:** By the way, yes and no are perfectly acceptable answers.

**Ms. Raphael:** I thought you dealt with it actually, Minister, with respect to the sanctions under the Central Bank.

**Mr. Ramdeen:** My question is – I understand that that is the position presently – would it not be better – I am just asking your view as the Commissioner of Inland Revenue. I understand the answer is no – if the answer is no, is that because of not sufficient resources at the BIR to implement that measure if that were to be the position?

**Ms. Raphael:** No. That is a good answer?

**Mr. Chairman:** The BIR is excused.

**Dr. Gopeesingh:** Chair – [*Crosstalk*] – You said that you have a website.

**Ms. Raphael:** That is correct, yes.

**Dr. Gopeesingh:** Is there any direct policy of the BIR now to educate the national population, the financial institutions, so that everybody would know what is required of them, what information has – because the population at the moment is still not aware or unaware of what will come out of this legislation and, therefore, what method would you use to educate the population?

**Ms. Raphael:** Well, right now, we are in consultation with many financial institutions. I do not know, Sharon just speak to it, speak to it a “lil” bit. You do not want her to speak too much. [*Interruption*]

**Mr. Chairman:** Just hold on, Dr. Gopeesingh, wait.

**Ms. Raphael:** I would answer, yes.

**Mr. Chairman:** The question is: how are you going to educate the public? Answer that question.

**Ms. Raphael:** Okay. Through the website. You mentioned through the website, because that is open to the public and some advertisements as well, we do intend to. Okay. That is good enough?

**Mr. Chairman:** Do you have a communications plan?

**Ms. Raphael:** Well, yes and no.

**Mr. Chairman:** I think it is appropriate that you should have a communications plan. So, I will undertake as the line Minister for the BIR to make sure they have a public education plan. Okay?

**Ms. Raphael:** That is good. Okay, thank you.

**Dr. Gopeesingh:** So you see how important it was.

**Mr. Chairman:** That is a good question. [*Crosstalk*] Thank you very much for coming.

#### **BANKERS ASSOCIATION OF TRINIDAD AND TOBAGO**

Ms. Anya Schnoor

President

Mrs. Karen Darbasie

Treasurer

Miss Kelly Bute

Chief Executive Officer

Ms. Kimi Rochard  
Miss Rachel Laquis  
Miss Janelle Bernard  
Miss Lindi Ballah-Tull

Legal Committee Chair  
Alternate Legal Committee Chair  
Senior Manager Compliance  
Head Legal Compliance

**Mr. Chairman:** Good morning, thank you for coming. The purpose of this meeting of this Joint Select Committee on the Tax Information Exchange Agreements Bill, 2016 is to discuss various clauses of the Bill and general principles of the Bill with key stakeholders. We have just finished with the Board of Inland Revenue and now we are pleased to receive the Bankers Association. Could the leader of this association please make a brief opening statement?

**Ms. Schnoor:** Good morning Minister, great to be here. I am Anya Schnoor. I am the President of the Bankers Association. May I also introduce Karen Darbasie, who is the Chief Executive Officer of First Citizens Bank. We have with us also, Kelly Bute, the CEO of BATT, Miss Lindi Ballah-Tull, Rachel Laquis, Kimi Rochard, attorneys-at-law who are also with us today and are on the legal committee of BATT and we have Janelle Bernard, who is from Republic Bank and is their head of compliance.

On behalf of BATT, I would like to thank the Committee for the opportunity to be present and to contribute to the finalization of this important legislation. BATT remains of the view that this must be done by the end of February to avoid any risk which is associated with non-compliance. We remain focused on the fact that the Bill seeks to capture the reporting of information on US persons already subject to US tax laws and reporting on their worldwide income. From the bankers' perspective this will affect not only our operations and ability to do business internationally, but potentially even non-US persons if the Bill is not passed.

We believe much progress has been made in addressing all stakeholder concerns, and we have no further substantive changes to propose to the latest draft of the Bill that we have seen. We have made some submissions which are before the Committee, and we are prepared today to answer any questions and any questions in the coming days. So, thank you, Mr. Chairman.

**Mr. Chairman:** Well, I will like to excuse the Bankers Association since they are happy with the Bill. They are happy with the Bill, I would like to excuse them. Are you in agreement? [*Laughter*] I am serious, since they have no objections to the Bill, can we excuse them? [*Crosstalk*] Yes, they have no objections

**Dr. Gopeesingh:** We have questions to the Bankers Association which we have submitted, and we would like to have some answers. Let me first, if I am permitted by the Chair, first of all, say a warm welcome to all of you. May I first ask, the Bankers Association is an association coming together for representation of whom? Who are your constituents for your Bankers Association?

**Ms. Schnoor:** Thank you. The members of the Bankers Association are the commercial banks, the licensed commercial banks in Trinidad and Tobago.

**Dr. Gopeesingh:** And how many do you have?

**Ms. Schnoor:** Eight.

**Dr. Gopeesingh:** You have some banks that are nationally owned and some that are

foreign owned, foreign majority. Which are the foreign ones? Royal, Scotiabank –

**Ms. Schnoor:** Royal Bank, Scotiabank, Bank of Baroda, Citibank and First Caribbean.

**Dr. Gopeesingh:** That is five out of the eight.

**Ms. Schnoor:** Five out of the eight.

**Dr. Gopeesingh:** How did you determine your position from the Bankers Association? Were there elements or constituents of all these eight banks that came together to give their opinions on this?

**Ms. Schnoor:** All banks are represented on the board of BATT, and we meet on every six-week basis, and we have discussed FATCA at length over a number of years. Our first submission to the Government of Trinidad and Tobago, at the time, was in 2012 when the Bill was passed in the US and subsequently came into force. So we have discussed this at length over a long period of time. All the banks, all the eight, equally agree and share the same views and the representations made by the association are the views of all the banks, commercial, in Trinidad and Tobago.

**Dr. Gopeesingh:** Would you have had one or two specific meetings to deal with this proposed FATCA legislation, and, if so, you would have had some information documented on the views of the individual banks? Would it be possible or would it be asking too much if we share that information or you could share that information to us to hear the views – because we do not have the time from this to ask individual banks, which we initially thought about, but because we want to bring this to an end, we thought we would hear the views of the Bankers Association.

**Ms. Schnoor:** We have written submissions to the Government and the Opposition with the views of the association. Those collective views are the views of all the banks in Trinidad and Tobago. There are no different views from different banks. We discuss and agree.

**Dr. Gopeesingh:** The information you sent to the Government and to the Opposition, was that sent to individual banks for ratification before sending it out or are you aware of it?

**Ms. Schnoor:** We had individual meetings as an association. As I said, every bank is represented on the directors of the board.

**Mr. Chairman:** May I come in here please? Miss Schnoor, may I come in here please?

**Ms. Schnoor:** Sure.

**Mr. Chairman:** Let me ask the question which I hope will put this to rest. The submission from the Bankers Association represents the unanimous view –

**Ms. Schnoor:** Unanimous.

**Mr. Chairman:** – of every single bank.

**Ms. Schnoor:** Every single bank.

**Mr. Chairman:** And there is no divergence?

**Ms. Schnoor:** None.

**Mr. Chairman:** No variation?

**Ms. Schnoor:** None.

**Mr. Chairman:** No protest?

**Ms. Schnoor:** None.

**Mr. Chairman:** No challenge?

**Miss Schnoor:** None.

**Mr. Chairman:** It is unanimous.

**Miss Schnoor:** Unanimous.

**Mr. Chairman:** And pure and clean?

**Miss Schnoor:** And we have made that presentation over and over again.

**Dr. Gopeesingh:** Thank you, appreciated. [*Crosstalk*]

**Mr. Chairman:** Go ahead, Dr. Gopeesingh.

**Dr. Gopeesingh:** I heard you mention something about non-nationals, I did not get the clarity or the circumstances which you brought in that piece of the non-nationals. Could you just enlighten us if you could remember what you said based on nationals and non-nationals?

**Ms. Schnoor:** So FATCA deals with the reporting requirements of US persons, as a US citizen resident or if you own a substantial amount in a US company you are required to report your worldwide income to the US tax authorities. So FATCA does not impose any new requirement on US persons, this is something they know. However –

**Dr. Gopeesingh:** Stick a pin for a minute. There are individuals in Trinidad who are double nationals. Well put it colloquially, the green card people. How does it affect them?

**Ms. Schnoor:** US residents and US citizens equally are required to file US tax returns, and that is the American tax law. They report on your worldwide income.

**Dr. Gopeesingh:** Appreciated for your clarity. You were going on before I interrupted you. Go ahead.

**Ms. Schnoor:** Okay, sorry. So, if we do not pass FATCA, however, right now it only would affect US persons. If we do not pass FATCA, one of the consequences of not passing FATCA for local banks – and when I say local banks, licensed in Trinidad and Tobago and any country around the world – is that the correspondent banks that we deal with have the ability to impose withholding tax on any US transaction that we may do with that correspondent bank. That will affect non-US persons, meaning Trinidad and Tobago citizens who may not otherwise be captured under FATCA, because any transaction that they may do – and we are in an open economy, so we are all transacting US dollars at some point – could be a subject to the withholding tax, and US correspondent bank would be under an obligation to apply to transactions that flow through their institutions.

**Dr. Gopeesingh:** Thank you for the clarity. Chairman, just last point on that. Our Chairman read out recently some – I do not know whether I should disclose this – but there are some banks that have already signed with the correspondent banks.

**Mr. Chairman:** No, no, no. Let me clear this up. What I indicated is that the Central Bank has told us that 22 out of 28 banking institutions and financial institutions, which would be more than your group, have registered with the US IRS and obtained a US TIN and 28 out of 34 insurance companies were registered. So, it is not that they have registered with correspondent banks. They have registered with the IRS in the United States. Okay? So, go ahead.

**Dr. Gopeesingh:** So if your banks, all eight banks have registered with the IRS, are you registered with your correspondent banks in the United States? If you are registered with them to provide the information.

**Ms. Schnoor:** Let me clarify how it works.

**Mr. Chairman:** They will have agreement with them.

**Ms. Schnoor:** Karen, do you want to explain how correspondent banking relationship works?

**Miss Darbasie:** Yes. So the registration with the IRS was a requirement when the FATCA regulations was introduced, but that registration has a little value for us to submit information to the US IRS now that the IGA was signed, because the IGA supersedes the registration that we did as individual banks.

The correspondent banking relationships are relationships that allow us to transact business in US dollars. It is not a reporting relationship insofar as providing our customer information to the correspondent banks. We, in fact, do not provide client information to the correspondent banks. What a correspondent bank will get is literally a wire transfer instruction –

By order of client Anya Sure

Please transfer funds to Karen Darbasie

Account number whatever at Bank of America.

They do not get any client details on our client financial information.

**Dr. Gopeesingh:** So, first of all, you have your registration with your correspondent banks across the United States?

**Ms. Schnoor:** It is not a registration.

**Mr. Chairman:** It is an agreement.

**Ms. Schnoor:** We are a client. We are a client of a correspondent bank.

**Miss Darbasie:** They are our bank.

**Ms. Schnoor:** They are our bank, so when we have to transmit anything in US currency around the world, we must do it through a US bank.

**Dr. Gopeesingh:** If this FATCA legislation is not passed, which we know it will be passed, how does that affect your relationship?

**Miss Darbasie:** I think there are two aspects of the impact of that relationship. So the first aspect is if the legislation is not passed, banks in Trinidad across the board would be deemed as non-compliant with a US regulation. I think I would like to segment the repercussions of that into two segments.

The first point is I think leading to the initial question you asked, which was there is a portion of our banking community that have international parents where they may be able to piggyback on the strength of that international parent relationship to canvass for them to not impact a broader correspondent bank relationship. So, for example, Scotia will use their parent in Toronto to go to their US correspondent bank and say, "Please treat my Trinidad subsidiary. We are ensuring they comply with regulations."

The locally owned banks though in which First Citizens and Republic fall into the category as two of the largest by balance sheet size, will not have that canvassing capacity because we do not have a parent to really go to a correspondent bank and say –

understand the breadth of this relationship. It is a global relationship with you. If you impact the Trinidad subsidiary, it will have repercussions on a broader relationship. We do not have that capacity. So while the potential repercussion is the same, the ability of us to canvass to keep a banking relationship open is much diminished relative to the international banks, but the reporting requirements and the fact that we are non-compliant will be across the board for all of the banks.

**Dr. Gopeesingh:** Appreciated, thank you.

**Mr. Roach:** Just for abundance of clearance, in the early when you were responding to the Senator here a while about the persons to be captured by FATCA, you did say that other persons, Americans who have substantial interest, but the substantial interest is defined somewhere in the Act? Is it 50 per cent? Is it a specified amount of ownership, is it not? What is it?

**Ms. Schnoor:** 50 per cent.

**Mr. Roach:** And where is that? Where is that 50 per cent? In the IGA?

**Miss Darbasie:** In the IGA

**Mr. Roach:** Thank you.

**Dr. Tewarie:** Caricom has recently taken on the issue of correspondent banks as an issue in the Caribbean that needs to be addressed in a way that is more supportive of the banks in the region. Do Trinidad and Tobago banks – that is to say banks operating in Trinidad and Tobago, whether international or local – have they over the last, let us say, two or three years had any kinds of problems with the correspondent banks with whom they have been affiliated and, if so, what kinds of problems?

**Ms. Schnoor:** You know, my wider substantive role is, I am in charge of the Caribbean, south and east. I spent most of yesterday on the phone with a large correspondent bank who has decided to pull cash services from one of our Caribbean neighbours. That bank is the only bank in the Caribbean that actually provides US cash to the Caribbean, and what that effectively does, it means that the banks in that island or in that country, I should say, will no longer be able to get US cash.

We have found here in Trinidad and across the Caribbean in almost every jurisdiction that we are coming under increasing pressure to question: Why do we use so much cash? Why are we drawing so many US cheques? Why the level of flows into the country? Lots of questions across the region.

There have been programmes, as you know, on *60 Minutes* talking about all sorts of things that have gone on in our various countries and, unfortunately, we are all caught up in the same discussion. So, yes, here in Trinidad there is pressure on us, especially with regard to cheques. Correspondent banks because of the inability for us to use their electronic monitoring system that a wire has, we are coming under increasing pressure to move from cheques to wires only and other forms of questions around the cash usage, et cetera in the country.

As I said, in a meeting, I think I had with the Opposition, this is death by a thousand cuts. This is not, you know, you are not going to expect a correspondent bank to call you overnight and say, I am gone. What they did in Belize was they cut out cash, they cut out cheques, they cut out and, eventually, they were gone. That is what is going



to happen if they feel that Trinidad and Tobago is not keeping their international obligations, FATCA being one, but there are many more to come under FATF and money laundering.

**Dr. Tewarie:** Are they concerned about the two way flow of cash or are they concerned about cash being transferred from Trinidad and Tobago to the US or from the US to TT?

**Ms. Schnoor:** What they look at is generally the risk profile of the country. They are looking at here is a country of excise, here is a country of economic activity, and what do we see passing through our banking system, because every single US transaction goes through a correspondent bank. And typically in the Caribbean, it is very few correspondent banks. So, they are looking at both ways. They are looking at what do we do as a country and does it fall into the profile that they as an institution are comfortable with. So de-risking is something that is going on across the Caribbean because really it starts from the fact that they look at the country and say how seriously do they take money laundering, all of the other things. Have they enforced money laundering? Have they convicted somebody for money laundering? Have they done all the things, and then decide are they going to stay with that country and individual institutions.

**Dr. Tewarie:** So in managing their risk then what they try to do is to find out if the level of international transactions coming from a country is larger than it should be, given the economic power of that country?

**11.15 a.m.**

**Ms. Schnoor:** Or is the country using a lot of cash; is it a lot of transactions that are perhaps not—I mean, a country can use a lot of wires, a bank, but cash business is difficult to track, and cheques, difficult to track.

**Dr. Tewarie:** Okay. Is the pressure that is being put on banks operating in this country by the correspondent banks, is that having any effect on how the banking sector in Trinidad and Tobago manages its risk profile here in Trinidad and Tobago, in terms of the way it looks at the customer base? Is there any connection between these two?

**Ms. Schnoor:** We have seen a lot of articles in the paper around, why do banks ask so many questions, why do banks ask for source of funds, why do banks go into detail when somebody is opening an account? This is all because of the international obligations we all have to be a part of the global banking system, which requires that we implement rules and regulations to protect the banking system from being used by illegal activity as a way to launder money.

So yes, it is the one department in all of our banks that I would say that is growing, compliance and money laundering, because we have to make sure that every single transaction that goes through our institution is scrutinized; we are making sure that the source of the funds is legitimate and that we protect the banking system, which is so critical to any economy, from being used in a way that would affect the safety and stability of the bank which is so critical to our clients.

**Mrs. Darbasie:** Let me add to that. Literally our compliance people, because our transactions flow through our correspondent bank's system, we have to comply with their compliance requirements as well. So their compliance requirements roll into ours and get aggregated to ensure that we can satisfy if they come and ask questions, that we

have the information to be able to provide to them on transactions. And if they deem a transaction as a suspicious transaction, that we have the information to validate that we have done the work, before we even progressed it through their system, to ensure that we were satisfied that the know-your-customer and the due diligence have been done on our side.

**Mr. Chairman:** I will just like to intervene here. Sen. Roach, did you have any questions?

**Mr. Roach:** Notwithstanding the fact about FATCA, if there is a suspicious transaction and you are dealing with your corresponding bank, you are required to pass that information that there is a suspicious transaction which will then be related to the FIU, or something like that?

**Ms. Schnoor:** No, we do not pass any information to the correspondent banks.

**Mr. Roach:** If you see a suspicious transaction, what are you supposed to do with it?

**Ms. Schnoor:** We would not process it, and we would then raise a UTR, that is the first step—

**Mr. Roach:** What is that?

**Ms. Schnoor:** An unusual transaction report. That would be raised first. It would then go from, say, a branch that may have looked at a transaction and said this does not look right. It then goes to our compliance department that reviews that transaction in detail, and if it is deemed that that transaction is suspicious, then we raise what is called a SAR, which is a suspicious activity report, that then goes to the FIU in Trinidad. There is no communication between Trinidad banks and US banks providing any client information, other than at the client's request, the client may ask us to send a wire. The client may ask us to write a cheque, but it is always at the client's application to the bank for a transaction.

**Mrs. Darbasie:** I think just to clarify what I had said, we look at the compliance requirements of our correspondent bank and make sure that we adhere to that from our local requirement, but not that we transmit the client's information.

**Mr. Roach:** But Scotiabank has a parent bank in Canada. If you have such a client where you raise the SAR and so forth, would your parent bank be entitled to get that information?

**Ms. Schnoor:** No, because that is in each jurisdiction that we operate in—

**Dr. Gopeesingh:** Can I just ask a short follow-up?

**Mr. Chairman:** Dr. Gopeesingh, just hold. No more questions from you, Sen. Roach?

**Dr. Gopeesingh:** Chair, with the suspicious account that you as a banking sector, the bank itself finds something suspicious, do you inform the individual or do you—

**Ms. Schnoor:** No, that is tipping off. Under the money laundering laws, we can be fined for informing a client of a suspicious transaction.

**Dr. Gopeesingh:** So a client will not know whether any information—

**Ms. Schnoor:** No, that is under the money laundering laws. That is called tipping off; it is against the money laundering laws of Trinidad and Tobago, and internationally that is how it is done.

**Dr. Gopeesingh:** So individuals banking with the banking sector may not be aware that his or her, is being—

**Ms. Schnoor:** They are not supposed to know.

**Mr. Chairman:** I think Minister Young wanted to make an intervention.

**Mr. Young:** Just to help you, Dr. Gopeesingh, the laws on the books in Trinidad and Tobago now, that they are complying with there, do not allow them to tell anyone—strictly—and there are criminal offences. So if they tell the customer, if they tell anyone outside of FIU, they will be in breach.

**Mr. Al-Rawi:** Heavily penalized.

**Mr. Chairman:** I think, Dr. Gopeesingh and Dr. Tewarie and Sen. Ramdeen and Sen. Shrikissoon, I would like to wrap up with the Bankers' Association. Unless there is anything critical, could we close now or if you have something critical, please ask it now.

**Mr. Ramdeen:** Mr. Chairman, can I just simply ask, what is the state of readiness of your individual members to comply with FATCA in its present form? As you indicated you agreed with the Bill in its present form. All of your members have an obligation to provide information to the Board of Inland Revenue as the competent authority. Can you just indicate to the Committee what is the state of readiness of your members?

**Ms. Schnoor:** All of our members are ready. We have been preparing for quite some time, as you can imagine, and as soon as the Bill is passed, we are ready to sit with the BIR and start the ball rolling. We are ready, all of our members.

**Dr. Tewarie:** My question is this: the Inspector of Banks at the Central Bank, what powers in effect—I mean, I know what exists under the law, but what powers in effect can that Inspector of Banks have in persuading a bank to do anything, to follow an instruction, to comply with the law, to comply with Central Bank requirements, et cetera? I am asking for practice here.

**Ms. Laquis:** If I may, in practice the powers stem solely and completely from the statute that governs that inspector, of which he is aware and, of course, of which we are aware. So if an inspector asks a question which does not appear to be proper and right under the Act, we know to not comply with it. He has consequences as well as we do.

**Dr. Gopeesingh:** One question, Chair. In one of your responses that you gave to a question, I do not know if you have it before you, what assurances can you give the national community that private and personal information of citizens, companies, et cetera, do not enter the wrong hands and maintain their confidentiality? I just want to come to part (c) of your answer and reconfirm with you, if it is possible, that the national community ought to be made aware that only information on US persons, which are US residents and US green card people, will be sent so the BIR under this proposed legislation, and no other TT citizens. That is correct?

**Ms. Schnoor:** That is correct. I just want to reiterate again, because I know this has been one of the major concerns. This new reporting requirement is nothing different than the standards by which banks have transmitted information, in whatever form we may have been asked for in the past. So nothing is going to change about the way in which we interact with any institution that may come to us for information, properly constituted, whether it is a court, whether it is the Central Bank, whether it is the BIR under the existing legislation, whatever it may be. It has to be done in the right way and the confidentiality of our client information is sacrosanct, and it is something we protect

because it would destabilize the entire banking system if our customers did not feel that they had confidence in the banks. So nothing is going to change with this.

**Dr. Gopeesingh:** Thank you very much, Mrs. Schnoor. May I draw to your attention that the agreement we signed, the IGA, that was initialled and signed on, the Minister of Finance knows it – as the second one which is the reciprocity agreement and not the first one which did not include the reciprocity – and the reciprocity basically is indicating that under the agreement you can be asked to share information of nationals having accounts abroad. Therefore, some of your banks may have information about nationals abroad, for instance Scotia and Royal or whatever.

Are you aware that this reciprocity issue, the United States now does not have it in their federal laws, and therefore if you are asked by the Board of Inland Revenue to provide information on a national with an account abroad – not that I have any – to ask for information on a national with an account abroad –

**Mr. Young:** What you said after that.

**Dr. Gopeesingh:** That is for us to discuss.

**Mr. Chairman:** Could you press on, please.

**Dr. Gopeesingh:** The issue of you being asked to provide that information when the Federal Government in the United States does not have that in their laws –

**Mr. Chairman:** Dr. Gopeesingh, let me stop you. It is not applicable.

**Dr. Gopeesingh:** Why do you say it is not applicable?

**Mr. Chairman:** Because it is only what is in the local banking system, not overseas. It does not apply.

**Mr. Al-Rawi:** They have nothing to do with their foreign counterparts.

**Dr. Gopeesingh:** No, I am not getting that clear. Explain that again for me.

**Mr. Al-Rawi:** Dr. Gopeesingh, I appreciate the point you are making –

**Dr. Gopeesingh:** I just wanted to re-emphasize for the benefit of the banking sector, for them to be aware that we have signed a reciprocity agreement under the IGA, but the reciprocity does not exist because even though we may ask for information from Trinidad and Tobago on individuals abroad, the United States is under no obligation at the moment to give that information because they do not have that in their federal laws.

**Mr. Al-Rawi:** Dr. Gopeesingh, if I could just remind you.

**Dr. Gopeesingh:** I just wanted to re-emphasize that to our colleagues.

**Mr. Al-Rawi:** Understood, just to remind; the banking sector is well regulated in Trinidad. The fact that we have branch banks, if that is what is in your mind, that Scotia exists in Canada and it is here, and therefore if Scotia gets a request here they will call Canada and say, “Ay boy, gimme dat”, and then they would just pass it through. The competent authority under this agreement –

**Dr. Gopeesingh:** I know I am going under your pet subject.

**Mr. Al-Rawi:** The competent authority under this agreement is the Board of Inland Revenue. The bank itself would be giving nobody anything other than the BIR, and they can only give the BIR. They do not give information to anybody else.

Any request that comes from the US whenever reciprocity comes on a federal level, because it exists in domestic level, will come to the BIR, and then the BIR would request

and the BIR would give. So they have no role or function at all in that particular interest.

**Dr. Gopeesingh:** So the information requested will only come from the BIR?

**Mr. Al-Rawi:** Yes, Sir, because they are the competent authority. These are the reporting entities across –

**Dr. Gopeesingh:** At the moment you are under obligation not to share information on any member of your bank, any banking person, unless you get that information – unless you are reporting to FIU and so on. If you are requested to give information, how does that affect the person who you have the assurance that their information is confidential?

**Ms. Laquis:** I am not sure I understand the question.

**Mr. Al-Rawi:** If I could just assist. Under the Data Protection Act, you cannot disclose sensitive, personal information without expressed consent.

**Mr. Chairman:** AG, what Dr. Gopeesingh is driving at is if Scotiabank or FCB gets a request to provide information on Trinidadians holding bank accounts in the United States, what is going to happen? Not so? That is the question.

**Ms. Laquis:** And that we can answer. We cannot give information on accounts in the United States, we can only give information on accounts with our bank locally. So the United States accounts will never come into the picture where we are concerned.

**Dr. Gopeesingh:** But if there are banks, as the AG said, like Scotia and Royal with corresponding banks, your main thing is in the United States, what happens then?

**Ms. Laquis:** It does not affect us from a local perspective.

**Mr. Chairman:** Same thing, it does not matter.

**Ms. Laquis:** We do not have information on those accounts, and even if we did we could not give it.

**Dr. Gopeesingh:** Thanks for the clarification.

**Mr. Chairman:** Any more questions?

**Dr. Gopeesingh:** Just one last one.

**Mr. Chairman:** That is a real one last?

**Dr. Gopeesingh:** The Board of Inland Revenue – do you send your information to the Board of Inland Revenue on United States citizens automatically or only on request of BIR, based on your reading of this FATCA legislation?

**Ms. Schnoor:** We have not sent anything yet, we are waiting. But when it does come into effect, on an annual basis, based on our review of our client records and we would have determined who are US persons, based on our interactions – and remember we would have been speaking to clients, writing them, talking to them, so we have an idea of who are the US persons. That information would be sent on an annual basis to the BIR in conformity with the FATCA legislation.

**Dr. Gopeesingh:** So the person, you would have been speaking with them during the time and getting them –

**Ms. Schnoor:** We have been speaking to them since 2012.

**Dr. Gopeesingh:** Very good. Thanks, you have clarified my questions.

**Mr. Chairman:** No further questions? Thank you very much. “Sen. Ramdeen, yuh good?” Anybody else, going once? Thank you very much for coming. You are excused.

Folks, we have three more institutions, but I think a lot of the ground has been

covered already.

**11.31 a.m.:** *Meeting suspended.*

**11.32 a.m.:** *Meeting resumed.*

## CREDIT UNION LEAGUE

Mr. Joseph Remy

President

Ms. Dianne Joseph

Chief Operations Officer

**Mr. Chairman:** Good morning, the purpose of this meeting of this Joint Select Committee on the Tax Information Exchange Agreements Bill, 2016 is to discuss the Bill itself and any clauses with key stakeholders. Could I ask the representative of the Credit Union League to introduce yourself and your team.

*[Introductions made]*

**Mr. Chairman:** Can you make a brief opening statement, please, on the matter before us.

**Mr. Remy:** Thank you much, Chair, and let me just indicate that we received the correspondence sometime this week, and based on the unique structure of the cooperative credit union movement, we have engaged in discussion with the wider movement, because most of our stakeholders and members are dispersed throughout the entire movement. We have approximately 130 credit unions registered, and within the league we have about 55 to 56 credit unions that are active members. So the process of arriving at a consensual approach would have been a little challenging for us.

What we have done is to circulate the documents throughout the movement and solicit their input relative to the implications for some of the larger credit unions and those who have already engaged in some particular activities relative to the current Bill.

We have asked if it is possible for us to have a comprehensive written submission made when we solicit this information. We have given them the opportunity to do it for this weekend. They have agreed, because the information was circulated to all the credit unions and they have agreed, and in essence they are working right now in terms of collating that information and having it documented, so that the league would be in a better position to give an opinion that is truly representative of the entire cooperative credit union movement.

But from an overall perspective, we understand what the purpose of the Bill is for and the implications it may have. We have just about two credit unions that may be carrying an asset base of over \$1 billion. The majority of credit unions are small and medium-sized credit unions, where the implications are not onerous in that fundamental way. We have examined it on a preliminary note and we are comfortable with some of the things that they have done to make themselves compliant in a lot of areas.

What would have been a challenge for us also, when we looked at the information that came to us, there were no specific questions that were designed for the cooperative credit union movement. We had to pick them out in terms of what was submitted on the list and, as such, we would really hope that in the discussion that will ensue we will just give our preliminary opinion on where we see the legislation and the impact.

There is not much negative impact for credit unions. In essence, we may have just 1 per cent, if so much, of our accounts held by foreign nationals or US nationals. In essence, the systemic risk for us is not going to be in any serious way of some great

proportion to us. So that is basically where we are.

**Mr. Chairman:** Thank you very much. Any members of the Committee have any questions? No? That is great! So we will await your written submission. Please send it to us as soon as possible.

**Mr. Remy:** Definitely; we have given the commitment that by Tuesday we will have that submitted.

**Mr. Chairman:** Thank you very much for coming.

We have Central Bank and SEC. Members, I would like to bring Central Bank before SEC because I think Central Bank will have much more connection and responsibility. So let us bring Central Bank.

**11.36 a.m.:** *Meeting suspended.*

**11.38 a.m.:** *Meeting resumed.*

**CENTRAL BANK**

Mrs. Michelle Francis-Pantor

Deputy Inspector

Ms. Shastri Singh

Examiner II

Ms. Deborah Boynes

Senior Legal Counsel

Ms. Camille Rajnauth

Legal Counsel I

**Mr. Chairman:** Thank you very much for coming. The purpose of this meeting of this Joint Select Committee on the Tax Information Exchange Agreements Bill, 2016 is to discuss the Bill itself and any clauses that may be of issue to you with key stakeholders. Could I ask the team from the Central Bank to introduce themselves.

*[Introductions made]*

**Mr. Chairman:** Would you like to make a brief opening statement, please, on the views of the bank on this legislation?

**Mrs. Francis-Pantor:** Certainly. With respect to the Bill, we would have reviewed the provisions and we are generally in agreement with the provisions of the Bill. There were a couple of issues that we would have liked, I would say, clarified. This is in respect of the sharing of information provisions. We would like in terms of those provisions for it to be strengthened so that it would allow us to share expressly with the Board of Inland Revenue, and that is in relation to clause 26 of the Bill.

In respect of clause 26 of the Bill where it speaks to the Insurance Act, so it allows us to share the information but we want an expressed provision to share with the Board of Inland Revenue, and we also want similar provisions included under the FIA, like an amendment to section 8(2) of the Financial Institutions Act to allow expressed provisions for sharing with the Board of Inland Revenue.

**Mr. Chairman:** We have no objection, at least on the Government side. Could I open the floor now to questions? Do members have any questions?

**Dr. Tewarie:** Yes I have. You just spoke to one issue which is basically that you would like – based on your written answer here you explained the relationship you have with the SEC, and you have a formal memorandum of understanding with protocols to make that possible. Basically, you just said that you would like to strengthen the legislation to permit a formal relationship for exchange of information with the BIR. If that were to be

done, that would make basically a strong connectivity for exchange of information between the BIR, as the competent authority, and the Central Bank and I imagine the reason why you are here is because the Inspectorate of Banks at the Central Bank has the most direct dealings with the banks in the sector. It would then include of course the SEC for securities.

You answered some of the questions that were sent to you, and in answer to question 3: What information can the Central Bank ask a bank for under current laws? – you have that answer on the right which basically says both financial and non-financial information, but having to do with the strength of the financial system and ensuring that the system is sound and stable, et cetera. Can you ask for customer information?

**Mrs. Francis-Pantor:** Yes, Minister, we can ask for customer information but we generally do not ask for customer information, unless it is related to assessing the financial soundness of the institution. So in practice what happens is that we get financial information on the performance of the licensee, whether it is on their assets and liabilities or income or larger exposures. Where we tend to review financial information is when we do on-site examinations. So when we go on site to verify the soundness of the institution, we might request specific individual files to ascertain that the institution is following their policies and procedures or that their loans are performing in a proper manner. But we do not customarily receive individual financial information within the Central Bank.

**Dr. Tewarie:** But generally that would probably involve corporate customers?

**Mrs. Francis-Pantor:** Corporate or individual.

**Dr. Tewarie:** In answer to question 6, “In what ways can the Inspector of Banks enforce compliance by banks?” – could you clarify the answer that you have here? Do you have this document that I have? Could you clarify a little bit what you have said there?

**11.45 a.m.**

**Mrs. Francis-Pantor:** All right. Certainly. Within our Financial Institutions Act, as well as within our Insurance Act, the legislation provides for us to take certain actions where we deem an institution is non-compliant with the rules or if it is posing certain risks. And those actions are extensive in the FIA. So it could be that you could issue a compliance direction, the nature of the compliance direction could compel the institution to take certain actions or restrict the institution from doing certain things. We could also levy administrative fines. These are civil money-penalty type of things for where an institution breaches certain sections of the Act. Depending on the issues that we ascertain with financial soundness of the institution, we could impose restrictions or revoke their licence or suspend the institution. So it is a broad range of tools available to us.

**Dr. Gopeesingh:** Would you have to go to the High Court for that?

**Mrs. Francis-Pantor:** No. If we issue a compliance direction though, and the institution fails to comply with the compliance direction, that is enforceable through the High Court.

**Dr. Gopeesingh:** Could I ask, in answer to question 4 on the same document, the Central Bank – well, first of all, my broad question. This FATCA piece of legislation, what is your thinking and how does the Central Bank become affected by this and what are the areas or issues that will be surrounding the Central Bank from a broad perspective based on



this?

**Mrs. Francis-Pantor:** Okay. Based on the provisions of the Bill, the Central Bank will be required to issue guidelines to give effect to the TIA. From the Central Bank's purview, those guidelines will be similar to the guidelines issued for us as a supervisory authority for AML/CFT compliance.

**Dr. Gopeesingh:** So is that—I missed that.

**Mrs. Francis-Pantor:** So the guidelines that we will issue really will be to ensure compliance of the financial institutions with the framework. So we will make sure that the institution has the appropriate systems, processes—

**Dr. Gopeesingh:** Policy.

**Mrs. Francis-Pantor:**—anti-systems, policies in place for them to enable reporting to the BIR. Right? So those are where the guidelines will cover. This is similar to our role as a supervisory authority for AML/CFT.

**Dr. Gopeesingh:** Meaning an institution failing to comply with your regulations?

**Mrs. Francis-Pantor:** With our guidelines. Yes.

**Dr. Gopeesingh:** And your guidelines, what will happen?

**Mrs. Francis-Pantor:** Well, the power we have where you fail to comply with our guideline, is to issue compliance directions. So that a compliance direction could say, oh, you do not have the requisite policies or procedures in accordance with the guideline. Or it can say, you have failed to report as the guideline has required you to report to the BIR.

**Dr. Gopeesingh:** Thank you. Just to follow up on that. The guidelines would require the approval of the Minister. Have those guidelines, based on this, are you in contemplation of putting those guidelines? Are you studying the guidelines?

**Mrs. Francis-Pantor:** Yes. We have started.

**Dr. Gopeesingh:** Where have you reached in—

**Mrs. Francis-Pantor:** Well, it is very preliminary. We have “kinda” just did an outline, a straw man's approach to how we will, but we have to look at when it is finalized if there is anything else that we need to pull in there. So it really would be—we have just referenced the framework, the broad outline.

**Dr. Gopeesingh:** And it would not be long before you can give those to the hon. Minister?

**Mrs. Francis-Pantor:** We do not anticipate—well, it depends on what you mean by “long”.

**Mr. Al-Rawi:** Dr. Gopeesingh, there is a manual produced by the Department of Treasury from which all persons who have to operationalize, draw their positions, and once we get past a certain stage, meaning the Bill, the guidelines then crystalize and then we get direct assistance from the US authority to make sure that the handshake is a proper handshake, electronic or otherwise.

**Dr. Gopeesingh:** Based on the guidelines that they have?

**Mr. Al-Rawi:** Yes.

**Dr. Gopeesingh:** So they will exchange—

**Mr. Al-Rawi:** So that billed out is sort of the second stage, but what you do, is in anticipation of it, you start with this straw man structure or skeletal structure.

**Dr. Gopeesingh:** And are you aware of the guidelines from the IRS that the AG is speaking about?

**Mrs. Francis-Pantor:** I am aware of the IGA in terms of what it is required to report, what the institutions are required to report on. Yes.

**Dr. Gopeesingh:** The other aspect of it reporting to the Minister and the guidelines, we will discuss that in our Committee meeting in terms of that.

**Mr. Chairman:** All right. Other questions?

**Dr. Tewarie:** Yeah. A couple or more. If you look at question 8, all right? – your response is:

Currently there are no laws which enable collaboration among the four entities, that is: Central Bank, SEC, BIR and individual banks.

But the Central Bank Act, in fact, determines the relationship between the Central Bank and the banking institutions. Right? And now with the Insurance Act, you also have the same inspector of banks responsible for that. Right? So that basically the Central Bank has these two different sources of financial information. How do you deal with – does the Central Bank have jurisdiction over brokers and dealers, investment managers?

**Mrs. Francis-Pantor:** Yes. The Central Bank – it is really Inspector of Financial Institutions.

**Dr. Tewarie:** Okay.

**Mrs. Francis-Pantor:** So our regulated entities are the banks, the commercial banks; we have some non-bank financial institutions. We also have insurance companies and what we call insurance intermediaries. The insurance intermediaries encompass the insurance brokers, agents, et cetera, and we also look at pension plans.

**Dr. Tewarie:** Okay. Is it on account of what you say here that there are no laws which enable collaboration among the four entities?

**Mrs. Francis-Pantor:** Yes.

**Dr. Tewarie:** But let us leave the individual banks out: Central Bank, SEC, BIR, that you asked for the strengthening –

**Mrs. Francis-Pantor:** Right. So based on the question, we answered the question in terms of that collaborative – like the four bodies together.

**Dr. Tewarie:** Need.

**Mrs. Francis-Pantor:** – but we do have bilateral relationships with the SEC and well with the banks.

**Dr. Tewarie:** Okay. I think I am okay now.

**Mr. Chairman:** Sen. Ramdeen.

**Mr. Ramdeen:** Thank you, Chair. Deputy Inspector, is the Central Bank going to have a special unit set up to deal with the supervision of the requirements of the IGA by financial institutions who are required to report under FATCA when it becomes law?

**Mrs. Francis-Pantor:** At this point we have not considered a separate unit. It will be handled within the financial institutions supervision department.

**Mr. Ramdeen:** Do you have any special staffing requirements, additional to what you would have now that you would need to fill with respect to well the role, the new role that you will be required to perform as the supervisory authority over the reporting

institutions?

**Mrs. Francis-Pantor:** Well, that will be contemplated whether we will need to increase the staffing, but right now we will be utilizing our staff.

**Mr. Ramdeen:** But do you think that – what I am trying to get at is that, do you think that what you have now is sufficient to be able to comply with your additional responsibilities?

**Mrs. Francis-Pantor:** Well, given what we envisaged the guideline to be, yes.

**Mr. Chairman:** And Sen. Shrikissoon, Toppin, Coppin. I am sorry if I got your name wrong, Coppin. Rambharat? Anything? Gopee-Scoon? Last question.

**Dr. Gopeesingh:** Yeah. Approximately how many financial institutions, non-financial institutions, insurance companies and intermediary insurance companies that come under the Financial Institutions Act and the Insurance Act that the Central Bank will be regulating? Do you have any idea? Why I ask you this is because many years ago when we were in the Senate, “donkey years” ago, there were a number of financial institutions that were not inspected by the Central Bank, but that is another story. Do you have an idea of what you had before you?

**Mrs. Francis-Pantor:** Okay. We have a number of – if we were to count all the regulated persons, including intermediaries, we will be in the thousands. But if you are looking at those who are caught by this Bill, the TIEA, it will be the eight commercial banks, the 16 non-bank financial institutions and the 34 active insurance companies. Not 34, actually 17, it is a little less, will be caught by the legislation.

**Dr. Gopeesingh:** And what would be your relationship with the BIR with respect to these institutions that you spoke about?

**Mrs. Francis-Pantor:** Well, based on how we envisaged this, because the information is going to be channelled directly to the BIR, but where the BIR detects areas of non-compliance with their reporting requirements, they will liaise with the Central Bank in terms of institutions not reporting as required or having challenges, if it is inaccurate or if there are other significant omissions.

**Dr. Gopeesingh:** And that is where your supervisory function come –

**Mrs. Francis-Pantor:** That is right.

**Dr. Gopeesingh:** – in your relation with the BIR and the institutions?

**Mrs. Francis-Pantor:** Yes.

**Dr. Gopeesingh:** Now the Central Bank is under the Freedom of Information Act?

**Mrs. Francis-Pantor:** No. We are not.

**Dr. Gopeesingh:** No?

**Mr. Chairman:** Exempt.

**Dr. Gopeesingh:** Yes. It is – sorry. Exempt from the Freedom of Information Act. So when information is requested of you, how do you deal with that? Under the –

**Mr. Chairman:** They do not reply.

**Ms. Boynes:** We indicate that they are subject to the secrecy provisions in the Central Bank Act which restricts us unless there is an exception in another law.

**Mr. Al-Rawi:** Dr. Gopeesingh, there is a department which has to reply, state what the perceived application or exemption is and that is still open to challenge. So the person

can then head to court.

**Mr. Chairman:** Comply and say it is exempt and then the person can go to court and challenge that if they want.

**Dr. Gopeesingh:** Yeah. What we were saying, through the Committee, the guidelines that you are going to give to the hon. Minister, we would like to see it in Parliament under a resolution whether negative or –

**Mr. Chairman:** We have already agreed to that.

**Dr. Gopeesingh:** Yeah?

**Mr. Chairman:** It would be subject to negative resolution. Any further questions for the Central Bank? Thank you very much. You are excused.

**Mr. Chairman:** The Securities and Exchange Commission, and that is it. And thank you very much for coming.

*[Central Bank Officials exit room]*

## TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION

Ms. Lystra Lucillio

Deputy Chief Executive Officer

Ms. Astraea Douglas

Legal Counsel

Ms. Leslie Ann-Browne

Legal Counsel

**Mr. Chairman:** Good morning. Thank you for coming. The purpose of this meeting of this Joint Select Committee on the Tax Information and Exchange Agreements Bill, 2016, is to discuss the Bill itself and its clauses with key stakeholders such as yourself. To let you know, you are the last entity that we are going to examine and things have gone very well, so that I am hoping that we can wrap this up quickly. I would ask the members of the team to introduce themselves, please.

*[Introductions made]*

**Mr. Chairman:** And could the leader of the team, please, make a brief opening statement.

**Ms. Lucillio:** Yes. When we were first invited to the review the changes, not only in our legislation, but also in the Act, we would have identified a few of the areas where we saw it fit for us to bring clarity to some of the statements which were, well the sections within our Act which would have covered some of the requirements being requested. As such, we would have responded to a few questions, as well as submitted our suggested amendments to the different areas.

**Mr. Chairman:** Okay. Is there anything in particular you would like amended?

**Ms. Lucillio:** Well, coming out of – well, I do not know exactly in terms of the order you would like to deal with it. But coming out of the Act itself in terms of the section 25, there were some edits which were raised there, as well as there were two questions which were also posed to the SEC.

**Mr. Chairman:** Are you reading the original version or the revised version?

**Ms. Lucillio:** I believe this is the revised version.

**Mr. Chairman:** Okay. I think what they got, Secretary, is what we have, the written-up version. So you are talking about section 25? *[Discussion with the Secretary]* Okay. What are the issues you have with section 25? That is the new 25 on page 25?

**Ms. Lucillio:** I believe this is page 28, based on what I have here.

**Mr. Chairman:** Page 28?

**Ms. Lucillio:** Yes.

**Mr. Chairman:** We do not have a 28. We do. Yes. We have a 28. All right. Just tell me what the clause says and we will see if it is corresponding to what we have.

**Ms. Douglas:** Chair, if I may? So we will be looking at clause 25(f) in relation to the amendments to section 90(1) of our Act. Sub-paragraph (1) would read as follows:

In paragraph (c) by deleting the word “and” ...

That “and” should actually be –

**Mr. Chairman:** Yes.

**Ms. Douglas:** That “and” should actually be “or”.

**Mr. Chairman:** You mean these are typos?

**Ms. Douglas:** No. These are just typos that we would have written.

**Mr. Chairman:** “Doh” worry with typos.

**Ms. Douglas:** Okay.

**Mr. Chairman:** I am talking about substantive issues.

**Ms. Douglas:** No. The substantive issues that we would have submitted previously, they were addressed in amendments.

**Mr. Chairman:** All right. So you have no –

**Ms. Douglas:** So in terms of that, we have no further issues.

**Mr. Chairman:** Thank you very much. Okay. Questions?

**Dr. Tewarie:** As of the issue of sharing of information, again, are you satisfied that in relation to the FATCA legislation and the role of BIR as the competent authority, that the level – I mean, what is the relationship between SEC, for instance, and BIR that allows BIR to get information from you and does that need to be addressed in any way?

**Ms. Douglas:** Currently now that they have – from our standpoint in our legislation, our interpretation of the legislation will be that it permits us to share the information to get information from the BIR and other entities. However, I know that there is an issue in terms of the BIR legislation and their ability to supply the information. And so I think that will be an issue that will need to be addressed in that piece of legislation.

**Dr. Tewarie:** Under the law, you may be able to give the BIR information, but it will be very difficult under the existing law for the BIR to give you any information if it relates to us, a single taxpayer account.

**Ms. Douglas:** That is correct.

**Dr. Tewarie:** So, what you are suggesting in that regard?

**Ms. Douglas:** For the regime – it will depend on how this regime is envisaged to work. If it is a situation where, that is the BIR would be the competent authority that we just need to submit the information to BIR, then our legislation allows us to get the information.

**Dr. Tewarie:** Right.

**Ms. Douglas:** In terms of enforceability, I think, that is where there would need to be some amendment to the BIR legislation. I cannot recall the section, I think it is 4, but I am not sure. Section 4 of the Income Tax Act that would then allow the BIR to supply information to us and that would probably affect the enforceability. So our ability to

issue compliance directions and so on, there might be a certain amount of information that we can get from the financial institutions or our registrants, however, the ability to take it that step further in terms of enforceability may be prohibited by the inability of BIR to share that information.

**Dr. Tewarie:** Under the current law which governs you, do you have the power to enforce compliance to the people who will have to comply with your requirements?

**Ms. Douglas:** With our requirements, yes, and in terms of the proposed amendments that are suggested in this Bill, those proposed amendments will allow us to enforce compliance in relation to guidelines that we would issue for the TIA.

**Dr. Tewarie:** Okay. So you can get the information and supply the information.

**Ms. Douglas:** Yes.

**Dr. Tewarie:** Okay. I am fine.

**Mr. Chairman:** Sen. Ramdeen.

**Mr. Ramdeen:** I was just a little bit curious, Ms. Douglas, if you could help me? Why would the Securities and Exchange Commission require an exchange of information with the BIR? In the opposite, not you supplying the BIR, but the BIR supplying you with information?

**Ms. Douglas:** I was suggesting that in relation to being able to enforce—if there was some issue of non-compliance, there might be a certain amount of information that we can get to enforce the guidelines and—this is just at this point, being speculative in terms of trying to enforce. There may be information that you may need from the BIR to take it the step further, because the way the compliance direction would move—

**Mr. Ramdeen:** Can I just—I apologize cutting across, but in terms of you enforcing—

**Ms. Douglas:** The guidelines.

**Mr. Ramdeen:**—the guidelines, your guidelines with respect to the persons who are registered under the Securities and Exchange Commission Act.

**Ms. Douglas:** Yes. So unless it is intended that BIR would then take that enforcement further, so we would enforce it in relation to the FATCA guidelines that we issue and I am comparing this to the AML regime which is that you issue guidelines for compliance with the substantive legislation. And there may be information that you need to get, currently with the CBTT for example, in terms of that type of enforcement to be able to effect the enforcement because you have to get—you do a compliance direction and if you have an issue of non-compliance, then you have to go to the court. So unless it is that the parts of the regime that BIR would solely have the information for, then they are able to then take it to the court separately. There would need to be some type of collaboration or I would imagine there would need to be some type of collaboration for effective enforcement.

**Mr. Ramdeen:** But you would be able—would it be correct to say that really is a situation that you can only envisage after the regime comes into place and you see how it works in terms of the persons who you have to get information from to supply to the BIR?

**Ms. Douglas:** That is correct, but I think there is a high probability that there would need to be some type of collaboration between the entities. Because we have the example of our AML regime, and it works because there is collaboration between the entities, all the

supervisory authorities. For example, in our AML regime has MOUs with each other.

**Mr. Ramdeen:** Are you saying that as far as from where you sit in terms of enforcement by the commission, you would need to have that type of amendment done in order to secure that you are able to enforce your guidelines both ways?

**Ms. Douglas:** I think it would be helpful and I imagine it would be necessary for it to be able to be done.

**Mr. Ramdeen:** Okay. Thank you.

**Mr. Chairman:** Any further questions? All right. This is just to say that we are considering your request. We may not necessarily accede to it. We have to discuss it as a Committee to see whether it is relevant.

**Mr. Ramdeen:** Just one short question, Ms. Douglas, or the Deputy can answer: what is the state of readiness of the commission to comply with the reporting requirements to the BIR which would be the competent authority if FATCA, well if the legislation as we now have it, is implemented right away?

**Ms. Lucillio:** If it is implemented right away in terms of readiness, we can actually, based on our legislation, review via the onsite compliance checks we are able to go in and actually review what we are seeing on some of our registrants. That is where we are at this point in. In terms of getting everything else in terms of a more complete reporting, it will take us some time to actually put things in place in order to do that.

**Mr. Ramdeen:** Without being too speculative, how long do you envisage that that process will take for you to become satisfactorily compliant? – if you want to put it that way. What will be your reporting requirements under the –

**Ms. Lucillio:** It depends on exactly what we would be required to do. All right? Coming out of this, if there are any substantive changes or any particular type of reporting that might be required which is beyond what we would normally do or the way we would collaborate with other regulators, normally it takes us about six months or so to actually put everything in place. It is according to what is required. If it is that we are required to include different types of reporting forms that we will have to implement for our registrants, it is going to take a little bit longer because of the collaboration process and all of that that needs to be completed.

**Mr. Ramdeen:** And the guidelines that the Securities and Exchange Commission is required to implement, presenting your amendments under this, how far along have you reached in terms of getting that done?

**Ms. Lucillio:** We have only recently started with that. We have made significant progress with that. And of course, it would not – because of the fact that we have not had any stipulated, as in finalized directions concerning it, we have some directions. We would not actually go and fully complete it without knowing exactly what is required in entirety.

**Mr. Ramdeen:** From what you are saying, is it that – well, I do not want to put it in a negative, but if I were to put it in a positive, what has been the relationship between yourselves as the commission and the BIR with respect to understanding what are the new roles that the commission will be required to perform if the legislation is implemented?

**Ms. Lucillio:** We have had just high level discussions in full roles, meaning that we have not had one-on-one collaborations attempts, so we will probably be participating as part of a wider meeting and there are some things that we would have asked directly and get responses coming in, but in terms of putting everything in place, really getting it all functioning and working in the way that they would have envisaged, we have not reached that stage as yet.

**Mr. Ramdeen:** And finally, in terms of staffing, would you have the appropriate – having regard to the answers to the questions that you have given previously, it may be difficult for you to anticipate at this stage not knowing exactly what your role is to perform. But do you expect or do you suspect that you will need additional staff or are you able to comply with the reporting requirements that you are envisaged to perform in the existing systems that you have in place?

**Ms. Lucillio:** It is based on exactly what is required. Normally in situations like this when we are required to implement something within a relatively a short period, we would probably engage the services of a consultant and then develop the skillsets internally probably. Also, based on the outcome of what we would see once we have started to implement everything and if we see that there is a major change or a requirement in terms of what we might need to have internally from organizational standpoint in order to support it, then we would look at increasing staff count and getting additional persons. But at this point, this is the way we would normally approach it.

**Mr. Ramdeen:** Okay. Thank you very much for the answers to the questions and thank you for coming and appearing before us.

**Mr. Chairman:** All right. Any further questions? Okay. Thank you very much for coming. You are excused.

*[Securities and Exchange Commission Officials exit room]*

**Mr. Chairman:** Members, I would like to schedule the next meeting for Tuesday at 10.00 a.m. Is that okay with everybody? The next meeting Tuesday at 10.00. How about Monday at 9.30 a.m.? I was just teasing my colleague over there. That is when they have F&GP. Yeah. Go ahead. Go ahead.

**Dr. Tewarie:** How about Wednesday or Thursday?

**Mr. Chairman:** Wednesday or Thursday. What you suggest? Thursday is not convenient.

**Mr. Ramdeen:** Wednesday is better for me.

**Mr. Chairman:** Everybody good with Wednesday? Wednesday at 10.00? It has to be in the morning. Wednesday at 10.00. Okay? Sorry, Marlene and I apologize, but we will have to get this – let me tell you why we have to push it. The deadline for reporting is Friday next week. So we must. And the purpose of this meeting is to just collate everything we have seen, everything we have heard, everything we have been told and see if we could report to Parliament on Friday. I would really like to do that. We will try to finish.

**Mr. Al-Rawi:** We will try to produce the amendments suggested.

**Mr. Chairman:** We want to produce a consolidated Bill now based on all the interventions made and all the requests made, all the proposals made by members of the



Opposition, Independent Bench and the stakeholders and try and finalize it. If we do not, we do not, but that is my objective.

**Mr. Al-Rawi:** We will try to circulate by Tuesday so that, at least, members have it in advance.

**Mr. Chairman:** Okay? [*Crosstalk*] That is okay with me. Okay, 9.30 on Wednesday.

**Mrs. Gopee-Scoon:** 9.30?

**Mr. Chairman:** Yes. [*Crosstalk*] I am asking if 9.30 is convenient. You prefer 10.00?

**Mrs. Gopee-Scoon:** Yes.

**Mr. Chairman:** That means we will have to finish by 12.00 eh, because we have Senate. Oh, no. There is nothing on Wednesday. So there is nothing to prevent us, except any other engagement that we will have. [*Discussion with Secretary*]

**Miss McDonald:** Chair, can we finish by 12.00?

**Mr. Chairman:** I am hoping. I “doh” know. I cannot say. But would you come at 10.00?

**Miss McDonald:** I can try because that is all the constituency day.

**Mr. Chairman:** What you can do—

**Miss McDonald:** I can shift.

**Mr. Chairman:**—like Sen. Roach did today. He had to leave at 12.00. So come and stay for as long as you can. All right? So Wednesday at 10.00 and the objective is to finish and report to the Parliament that we have consensus on an amended Bill. Okay? That is my plan.

**Dr. Gopeesingh:** Just for clarity, the CPC, you all have submitted what was required of them?

**Mr. Chairman:** Yes. Yes. Yes. Yes. The explanations. Yes.

**Dr. Gopeesingh:** The other pieces of legislation—

**Mr. Chairman:** I do not know why you do not have that. Is that in his package? Is that in his package? It is in your package.

**Dr. Gopeesingh:** I was only focussing on what was before me.

**Mr. Chairman:** That is quite okay, Dr. Gopeesingh. I am not quarrelling with you. It is in your package. Okay?

**Dr. Gopeesingh:** All right.

**Mr. Chairman:** And I believe lunch is available.

**Dr. Gopeesingh:** And then you remember I asked for certain parts of the—what they sent for you, what you gave us from the correspondence with—

**Mr. Chairman:** It is in your package.

**Dr. Gopeesingh:**—if you can get other little parts that are—the other areas of correspondence that are relevant.

**Mr. Chairman:** You were not here. There was a question prior to [*Crosstalk*] one letter, two letters, three letters.

**Mr. Al-Rawi:** If I could just explain. There was one letter which was circulated out. But what we did, we sat down with them, clause by clause and worked out a lot of the issues.

**Dr. Gopeesingh:** Not the Bankers Association?

**Mr. Chairman:** No. You know what you wanted. The correspondence between the Ministry of Finance and the Treasury. I will look and I see what is available.

**Dr. Gopeesingh:** Okay. Good.

**Mr. Chairman:** They spoke about a notice. I will see if I get the notice for you. Okay. Okay. Thank you very much. Meeting is adjourned.

**12.17 p.m.:** *Meeting adjourned.*

## **VERBATIM NOTES – FIFTH MEETING WEDNESDAY, FEBRUARY 1, 2017**

### **PRESENT**

Mr. Colm Imbert	Chairman
Mr. Faris Al Rawi	Member
Mr. Stuart Young	Member
Miss Marlene Mc Donald	Member
Dr. Tim Gopeesingh	Member
Dr. Bhoendradatt Tewarie	Member
Mrs. Paula Gopee-Scoon	Member
Mr. Clarence Rambharat	Member
Mr. Michael Coppin	Member
Mr. Gerald Ramdeen	Member
Mr. H. R. Ian Roach	Member
Mr. Taurel Shrikissoon	Member
Miss Keiba Jacob	Secretary
Mrs. Angelique Massiah	Asst. Secretary
Miss Simone Yallery	Legal Officer

### **CHIEF PARLIAMENTARY COUNSEL**

Ms. Ida Mariana Eversley	Deputy CPC
Ms. Donna Marie Neaves-Ronstant	Legal Counsel II
Ms. Paula Hender	Legal Counsel I

### **OFFICE OF THE ATTORNEY GENERAL**

Ms. Vyana Sharma	Legal Counsel II
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### **MINISTRY OF FINANCE**

Ms. Nnika Watson	Senior Legal Officer
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**Mr. Chairman:** Good morning all. All right, let us start the meeting. I am advised that Sen. Shrikissoon will be late. I happen to know that the Attorney General and Minister Young were called away at short notice and they are on their way so they will be late. Sen. Rambharat is late.

At the last meeting, we did not confirm the Minutes of the previous meeting because we wanted to ensure that the table at the back carefully reflected the various comments that had been made with respect to amendments to the Bill. Can I confirm those Minutes now or would you want to defer them?

**Dr. Gopeesingh:** Which one is that, Chair?

**Mr. Chairman:** At the last meeting that we held on the 27<sup>th</sup>. So on the last meeting that we had on the 27<sup>th</sup>, we were seeking to confirm the Minutes of the 20<sup>th</sup>, and there was a concern from you, in particular, Dr. Gopeesingh, that you had not had time to go through the table in the back which was just a recital of what we discussed with respect to proposed amendments to the Bill. I think we have gone past that. I would like to confirm these Minutes if you do not mind. This is the Minutes of the 20<sup>th</sup> of January. You have them there? The only issue was how accurate was the table in the back there.

**Mr. Roach:** The 20<sup>th</sup> which we speaking about here.

**Mr. Chairman:** Yeah.

**Mr. Roach:** Yeah.

**Mr. Chairman:** The only issue that prevented us from confirming those Minutes was how accurate was the table in the back, but I have looked at it since and it appears to be accurate to me, in terms of what we agreed, what we did not agree, what we deferred and so on.

**Dr. Gopeesingh:** You see, if we agree to that now, Chair, what we intended to do subsequently would probably impact on all this. I was implicating that if we confirm the Appendix which deals with clause by clause.

**Mr. Chairman:** Well, what I am saying is that I looked at the Appendix and I am satisfied it is an accurate account of what we discussed, what we agreed to accept, what we agreed to defer and so on.

**Dr. Gopeesingh:** When we are doing the clause by clause, could you just refer to them and just kick them out.

**Mr. Chairman:** So you want to leave it until then?

**Dr. Gopeesingh:** All right, then yeah, Chairman. I think it would give some comfort of mind.

**Mr. Chairman:** No problem. Let us look at the Minutes of the meeting of January 27<sup>th</sup>. Can we go to corrections to the Minutes? Any corrections on page 1? Any corrections on page 2? Any corrections on page 3? Any corrections on page 4?

**Dr. Tewarie:** On page 2, did we have – that is fine.

**Mr. Chairman:** Okay, good. Any corrections on page 3? Page 4. Any corrections on page 5? Can I get somebody to confirm the Minutes of the meeting of the 27<sup>th</sup> of January?

*[Confirmed by Mr. HRI Roach]*

*[Seconded by Miss M. McDonald]*

**Mr. Chairman:** Okay, let us go to Matters Arising now from that meeting. Any matters arising on page 2?

**Dr. Gopeesingh:** 3.2, Chair, to start, confirm the written submissions were requested to the Chamber?

**Mr. Chairman:** Sure. Okay, could the Secretary report on this please?

**Miss Jacob:** We received no response from AMCHAM and the Trinidad and Tobago Chamber of Commerce. The Law Association and the Faculty of Law indicated that they would like to get – they would need some more time and as soon as they are finished, they would submit the –

**Dr. Tewarie:** But, was correspondence sent to all of these entities?

**Miss Jacob:** And they confirmed receipt.

**Dr. Tewarie:** All confirmed receipt you are saying.

**Dr. Gopeesingh:** So which ones they are?

**Miss Jacob:** The Law Association and the Faculty of Law.

**Mr. Chairman:** Said they wanted more time.

**Miss Jacob:** Yeah, that they would submit something –

**Mr. Chairman:** AMCHAM and the Chamber did not respond.

**Miss Jacob:** – in two weeks.

**Mr. Chairman:** That is what I am hearing. Okay?

**Mr. Roach:** Can I ask you, I mean more time as in what? Do we have a deadline?

**Mr. Chairman:** I know, they are asking for two weeks. It is not that we could entertain that request. Anything more arising on page –

**Dr. Gopeesingh:** Chair, I remember you had indicated that there were some widespread consultations with them.

**Mr. Chairman:** Who them?

**Dr. Gopeesingh:** Well, some of these, like AMCHAM and – I do not know whether you had indicated that in your presentation.

**Mr. Chairman:** It was the only group that the Attorney General has indicated that he held widespread consultations – well, consultations with, is the Bankers Association. The communication with these groups is really in terms of press releases and statements that they would have made in the newspapers and that sort of thing. There was no meeting per se with the Chamber, with AMCHAM, et cetera. They were just urging us by way of press releases to get on with it and pass the Bill. Okay? That was their position, just get on with it and pass the Bill because they were scared of the consequences of not passing the Bill. Both AMCHAM and the Chamber.

**Dr. Gopeesingh:** So when the AG spoke about the consultations.

**Mr. Chairman:** It is with the Bankers Association. Any other matters arising on page 2?

**Dr. Tewarie:** We met with the stakeholders.

**Mr. Chairman:** Correct.

**Dr. Tewarie:** But there were other stakeholders identified, I think in the other Minutes, and with whom we were supposed to engage. Among them, I think, was the insurance people, ATTIC. Did we decide to write to them for responses or what?

**Mr. Chairman:** I do not think the insurance companies – I mean, I will have to double-check this, eh, but I do not think they have any locus standi you know, but I will have to double-check this.

**Dr. Tewarie:** No, no, remember we had said that – I mean, it is mostly the banks that are affected by this but when we look through the legislation, there was a substantial part having to do with the Securities Exchange and also the insurance, so we asked –

**Mr. Chairman:** Correct, quite correct. What would you want to do?

**Dr. Tewarie:** I mean, I do not mind engaging them but I know that for you, Chair, time is of the essence, if we could get something in writing from them that would clarify their situation, I will be happy.

**Mr. Chairman:** Okay, so let us see if we could reach out to them today and ask them just for a position. They could give us that by tomorrow.

**Dr. Gopeesingh:** Chair, if I could just go back, I crave your indulgence, on 3.3, you had indicated very kindly that you might have been able to provide a little more of the information on—

**Mr. Chairman:** Yes. What happened was that in the email, the lady from the Treasury refers to notices, some of which would have been posted on the FATCA website. When we bring in the public servants, I will get the legal officer who works with me to just go through the email, identify the notices and pull them one time while we are meeting here.

**Dr. Gopeesingh:** Okay, good. Very good.

**Mr. Chairman:** All right, then. Anything else on page 2?

**Dr. Tewarie:** Could I follow up on that thing from 6.1 because I am now looking at the Minutes before, which we have not confirmed? On page 2 there, it says the trust corporations not within a bank. I imagine that would include people like UTC, et cetera, merchant banks that fall outside of the commercial banks' framework and ATTIC. So if we could just communicate with—

**Mr. Chairman:** Sure. So Unit Trust, if there are any merchant banks that fall outside of commercial banks. I do not think there are any but—

**Dr. Tewarie:** It would be like ANSA Merchant.

**Mr. Chairman:** That is part of a—okay, I understand. Any other matters on page 2? Can we go to page 3? Well, it is just a recycle of what happened. Page 3 would just be what went on. Any matters arising on page 4? I can tell you and with respect to 6.13, the Attorney General told me yesterday that the Central Bank had proposed a few amendments which he has incorporated into the final version of the Bill. That is about it.

**Dr. Gopeesingh:** Chair, if I could go back to the Board of Inland Revenue.

**Mr. Chairman:** Which page you are on?

**Dr. Gopeesingh:** It is not a page as such, in terms of the following officials on page 3, they were here and—yeah, 6.4, adequacy of the system. I am very concerned that they indicated that they had about 300 employees and over 60 per cent were vacant, meaning that they have 180 absent and 120, and from that 120—

**Mr. Chairman:** But she clarified it afterwards. She was talking about establishment positions but they also have a substantial number of contract positions which they use to perform the duties. So she clarified it afterwards. She was being very precise when she was talking to you. In terms of permanent public officers on the establishment, there are vacancies but they supplement that with a large number of contract officers.

**Dr. Gopeesingh:** But still, since in your portfolio, your normal portfolio as Minister of Finance, you could probably seek to—

**Mr. Chairman:** Well, the problem with that, of course, is the Public Service Commission. You know they—

**Dr. Gopeesingh:** They all have that problem.

**Mr. Chairman:** I mean, it is everywhere. So it is not to say that representation is not being made on a continuous basis to the Public Service Commission.

**Dr. Gopeesingh:** My next question might be anticipatory. With your proposal of the BIR

and the Customs and so on coming together in one body, a lot of these laws that we are enacting now, making the BIR the custodian, the competent authority, subsequent, if that comes in, we will have to go back and amend the –

**Mr. Chairman:** Yeah, but that would only come in if you all agree. It requires a special majority.

**Dr. Gopeesingh:** Once you “doh” dismiss the 2,000 workers who have applied –

**Mr. Chairman:** Of course not, but I am just saying that that also requires a special majority so we will handle that at that time. All right?

**Dr. Gopeesingh:** All right.

**Mr. Chairman:** “Because if yuh doh agree to that, well yuh just talking.” Okay?

**Dr. Gopeesingh:** I give no commitment. [Laughter]

**Mr. Chairman:** All right, can we confirm the Minutes of January 27<sup>th</sup> please? Can somebody move the confirmation?

**Miss Jacob:** We did that already.

**Mr. Chairman:** [Discussion with Secretary] Oh, I am so sorry, yes. We were going through Matters Arising. That is quite true. All right. Do we have the lawyers here? CPC, everybody is here? Tell everybody to come. We are waiting on the AG.

**Mr. Ramdeen:** Can we go to the BIR? The BIR is supposed to submit information in answer to the questions that we had.

**Mr. Chairman:** I am not sure about that, you know. I know the Central Bank said they would send amendments. [Interruption] No, I am not doubting you, “yuh” know, I am just saying I am not sure. All right. I am not seeing it in the Minutes. I am seeing that they said they would have a public education plan. Can you remember specifically what it was?

**Dr. Tewarie:** Specifically they were supposed to send – based on certain questions, they were supposed to send the written responses.

**Mr. Chairman:** All right, I will get the verbatim notes.

**Miss Yallery:** The deadline is Friday.

**Mr. Chairman:** Do you have a list of what they were asked to do?

**Miss Yallery:** Yes, we do.

**Mr. Chairman:** Would you be able to put it in writing?

**Miss Yallery:** Yes.

**Mr. Chairman:** Now?

**Miss Yallery:** I can go and get it.

**Mr. Chairman:** Yeah, do that now. Okay?

**Miss Yallery:** But the deadline we agreed to was Friday.

**Mr. Chairman:** I understand. But those were operational matters, that does not affect the –

**Mr. Ramdeen:** No, I think one of the important things that Dr. Tewarie had raised was the issue of the validations and he was asking if we were going to validate – to have the validation clause, we wanted to know what we were validating in terms of what requests were made, how many requests were made by –

**Mr. Chairman:** So we could pull that one out and ask them to send it to us by tomorrow.

Pull it out of all the things.

**Mr. Ramdeen:** Yeah, yeah.

**Mr. Chairman:** Yeah, okay. What it would have been is all things they had done in accordance with the 1989 which they believed was lawful. They would have been sharing information and they said it was minimal.

**Dr. Tewarie:** Yes, but it is just to confirm that and to make sure. The other thing, Chair, I want to raise is the BIR said very emphatically that we do have a tax exchange treaty with the United States and she said that it was in fact on their website and when we were discussing here, there was some uncertainty, but we made the assumption that there was no tax information exchange.

**Mr. Chairman:** I would not say there was uncertainty, there was an emphatic declaration that there was none.

**Dr. Tewarie:** That you did not have – double taxation, I mean.

**Mr. Chairman:** So we need to sort that out.

**Dr. Tewarie:** We need to sort that out and see if there are any implications for the way we handle the legislation.

**Mr. Chairman:** Yeah, we need to sort it out, determine what the true facts are. I do not know if they were talking about the TIEA 1989 and they got mixed up, I do not know. I do not know what they were talking about.

**Dr. Tewarie:** The reason – remember we had had a sort of – what can I say – side dialogue across the table. I was almost certain that we had a double taxation treaty with the US. In fact, I think that that is the first one we signed.

**Mr. Chairman:** Let us just stick a pin. Ms. Watson, can you check now, go and check with Ms. Carter, and find out whether Trinidad and Tobago has a double taxation treaty with the United States of America or not?

**Ms. Watson:** Certainly.

**Mr. Chairman:** Right, so we get that out of the way. No, we are going to check it now. That is the Treasury Solicitor, I have told her to go and check. It would have been signed by the Minister of Finance so Ms. Watson gone to find out so if it is not there, it is not there; that is the end of that. All right, could we go now straight to – no, we are going to find out. Ms. Ronstant, Ms. Eversley not here?

**Ms. Ronstant:** Yes, she is on her way. She is just parking.

**Mr. Chairman:** You are familiar with this?

**Ms. Ronstant:** With what?

**Mr. Chairman:** With this final version of the Bill.

**Ms. Ronstant:** Yes.

**Mr. Chairman:** Intimately familiar? Are you very familiar with this?

**Ms. Ronstant:** Familiar, yes.

**Mr. Chairman:** No, what I mean is if I ask you about any clause, you will be able to explain?

**Ms. Ronstant:** I should.

**Mr. Chairman:** All right. All Members should have received, or it should be on the table, the final version of the Bill with all the changes made based on the discussions here. What

I would like to do now is just go through and see if we could – I am hoping the only clause we will have a sticking on is the validation. Right?

**Mr. Ramdeen:** I do not mean for it to be a stickler.

**Mr. Chairman:** No problem, but that is even better. I am glad that you are adopting that approach. So let us – and we can use the table. Dr. Gopeesingh has quite logically told us. Let us go to the Minutes of the 20<sup>th</sup> and there is a table in the back and it will help us. Even though it may be a bit dated, it will help us. So we look at this, we look at the Bill and then the CPC will assist us if there were any changes since the 20<sup>th</sup>.

So, can we start with the Preamble? Okay, I see, Ms. Ronstant, you do not have the Preamble here on this table. That is all right. Do you have the Minutes of the 20<sup>th</sup> of January?

**Ms. Ronstant:** No.

**Mr. Chairman:** Can you get a copy for her? There is a table in the back which is the prior agreement of members with respect to how they would treat with each clause: defer, agree, need further examination, et cetera, et cetera, et cetera. Okay? Let us look at the Preamble. This should be very straightforward, I think we have done this about three times so unless something jumps out at us, it should be easy. So that in the Preamble, they are changing the wording to make it clear that this legislation only applies to the 2016 Tax Information Exchange Agreement with the United States. So if you look at the Preamble on page 3 of the document, you will see all of the changes there that make it clear this is just limited to the agreement with the United States.

As we go down, I see what looks like a grammatical correction from “to validate” to “the validation of”. As you come now to the first Preamble, you see some strikeout there on the basis of which an order was made. Ms. Ronstant, could you explain that?

**Ms. Ronstant:** Yes. The original Preamble, Minister, it treated before the TIEA – the 2016 IGA was signed so they are actually speaking to the making of the Order. So right now, we have changed the language somewhat. If you go to the second page, so that we are referring strictly to the IGA and the TIEA so we had to make some changes. Just so that we are not referring to the arrangement but to the agreement.

**Mr. Chairman:** Okay, so you are being specific now?

**Ms. Ronstant:** Being specific.

**Mr. Chairman:** All right and then the second Preamble, why you have the words “including the 1989 TIEA” in bold in the second “Whereas”?

**Ms. Ronstant:** Again, that is just specific in terms of what was actually done in the Act. Previously, the 1989 TIEA Act, Tax Information Exchange Agreements Act, the one done in 1989, it spoke generally to all tax information exchange agreements so we just wanted to be specific that that Act treated with the 1989 TIEA. That is the only Act that was dealt with in the Schedule so this is just specific again, in terms of not leaving it open to all tax information exchange agreements which is what it was, locking it down to say that that Act also treated specifically with the 1989 TIEA. It is not a necessary change but we are looking at this one.

**Mr. Chairman:** Okay. All right.

**Dr. Gopeesingh:** Chair, the third paragraph and that is for the CPC.



AND WHEREAS personal information in the position of—

**Mr. Chairman:** Where are you? What page are you on?

**Dr. Gopeesingh:** Page 4.

**Mr. Chairman:** Okay, good.

**Dr. Gopeesingh:** WHEREAS personal information in the possession of the BIR has been shared with the Secretary of the Treasury under the 1989 Agreement without the consent of the person to whom the information relates.

Forgive me. That was in a 1989 Agreement, you could have shared the information without the consent?

**Mr. Chairman:** Yes, the issue was that the 1989 law was passed with a simple majority and the view now is that it should have been passed with a special majority. So this is just simply acknowledging that fact that information was shared based on that agreement without the consent of the person.

**Dr. Gopeesingh:** All right, well then that would have made it illegal to have done that.

**Mr. Chairman:** Well this is why we are now seeking to validate that.

**Dr. Gopeesingh:** Just permit me a little future thinking on that illegality. There is a particular clause which deals with any other illegal acts performed.

**Mr. Chairman:** But can we come to that? We could deal with that when we come to it.

**Dr. Gopeesingh:** Okay, so we will look at that information shortly, what is stated here?

**Mr. Chairman:** Yeah, sure, when we come to it, we will deal with that. And the next one makes it clear that because personal information was shared without consent, it is now necessary to validate the actions of the BIR with respect to sharing of personal information.

Again, with this new agreement, as you go down, whereas the IGA provides for the sharing of personal information without consent and that is a breach of rights, it leads to the requirement for a special majority. If you go over to page 5, it says at the end:

It is necessary and expedient that the provisions of the Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

So what this Preamble is acknowledging is that there was a 1989 Agreement and law, information was shared without consent, that needs to be validated and with this new agreement, it is inconsistent with 4 and 5 of the Constitution so that is why we need the special majority. Okay?

**Mr. Ramdeen:** I have never seen it drafted like that.

**Mr. Chairman:** Which one?

**Mr. Ramdeen:** Normally what they would have is the clause that you have on the first page—

**Mr. Chairman:** Which one?

**Mr. Ramdeen:** If you look at—

**Mr. Chairman:** Yeah, I am there.

**Mr. Ramdeen:** Normally if you start from the bottom, it is easier.

WHEREAS the sharing of the personal information of identifiable individuals without first obtaining their consent amounts to a breach.

**Mr. Chairman:** Yeah, and that is where you go and now you are stating that that is so

and then you are saying you want this Act to have effect even though that is so.

**Mr. Ramdeen:** I am just saying that I thought that the one you had on the first page would have done it without having to go to the –

**Mr. Chairman:** But this does not take away? Right?

**Mr. Ramdeen:** It does not take away.

**Mr. Chairman:** Right, so let us leave it so. On page 5 now. Ms. Watson.

**Ms. Watson:** Yes, Chair, there is a double tax treaty with the United States. It was signed on the 9<sup>th</sup> January, 1970 and the Order bringing it into the laws of Trinidad and Tobago was dated 1971.

**Mr. Chairman:** Okay.

**Dr. Gopeesingh:** So there was an Order?

**Ms. Watson:** Yes, there was an Order in 1971. It was laid in Parliament, the Order.

**Mr. Chairman:** *[Interruption]* All right, so that settles that.

**Mr. Ramdeen:** On a more serious note, I thought that when we were having that discussion, it was because we were laying the foundation for saying why we needed to implement this piece of legislation, that there was an absence of a double taxation treaty and therefore, that was laying the foundation for this.

**Mr. Chairman:** What they should have said is that that treaty has now been superseded by the IGA. The elements of that treaty that deals with the sharing of information have now been overtaken by the 2016 Inter-Governmental Agreement.

**Mr. Ramdeen:** I am asking, does that now leave anything for us to be done in this, to give effect to that?

**Mr. Chairman:** The 1971?

**Mr. Ramdeen:** Well, what I am saying is since this would override what would have been the provisions for the sharing of information –

**Mr. Chairman:** I do not think it would override, I think it adds. I do not think in those days, they used to share tax information.

**Mr. Ramdeen:** Probably we should just check it.

**Mr. Chairman:** We will, yeah.

**Dr. Tewarie:** Chair, I think one of the things we need to clarify is just as we are making provisions to take into account actions under the 1989 law, we may want to include a clause which makes reference to the fact that there exists, in fact, a double taxation treaty between the two countries.

**Mr. Chairman:** If it is relevant.

**Dr. Tewarie:** And I think we need to tidy that up.

**Mr. Chairman:** We will check but if it is relevant because that is a pre-1976 law so it would have been saved by the Constitution. Not so, Ms. Eversley?

**Ms. Eversley:** Yes, it would.

10.45a.m.

**Mr. Chairman:** So that would have the – I am trying to find the words – the protection of a – *[Interruption]*

**Mr. Ramdeen:** It would be safe.

**Mr. Chairman:** Yes, it would be safe but it would have the same effect as a Bill passed

with a special majority.

**Dr. Tewarie:** I am not worried about the law. The law is the law, but –

**Mr. Chairman:** But what I am trying to say, there may be no contradiction. It may not be relevant. There may be no need to refer to it, because it may have nothing to do with this. So we would check. We are going to check and see.

**Dr. Gopeesingh:** Chair, let me just go on that point and delve a little deeper than my colleague. When the hon. Attorney General and Minister Stuart Young were speaking and they indicated that we have two models to sign up, one was Model 1 and Model 1A and somewhere along the line I got the impression that the Model 1 that they said, which countries signed, which did not have the reciprocity as in keeping because those countries had double taxation treaty and we signed the Model 1A because we did not have a double taxation treaty.

**Mr. Chairman:** I did not pick that up, but when they come we can deal with that.

**Mr. Roach:** I did not pick that up too.

**Mr. Chairman:** No, I did not pick that up.

**Mr. Roach:** Probably a clarification. I mean all of us, I want to assume, understand what is the implication of a double taxation treaty.

**Mr. Chairman:** That is the other thing. All that means is that you do not get taxed twice.

**Mr. Roach:** Twice, that is all it is.

**Mr. Chairman:** But what the US is interested is not so much that people do not get taxed twice. They just want to know that people are being taxed because a man could be hiding here in Trinidad and not be taxed, a US citizen. A US person could be earning revenue here, not being taxed at all and they are not picking it up on the US side. So they want to make sure that their citizens are taxed wherever they are.

**Mr. Roach:** Without saying what our double taxation treaty with the United States may have specified, in terms of – the difference I could see in this Act, that is amplifying, is people with interest, a certain amount of interest, which there was 50 per cent interest. The double taxation may probably have referred to citizens and green card holders.

**Mr. Chairman:** But we would get it to find out what it is.

**Dr. Tewarie:** Chair, could the CPC share a copy of the resolution?

**Mr. Chairman:** Which resolution?

**Dr. Tewarie:** The Order, sorry, that was laid in Parliament in 1971?

**Mr. Chairman:** Ms. Watson, could you get that for us, please?

**Dr. Tewarie:** It is probably just a page.

**Mr. Chairman:** We would get it. Okay? We are going to get it. We are going to get it. It is finance. One of my staff is going to go and get it. Okay? So, Ms. Watson, just get a copy for us. Okay? All right, good. For all you know, it might just be a paragraph, who knows. All right.

All right, the second clause is a proclamation clause, standard.

**Dr. Tewarie:** I was just going to make a point here. It is just a stylistic or tidying-up point.

And whereas the IGA provides for the sharing of personal information without first obtaining their consent.

I feel that needs to be a little more specific and elegant on page 4.

Whereas IGA provides for the sharing of personal information – [Interruption]

**Mr. Ramdeen:** Just borrow the phrase from the first page.

**Dr. Gopeesingh:** – without first obtaining – [Interruption]

**Mr. Ramdeen:** Clause 4 of the first page means the same thing. It is the same line.

**Dr. Tewarie:** First obtaining their consent for such sharing. Right?

**Mr. Chairman:** Do you want to add that?

**Dr. Tewarie:** Well, no. It is just, I mean, I know what it means. It is just the language.

**Mr. Chairman:** Dr. Tewarie, I am just trying to settle this.

**Dr. Tewarie:** For the sharing of personal information without first – [Interruption]

**Ms. Eversley:** Chair, we could simply remove the word “there”. So it would be “without first obtaining consent”.

**Mr. Ramdeen:** I think what we should do is, if you would be adding “and whereas the IGA provides for the sharing of personal information of identifiable persons”.

**Dr. Gopeesingh:** Yes, that is it.

**Ms. Eversley:** We would want to use the language –

**Mr. Ramdeen:** That is the same language that is used in clause 4.

**Dr. Tewarie:** It is just that the “there” is –

**Ms. Eversley:** Remember, the preamble is not a substantive provision.

**Mr. Chairman:** Since it is not, can we accommodate them?

**Ms. Eversley:** We lose nothing by it.

**Mr. Chairman:** Right, so let us go with it, “nah”. I just want to accommodate you guys. I have a different objective. Right?

**Dr. Gopeesingh:** It makes a big difference there, Chair.

**Mr. Chairman:** No problem, good, we are doing that. Right, let us go to page 5 now.

Clause 1, clear that this is just specific to the United States. Clause 2 is a standard proclamation clause. Clause 3 is the standard clause that states it will take effect. It will have effect even though it is inconsistent with the Constitution. Clause 4, take out most of clause 4. CPC, just explain why we are doing all this surgery to clause 4, please.

**Ms. Eversley:** Yes, Chair, these definitions, a lot of these definitions were things that we would have had from the original Act, that is the 1989 Act. As we are now moving things into the substantive parts of the Act, some of the things are no longer necessary, especially in relation to other agreements. The older Act provided for other agreements to be entered into. Since this Act is now going to be relegated only to the 1989 and to the 2016, a lot of the definitions are no longer necessary, or they are being put in the relevant part.

**Mr. Ramdeen:** This is really because we are separating 1989 from 2016. So these same definitions that are excluded here are really in, if you look later on, the sections that deal with the IGA 2016. I know that was the explanation given to us before.

**Mr. Chairman:** Makes sense. So if we go – [Interruption]

**Mr. Ramdeen:** It is not that it is being cut out totally. We are just moving them to a different place.

**Mr. Chairman:** If we go to page 6, the one declared agreement we have is the 1989 TIEA. The former Act is the Tax Information Exchange Agreements Act, Chap.76:51.

**Mr. Ramdeen:** That is another mistake. There is supposed to be an “s” at the end of agreements. I had pointed that out earlier.

**Ms. Eversley:** Yes, we recognize that— [*Inaudible*].

**Mr. Chairman:** So you would put it in now, right?

**Ms. Eversley:** Yes.

**Mr. Chairman:** The Minister is the Minister of Finance. Go to the next page, page 7. The board is the Board of Inland Revenue and that is it. If we go to the old clause 4, which is gone, the Minister’s authority to authorize people to act as the competent authority, anybody. That gone. I no longer have that power. If we go to 5, the President can no longer declare by Order another agreement that the Parliament would not have sight of. So we are only dealing with what we know, which is the 2016 tax information agreement. So that is 5, so that is gone.

Clause 6, again, that flows from the concept that was there before, that the Minister could give effect to other agreements that the Parliament would not have sight of. So that power of the Minister disappears. Clause 7, all to do with that concept that there would be other agreements that the Parliament would not see, gone. And 8, could you explain clause 8, the deleted 8 on page 8, please?

**Ms. Eversley:** Yes, Minister. Even though it is deleted here. It reoccurs in the substantive parts.

**Mr. Chairman:** No problem. So this is just a definition section and you are now putting the language into the actual clauses?

**Ms. Eversley:** Well 8 actually is the disclosure section to allow that notwithstanding the section 4 of the Income Tax Act— [*Interruption*]

**Mr. Chairman:** Where it would reappear elsewhere.

**Ms. Eversley:** It reappears elsewhere.

**Mr. Chairman:** All right. Okay, so let us go to page 9. Okay 5, 1989 fine, very straightforward. Competent authority, Board of Inland Revenue.

**Mr. Ramdeen:** The 1989 Act, exchange agreement.

**Mr. Chairman:** You are missing an “s” again?

**Mr. Ramdeen:** Yup.

**Mr. Chairman:** Okay. Where is that?

**Ms. Eversley:** This is referring to the Act and not the agreement. So it is agreement, singular. The Act was “agreements”.

**Mr. Ramdeen:** Okay.

**Mr. Chairman:** No problem. And then the Secretary to the Treasury.

**Ms. Eversley:** This definition was introduced because we repeat the nomenclature quite a bit. So for a shorter nomenclature it just was created as a definition.

**Mr. Chairman:** So this allowed it to be the secretary himself of herself or his or her delegate?

**Ms. Eversley:** Yes.

**Mr. Chairman:** Al right. Okay, clause 6. Why do you have “this part applies” in bold there instead of “the”?

**Ms. Eversley:** It is just moving it, Minister, for clarity. The words appeared at the end of

the chapeau and we just moved it to the front for clarity.

**Mr. Chairman:** Okay. All right. So, on page 9, could you explain 6(2), please? Why these words in bold are there?

**Ms. Eversley:** Again, Minister, this is just for clarity, for grammar. So that it is just clear that it is similar tax to the taxes referred to in sub (1) and which are imposed. Those are just simply grammatical clarifications.

**Mr. Chairman:** Okay, page 10.

**Dr. Gopeesingh:** Mrs. Eversley, what can be some of those similar taxes? The part applies to any identical or substantially similar tax to the taxes referred to in subclause (1). I remember reading somewhere there are other taxes for citizens of Trinidad and Tobago.

**Mr. Chairman:** No, this is the United States. It is only the United States.

**Dr. Gopeesingh:** Similar tax.

**Mr. Chairman:** In the United States.

**Ms. Eversley:** In the United States. So they may call it a different tax at some point. Once it is a similar type of tax for similar type of persons, it will attract these clauses.

**Dr. Gopeesingh:** So it is allowing them to encompass the other taxes, which they may deem to be – *[Interruption]*

**Mr. Chairman:** – which US citizens are subject to.

**Ms. Eversley:** – which US citizens are subject to.

**Dr. Gopeesingh:** Right, okay.

**Mr. Chairman:** All right? So, page 10. You are putting the Secretary to the Treasury. Why did you put that in there, in 7?

**Ms. Eversley:** Again, Minister, just for clarity, we needed the subject to be there. So the board is exchanging with the Secretary to the Treasury.

**Mr. Chairman:** And nobody else.

**Mr. Roach:** And nobody else.

**Mr. Chairman:** Right, okay.

**Mr. Ramdeen:** Subclause (3), is that supposed to be “the” or “this”?

**Ms. Eversley:** Sorry?

**Mr. Ramdeen:** Clause 6(3), the first word. Is that supposed to be “the” or “this”?

**Mr. Chairman:** At the top of the page.

**Ms. Eversley:** I am now seeing, sorry.

**Dr. Gopeesingh:** (2) would have this part as well.

**Dr. Tewarie:** I notice that the definition of “competent authority” is now withdrawn and the only reference to the Board of Inland Revenue is that the board means the Board of Inland Revenue established so and so and so.

**Mr. Chairman:** No, it will reappear. It will come back.

**Mr. Ramdeen:** Page 9.

**Dr. Tewarie:** I “eh reach” so far. Competent authority means – okay, fine. I withdraw.

**Mr. Chairman:** We are on 10, you know. “How yuh mean you ain reach so far?”

**Dr. Tewarie:** Well, I am just slow. *[Laughter]*

**Mr. Chairman:** You said it, not me. So, page 10. All right, why are we deleting 7(5) at

the bottom of the page? Is it that we are replacing it with what is in bold? At the bottom of the page, you take out a 5 and you put back a 5. So the new 5 is supposed to replace the old 5?

**Ms. Eversley:** Yes, Chair.

**Mr. Chairman:** What is the difference?

**Ms. Eversley:** Again, it is a clarity. It really is simply a clarity. All right?

**Mr. Chairman:** Okay, so you are making it clear that the request comes from the Secretary.

**Ms. Eversley:** Yes, because we must have a legal subject.

**Mr. Chairman:** All right. Okay. Page 11.

**Mr. Ramdeen:** Chair, I think in clause 7(2), line 2. It should be Secretary “to” the Treasury and not “of” the Treasury.

**Mr. Chairman:** Quite correct. Okay. You all take note of that?

**Dr. Gopeesingh:** I missed that point.

**Mr. Chairman:** It is just a grammatical change he is making and a typographical. It is on page 10 and it is clause 7(2). Instead of “Secretary of the Treasury”, it should be “Secretary to the Treasury”. The second line in clause 7. Okay? All right, page 11, again, I see what you are doing. Why did you change in subclause, (7), the word “requires” to the word “authorizes”? Could I be told why?

**Ms. Eversley:** When we look at it, Minister, we are really not requiring the board to do it but we are authorizing the board. So hence the change in the language.

**Mr. Chairman:** Okay. So, if we look at that carefully now, it says:

Nothing in this section authorizes the board to carry out administrative measures which conflict with the laws and practices of Trinidad and Tobago.

So Dr. Gopeesingh, you should be happy about that?

**Dr. Gopeesingh:** Yes, it is very clean and nice.

**Mr. Chairman:** And then:

Nothing in this section authorizes the Board to supply particular information which is not obtainable under the laws of Trinidad and Tobago.

So that is a point you all were making. So that has been settled. So if we could move on to 8, and:

Nothing in section 4 of the Income Tax Act – and a bunch of sections of the Data Protection Act – or any other law of like effect prevents the disclosure of –

Explain this please.

**Ms. Eversley:** Minister, this was the clause that was earlier deleted, which recognizes that we have on our statute books legislation that prevents sharing.

**Mr. Chairman:** That would be in conflict.

**Ms. Eversley:** Yes. So to allow the sharing – *[Interruption]*

**Mr. Chairman:** So that stops you from sharing.

**Ms. Eversley:** Yes, so it allows the sharing in spite of that.

**Mr. Chairman:** Okay. Why is it relevant? Why are you referencing 1989? I see this does not talk about the 2016 TIEA. It talks about the 1989 TIEA.

**Ms. Eversley:** Because this part is dealing with 1989.

**Mr. Chairman:** Okay. Right, right. Okay, so let us move on to page – *[Interruption]*

**Dr. Gopeesingh:** Chair, one of the areas of concern was any other law or like effect, under 8, same page 11, nothing.

**Mr. Chairman:** I am seeing it.

**Dr. Gopeesingh:** Any other law of like, so nothing in subsection (4) of the Income Tax Act. Data Protection, any other law of like effect. That makes it wide. Could you, CPC, through you Chair, give us a little idea of – *[Interruption]*

**Mr. Chairman:** Would you prefer the words, “any other law that prohibits the sharing of information”? Because that is what that thing means.

**Dr. Gopeesingh:** A little more concise.

**Mr. Chairman:** Is that okay with you all? Okay, so instead of “of like effect”, any other law that prohibits the sharing of personal information. Right? So we could move on now to – *[Interruption]*

**Dr. Gopeesingh:** That is appreciated.

**Mr. Chairman:** No problem. We could move on now to page 12. All right, the fines. So let us look and see what is happening here.

Where information has been obtained or received under this part of the 1989 TIEA, the person uses or discloses the information other than for the purposes for which it is obtained, commits an offence, liable on summary conviction to a fine of \$30,000 or imprisonment for two years.

You all okay with those fines?

**Dr. Gopeesingh:** Let me first congratulate and thank the CPC for providing the information on a number of comparative areas where there are penalties and the lawyers will – *[Interruption]*

**Mr. Chairman:** Where is that?

**Dr. Gopeesingh:** They had provided that information to us in one of their documents and where they gave the comparisons on page – *[Interruption]*

**Mr. Chairman:** Just hold on, Dr. Gopeesingh.

**Mr. Ramdeen:** In its original form, Part I of the Act was supposed to apply to the 1989 Act, and Part II was supposed to apply to the IGA.

**Mr. Chairman:** Yes.

**Ms. Eversley:** Part I was general and Part II would have been the 1989 and Part III would have been the 2016. We removed the general part, which was Part II, and Part II is now the part that deals with the 1989 IGA and Part III is now the part that deals with the 2016.

**Mr. Ramdeen:** Okay.

**Mr. Chairman:** All right?

**Dr. Gopeesingh:** Let me come to this.

**Mr. Chairman:** Page 12, the fines.

**Dr. Gopeesingh:** What the CPC provided to us was the comparison on the proportionality of the suggestion to increase. So that is page 8 and 9. But 10, so we have a wide range of – *[Interruption]*

**Mr. Chairman:** It is very wide.

**Dr. Gopeesingh:** – penalties. So it is left to the committee now to – *[Interruption]*



**Mr. Chairman:** In one case it is \$6,000. In another case it is \$600,000.

**Dr. Gopeesingh:** Whistleblowers, procurement, anti-doping.

**Mr. Chairman:** And then another one is \$50,000. Then a next one is \$100,000, then \$25,000. I cannot help.

**Dr. Gopeesingh:** Guys who are in court.

**Mr. Ramdeen:** That goes to the point I was making. If Part II deals with the 1989 agreement, then clause 8 would have to be amended as it presently stands. Because if you come to the protection that is given by clause 8, it would be to the 1989 agreement or the 1989 TIEA, but it does not include the IGA.

**Ms. Eversley:** That part is repeated.

**Mr. Chairman:** You are saying it is repeated?

**Ms. Eversley:** And that is repeated in Part III for the IGA in a different form.

**Mr. Chairman:** All right? When we reach there, Sen. Ramdeen, we would deal with that.

**Dr. Tewarie:** Could I ask—having not seen the coming pages of the revised Bill—can I ask if this fine defined here and the two years of imprisonment is the only penalty for breach?

**Mr. Chairman:** For breach of, for disclosure of information. No, this is just disclosure of information. This is the only penalty?

**Ms. Eversley:** No. If you go, well at least for the 1989.

**Mr. Chairman:** For the 1989 TIEA, this is the only one?

**Ms. Eversley:** Yes.

**Mr. Chairman:** So why are you asking that, Dr. Tewarie?

**Dr. Tewarie:** No, the way—I mean, I do not know. I am just going on what I am hearing because I have not read the other pages. But it seems to me like the Bill is now structured to deal with 1989 TIEA and 2016 legislation.

**Mr. Chairman:** It is.

**Dr. Tewarie:**—covering the IGA.

**Mr. Chairman:** Separately, it is.

**Dr. Tewarie:** Right, so I want to know if there is a separate penalty for that.

**Mr. Chairman:** For the 2016 one, they are saying yes.

**Dr. Tewarie:** Okay, all right. So when we come to that we will see.

**Ms. Eversley:** It is at clause 22.

**Mr. Chairman:** What Sen. Ramdeen is pointing to is that it is confusing and I assume you are also saying it might be duplication.

**Mr. Ramdeen:** I understand what the CPC is saying, save and except that I think what is referred to by the CPC, when look at clause 8(b), all of part (b) is covered but I am not seeing a clause that covers part (a) or (c). [*Crosstalk*] Agreed, but there is provision to make—there is provision for all of the protection that is given by clause 8(b) just in a different form, dealing with the IGA. I am not seeing any protection under the IGA for 8(a) or 8(c).

**Mr. Chairman:** You mean when we come to that? Can we deal with that when we come to that?

**Mr. Ramdeen:** Let me just suggest this, Chair. As a matter of pure style it is really up to

you, but if we had included in clause 8(c) and the 2016 IGA, you would have given all of the protection that you had given to the 1989 legislation, to the 2016 legislation.

**Mr. Chairman:** No, but this part deals only with the 1989 Agreement.

**Mr. Ramdeen:** I understand that but when you come to deal with the IGA you have provided for the same protection for the sharing of information under Part B in a different form. You have all the protection there in a different form but you have nothing to give you the protection that you are giving the legislation by Part A and C.

**Mr. Chairman:** So let us deal with it when we come to it. When we reach there we would deal with that. Okay? And we would see whether we need to go along the lines that you are suggesting. So let us go back to the fine.

**Dr. Gopeesingh:** I crave your indulgence just to go back to something that has cropped up in my analysis. If we go back to page 11, and we go to the last few words of number one, where that disclosure is in accordance with and/or for the purpose of giving effect to this part or the 1989 TIEA, but the 1989 TIEA would have been exercised and there would have been some illegalities performed under that 1989, which we acknowledged here this morning. So, if we refer to that and saying that is going to give effect to this part or the 1989 TIEA we are giving way to continued illegalities, if we use the 1989 TIEA?

**Mr. Chairman:** No, this is making it lawful. This is now correcting an apparent defect in the 1989 law. Going forward now, if the 1989 agreement is used to share information, it would be within the Constitution.

**Dr. Gopeesingh:** So those few words here are making the 1989 illegalities legal?

**Mr. Chairman:** No, the validation is in another clause. That is elsewhere. This makes, this gives the 1989 legislation constitutional authority going forward. Follow? It does not validate what happened in the past. You understand?

**Dr. Gopeesingh:** Yeah. I think I have received the explanation.

**Mr. Chairman:** Let us go to the fine. So, as you have pointed out, Dr. Gopeesingh, we have a myriad of fines and custodial sentences for sharing of information, disclosing information. It is all over the place. So what would you propose, now that you have seen that?

**Dr. Gopeesingh:** Basically, I am guided by the practitioners in the courts, to some extent. They understand the crime situation.

**Mr. Chairman:** No problem. Sen. Ramdeen, what do you think it should be?

**Mr. Ramdeen:** Perhaps we would be best guided by what are the fines under the data protection in other pieces of legislation.

**Mr. Chairman:** Data protection

**Mr. Ramdeen:** Sorry, if we look at the other pieces of legislation.

**Mr. Chairman:** It is here, you know. Data protection is \$50,000 and imprisonment for three years.

**Mr. Al-Rawi:** Just to let you know, Mr. Chairman, we pegged it in accordance with perjury because of the matrix that was used here.

**Mr. Chairman:** That is all right.

**Mr. Al-Rawi:** So there are a number of matrices that came up and we kept it in line with data protection.

**Mr. Chairman:** Data protection is \$50,000 and three years. Do you want to go with that? “Yuh good with dat?”

**Dr. Gopeesingh:** Yeah.

**Mr. Chairman:** Right, \$50,000 and three years. What is the problem?

**Dr. Gopeesingh:** There is stuff like \$500,000 and \$600,000.

**Mr. Chairman:** No, but that is completely different.

**Mr. Al-Rawi:** May I ask what is the rationale?

**Dr. Tewarie:** But you see we have made a lot of – we focused on a lot of issues here that really have to do with facilitating what is essentially a constitutional breach. Right? And we are legalizing that breach and giving supreme authority to a competent authority, which is now the BIR. Now, a breach in that context of privacy, rights and information should carry a heavy penalty and that helps the competent authority to comply not only with the law but to establish an ethical basis for organizing its business, which is unassailable. I think it is necessary – *[Interruption]*

**Mr. Chairman:** Dr. Tewarie, can I just stop you?

**Dr. Tewarie:** – to do that in a country like Trinidad and Tobago?

**Mr. Chairman:** Can I just stop you? Attorney General, you, in this – *[Interruption]*

**Mr. Al-Rawi:** Mr. Chairman, I am just pulling up the Income Tax Act to give you the breach.

**Mr. Chairman:** That is all right, understood. I want to raise something with you though. In this clause, it is summary conviction. In data protection, they have \$50,000 or three years for summary conviction and \$100,000 and five years for conviction on indictment. Why we do not have conviction on indictment there?

**Mr. Al-Rawi:** Because summary is an easier course of conviction.

**Mr. Chairman:** I understand, but in the data protection they have both. It is triable either way. You say you could go \$50,000 summary conviction and the other one is – they are doing both. So does it matter to you?

**Mr. Al-Rawi:** You see, first of all, we took our comparators from the Data Protection Act, from the Perjury Act. So we kept within that zone, as is reflected on the drafts.

Secondly, the method, i.e. indictable summary or either way. What we looked at was how many cases do we actually have, what is the progress of cases, et cetera. The information suggests that trial by way of indictment involves a whole lot of complications, which summary trials do not, and the feeling was that we could have left it to a judicial officer at the Magistracy to deal with it in a faster route by way of summary position. I just want to pull up and I have asked our team to find – *[Interruption]*

**11.15 a.m.**

**Mr. Chairman:** I have a different question. It is optional. In the Data Protection Act, it is optional. You could go for summary conviction or you could go for conviction on indictment.

**Mr. Al-Rawi:** Yeah.

**Mr. Chairman:** Do you have a problem with giving the options in this law?

**Mr. Al-Rawi:** Yes, I do. One, the Data Protection Act is untested so far, so the complexity of time, we do not know yet. It is not fully proclaimed. It was not. We are now in the

course of proclaiming that law in full effect. Secondly, the criminal justice system shows that the indictable approach, particularly where there is a preliminary enquiry involved, et cetera, just takes too long. One of the cases that come to mind, a classic case of a charge laid indictably and then by preliminary enquiry is the fact that we are going to be celebrating the 17<sup>th</sup> year of the Piarco Airport enquiry this year. So the information just does not look good on the indictable route.

**Dr. Tewarie:** I hear what the AG is saying and that is fine. Chair, I want to make this clear. I mean, let us face it, without going into any “big setta ting”. A breach in an institution like this will only take place on the basis of financial corruption, political pressure or malevolence of a specific kind. For a breach like that the penalty should be high.

**Mr. Chairman:** I want to know what is the penalty you are proposing. Come up with something.

**Dr. Tewarie:** I proposed it. I proposed \$250,000 and five years. That was the last proposal.

**Mr. Chairman:** No problem, I am hearing you now. [*Crosstalk*]

**Dr. Gopeesingh:** Summary or indictable?

**Dr. Tewarie:** Summary.

**Mr. Ramdeen:** There is no issue about proportionality, but I think your suggestion is the best one. We cannot enact legislation on the basis that the criminal justice system is too slow. That is the wrong basis, otherwise if that is the basis —

**Mr. Chairman:** So what are you proposing?

**Mr. Ramdeen:** Let us do it in either way, and have it like how it is in the Data Protection Act.

**Mr. Al-Rawi:** What is the rationale for that?

**Mr. Ramdeen:** Well, the rationale for that is that these are serious offences, and I do not think I am comfortable in enacting legislation like this to give a magistrate the power to determine an issue like this.

**Mr. Chairman:** Should it be a sticking point AG?

**Mr. Al-Rawi:** Well, we have a brief on the proportionality which was circulated to all.

**Mr. Chairman:** Seriously, should this be a sticking point?

**Mr. Al-Rawi:** Yes, Mr. Chairman, because I hold the exact opposite view of Sen. Ramdeen, because our country has been downgraded on a number of pieces of law because we have nothing to show for it. You see, the magistrate is appealable.

**Mr. Roach:** I was now going to say that.

**Mr. Al-Rawi:** So what is the point about the magistrate? The matrix shows that magistrates have loads of significant matters to deal with. There is due process. You could go up to the Privy Council and back. I have no fear of a magistrate making a position. We in this country have nothing to show in terms of convictions, and I do not want to keep it that way.

**Mr. Ramdeen:** Well, I am not going to support that, because I am not prepared to let someone go before a summary court in a very serious matter like this, and if that is the position, that rationale cannot make any sense.

**Mr. Roach:** Can I ask – Chair, can I ask a question, please?

**Mr. Ramdeen:** Hold on. I do not understand – perhaps, it is me. I do not understand the issue of the magistrate is “appealable”. What is that about? You could appeal the indictment, too.

**Mr. Chairman:** Sen. Ramdeen, we are not on the floor. Okay? I got the point. I got the point.

**Mr. Roach:** Chair, who determines if the option is given, an option is given by?

**Mr. Chairman:** The prosecutor.

**Mr. Roach:** The prosecutor or the DPP. Right?

**Mr. Chairman:** The prosecutor determines.

**Mr. Roach:** The prosecutor determines that. So what is the difficulty then?

**Mr. Ramdeen:** No, it is not.

**Mr. Roach:** Who determines it?

**Mr. Ramdeen:** It is the accused. The accused is given the opportunity to decide whether he wants the matter tried here or in the High Court. A triable either way.

**Mr. Roach:** If you are charged, if you have an option to charge either way and you are charged indictably, the accused does not have an option there.

**Mr. Chairman:** I find that strange.

**Mr. Ramdeen:** It is an either-way offence. It is a requirement under section 18 of the Indictable Offences (Preliminary Enquiry) Act that you must give the option; that is why when we have a drug matter and you go before the court they tell you, you could have your matter tried here or you could go before a judge and jury. It is done with the consent of the accused. If the accused does not consent, you cannot do it summary. Every single Magistrates’ Court does that every day. They ask you: your matter can be tried here or it could be tried in the High Court.

Mr. Young, when you have a matter – we are trying to clarify this, you might have the experience – triable either way and you go in the Magistrates’ Court, is it not the prosecution says to the accused: “You could have your matter tried here or you could have it tried in the High Court, which one do you want?”

**Mr. Young:** It is the magistrate, yes. You are asked to elect.

**Mr. Chairman:** So the accused has an option?

**Mr. Al-Rawi:** Mr. Chairman, I just want to point out, the circularized sheet shows the Central Bank Act, the Securities Act, the Data Protection Act and the Public Procurement Act. The Public Procurement, the Central Bank and the Securities Acts are all summary. The Data Protection Act, the only untested one, is either way, but you look to section 56 of the Central Bank Act, you look to section 14 of the Securities Act for the same type of position, it is a summary offence.

**Mr. Chairman:** I do not think we should detain ourselves on this. I want to get something clear now from –

**Dr. Gopeesingh:** I want to support Sen. Ramdeen.

**Mr. Chairman:** No, hold on, Dr. Gopeesingh. I would like us to come to a close on this clause, so I want to ask a question. If it is either way, and it is \$50,000 and \$100,000 as we see in the Data Protection, would the Opposition members of this Committee be prepared

to go along with that?

**Dr. Gopeesingh:** To go along with what?

**Mr. Chairman:** If it is drafted in the same way that the Data Protection Act is drafted where it is \$50,000 and three years in the Magistrates' Court and it is \$100,000 and five years on indictment, would you all be prepared to go along with that?

**Dr. Tewarie:** Can we increase it to \$100,000 and \$250,000, three years and five years.

**Mr. Chairman:** \$100,000 is a bit high for the summary; \$100,000 is a bit high.

**Dr. Tewarie:** This is a serious crime. [*Crosstalk*]

**Mr. Ramdeen:** I think what we have to do is check. At the back of the Magistrates' Court Act there is a limit on the fine that could be imposed by a magistrate. I think what we might have to do is just check that.

**Dr. Gopeesingh:** Summarily and/or indictably?

**Mr. Chairman:** It is the amount I am on now. I am on the amounts.

**Dr. Gopeesingh:** Well, I think the Magistrates' Court has a limit on which they could quote—

**Mr. Chairman:** He just said that.

**Dr. Gopeesingh:** Right. Okay.

**Mr. Ramdeen:** I am prepared to go with it either way.

**Mr. Chairman:** AG, what is the largest fine the magistrate can impose?

**Mr. Al-Rawi:** Under the Copyright Act, under securities legislation and under different things, a million dollars, \$2 million. There is no limit. There are allegations that are being tested right now as to whether that constitutes excessive criminality, but there are a number of pieces of laws that this Parliament and others have passed which are way out of scope.

**Mr. Chairman:** No problem. This is for the Opposition at this time. If you make it \$100,000 and three, and \$200,000 and five, are you okay with that?

**Dr. Tewarie:** I suggested \$250,000. I do not know why you have changed it.

**Mr. Chairman:** Just round numbers—\$100,000 and three, \$200,000 and five. Sen. Shrikissoon? Sen. Roach? Okay? The Government will look at this matter. I just want to get your position that if we went that way you will be okay with it. All right? So we will come back to this in due course. All right, good. Just leave that alone for now.

**Mr. Al-Rawi:** Anyway, Mr. Chairman, just for the record, I pulled up the Income Tax Act. The penalties under section 121 for breach of the secrecy provision, it is a summary offence and it is dealt with within the same matrix that we suggested here.

**Mr. Chairman:** How much?

**Mr. Al-Rawi:** It is \$30,000.

**Mr. Chairman:** So that is old law then.

**Mr. Al-Rawi:** I am just telling you where the matrices are.

**Mr. Chairman:** Understand.

**Mr. Al-Rawi:** Because this thing refers to the laws that we have traversed by way of cross-referencing in this Bill are Data Protection, section 4 of the Inland Revenue strictures, et cetera. So we kept it within those parameters.

**Mr. Chairman:** It is not a problem. All right. So we have come back to that. If we go

along with your proposals, this clause will now be acceptable to you. Correct?

**Dr. Tewarie:** Yes.

**Mr. Chairman:** Right. So no significant change, I am seeing on the rest on page 12, so let us go to—

**Mr. Al-Rawi:** Mr. Chairman, just for CPC's department, just crystallize the suggestion for consideration.

**Mr. Chairman:** \$100,000 and imprisonment of three years, summary conviction; and \$200,000 and imprisonment for five years on indictment.

**Mr. Al-Rawi:** You said three.

**Mr. Chairman:** No. It is \$100,000 and three, \$200,000 and five.

**Mr. Al-Rawi:** Okay, thank you.

**Mr. Chairman:** All right. So could we go to page 13 please? This deals with the point you had raised before, Dr. Tewarie. It is now clear the "competent authority" is the Board of Inland Revenue. All right? Okay.

**Dr. Tewarie:** Yes.

**Mr. Chairman:** Is this definitions dealing with the 2016 IGA now, Ms. Eversley?

**Ms. Eversley:** Yes.

**Mr. Chairman:** Okay. Page 14, there is no change on page 14. Page 15, nothing significant here. Page 16. All right, I am seeing bold, in the middle of the page, Schedule 2. Could you explain that please? Page 16.

**Ms. Eversley:** It was just an error in the reference to the Schedule, Sir. Originally it says "3" and it should have been "2".

**Mr. Chairman:** So the bold should just have been on the "2" then, not on the "Schedule"?

**Ms. Eversley:** Yes.

**Mr. Chairman:** Okay. So can we go to page 17? Could you explain subclause (4), what that means?

**Ms. Eversley:** When you go into on page 21, you see subclause (4), says:

For the purposes of this Part, the definition of "sensitive personal information" in respect of...

—and describes what "sensitive personal information" is. So that is why the definition of "sensitive personal information" on page 17, it says subject to that qualification in subclause 4.

**Mr. Al-Rawi:** And that is because the IGAs treated sensitive personal information differently for different time periods. So we had to capture that in subclause (4) at page 21.

**Mr. Chairman:** So this is just referencing the agreement?

**Ms. Eversley:** Yes.

**Mr. Chairman:** Okay.

**Dr. Tewarie:** Chair, on page 16, that non-participating financial institution and non-reporting financial institution, through you, Chair, to the AG, does that create any loophole at all in this legislation?

**Mr. Al-Rawi:** Again, it is to comply with the provisions of the IGA where the US has set out what a non-participating versus a participating is. So we are bound to recognize what

they view to be non-participating. So, it is just to comply with it as opposed to creating a loophole. The answer I guess technically is that yes there is, but that is what the US wants.

**Mr. Chairman:** Okay, can we go now to page 18?

**Dr. Gopeesingh:** The Schedule referred to is Schedule 2 under the IGA? Do you want to make that explicit?

**Ms. Eversley:** No, this Schedule 2—

**Mr. Al-Rawi:** The Schedule has the IGA attached to the Act.

**Mr. Chairman:** Page 18. There is nothing on page 18. Page 19. Nothing. Page 20. Nothing. Page 21. This is what you were just talking about Ms. Eversley. So you are saying in 2014 there was a particular definition of sensitive information which changed in 2015 and then changed again in 2016, and this is in the IGA itself. So this is what they want. They want a certain type of information. [Crosstalk] Ms. Watson, you could come here if you want. [Crosstalk] Okay. Could we move now to—

**Dr. Gopeesingh:** Mr. Chairman, some clarification. Why were the years specific for 2014, 2015 and 2016?

**Mr. Chairman:** It is in the agreement, but let them explain.

**Mr. Al-Rawi:** Sure. Look at subclause (1) to this section which is before the definitions bit. Let us go through them one by one. For 2014, the information described at paragraphs (a) to (d) of the definition of “sensitive personal information” set out in subclause (1). So that is to be found—

**Dr. Gopeesingh:** Subclause (1) is on what page there AG?

**Mr. Al-Rawi:** I am looking for the correct page. One second. It is on page 17, sensitive personal information. This is the cross-reference that we did just now. So this definition is these particular things set out here, and the IGA said for 2014, that that was the type of data that they wanted to capture which was (a) to (d): names—look at (a), (b), (c) and (d) on page 17. It did not go further to (e), (f) which came in broader inclusion by way of the other years which the IGA sets out. So for the year 2015, it is the information set out in one, except for “gross proceeds” described in subparagraph (f)(ii). Again, this is lifted out of the IGA itself. Then we went to paragraph (c) for the year 2016, and subsequent years the information shall be that described in the definition which is again to (1). That is the whole thing, (a) to (h) which is page 17 and page 18 of the Bill itself.

**Dr. Gopeesingh:** Thanks for the clarification, AG.

**Mr. Chairman:** Page 22 just seems to be grammatical.

**Mr. Ramdeen:** This comes back to the point I was making about clause 8.

**Mr. Chairman:** Yes. Do you want to explain?

**Mr. Ramdeen:** When you look at clause 10.

**Mr. Chairman:** You are on page 21.

**Mr. Ramdeen:** 21 down to 13. If you could just go back to 8, which is on page 11, you will see that what it does is that all the sections that are referred to in clause 8(b) are given effect to in those sections from section 10 to section 13. But the point I was making is that when you come to clause 8(a), there is no protection provided or insulation with respect to the Income Tax Act or any other law with respect to the 2016 IGA.



**Mr. Chairman:** You understand the point, Ms. Eversley?

**Ms. Eversley:** Yes, Chair. We have crafted a provision to take care of the Senator's concern.

**Mr. Chairman:** Okay. So that would be a new provision. What he is saying is it is incomplete.

**Ms. Eversley:** Yes.

**Mr. Chairman:** Okay. So you are going to make it similar or identical to.

**Ms. Eversley:** It would be similar, because it will not need to refer to paragraph (b) and it will have to refer to the IGA not the TIEA.

**Mr. Chairman:** So that settles that.

**Dr. Gopeesingh:** Could you explain it? I got lost in that crosstalk.

**Mr. Chairman:** The point he is making is that when you go to page 11 of this document, and you look at clause 8 on page 11, this refers to the Income Tax Act. In other words, it says nothing in the Income Tax Act, nothing in the Data Protection Act with respect to these sections. That is for the 1989 Tax Information Exchange Agreement. When you go to the 2016, the reference to the Income Tax Act was left out. That is what Sen. Ramdeen is saying. Okay?

**Mr. Ramdeen:** And we should put something "and any other law".

**Mr. Chairman:** Yes, and the other part, "any other law that prohibits the sharing of personal information". All right?

**Ms. Eversley:** And not "prohibit" but more "restrict" because the laws would really "restrict" more than "prohibit".

**Mr. Chairman:** You could use whatever word you want to use, the correct word. So page 22. Again, this just seems to be grammatical corrections. Page 23. The same thing. Page 24. All right. We seem to have a substantial issue here, and it is the same issue we have been quarrelling about which is clause 22 on page 24. So the Government will take a decision on that; hopefully, the Government will agree with you and that will get rid of that sticking point. By the way, members I have circulated the notices that Dr. Gopeesingh wanted that are referred to in the email exchange. All right? So you have them now.

**Ms. Eversley:** Chair, the new clause would go immediately before clause 22, so it would be the new 22. The one that we indicated that will take care of 8. All right?

**Mr. Chairman:** Sure. And clause 22, let us defer —

**Dr. Tewarie:** I just want to ask. I mean, is it reasonable to say after something has been referred to the committee, the Joint Select Committee, where we are meant to make recommendations to the Parliament that the Government will take a decision on something? Is it not the committee, once it has been given that mandate by Parliament, does the committee not have the right to agree or disagree on something and put it before the Parliament without Government interference?

**Mr. Chairman:** I think you completely misunderstand my intent, totally. I would clarify. I am ready and willing to go along with the proposal from the Opposition. So I will have to caucus with my Government colleagues to see if I can persuade them to go along with it. All right? Before we take a decision as a committee —

**Dr. Tewarie:** We take it as a committee?

**Mr. Chairman:** Of course. Are you now clear on my purpose and intent?

**Dr. Tewarie:** Very clear.

**Mr. Roach:** Chair, having said what you just clarified, what I understood is that you had probably gone to Sen. Shrikissoon and myself to determine whether or not we had a problem with that.

**Mr. Chairman:** Oh yes.

**Mr. Roach:** So all that is left to be outstanding is whether you caucus with your people because the Opposition position will be that. And once it was understood there was no need to come back as to the Government is taking it on its own. That is what I understood.

**Mr. Chairman:** Correct. Dr. Tewarie misunderstood.

**Dr. Gopeesingh:** And you will share that with us before the meeting is concluded.

**Mr. Chairman:** I just took it off the table so I could confer with my Government colleagues, and we will come back to that, and I have a reason why I took it off the table. You will see in due course. So could we move on now to page 25? Either the Attorney General or Ms. Eversley explain the new clause 23 please.

**Mr. Al-Rawi:** This is not a new clause. It was in the previous draft that we had. The only thing that is new coming forward actually would be from the drafts that we had previously would be the recommendations of the Central Bank as to how they form an opinion.

**Mr. Chairman:** This is clause 23?

**Mr. Al-Rawi:** No. These should not have been bolded as anything new.

**Mr. Chairman:** I am just dealing with 23. Does the Central Bank have anything to do with 23?

**Mr. Al-Rawi:** No, I was just about to tell you these clauses which are bolded, coming forward from here—Income Tax Act, Central Bank at 24, et cetera—these clauses are exactly as we have considered previously. The only amendment from these pages go forward which is different from what members considered up to the last date is the inclusion of certain paragraphs to deal with the FIA and the Central Bank.

**Mr. Chairman:** What page is that?

**Mr. Al-Rawi:** That would be at page—well, the numbers are a lil bit different from the drafts I have. So it would be clause 25 which is—

**Mr. Chairman:** So not on this page then?

**Mr. Al-Rawi:** No.

**Mr. Chairman:** So you are giving us an assurance that there are no changes on this page even though you have a set of bold.

**Ms. Eversley:** Chair, there is one change, however in (b), because the title—

**Mr. Chairman:** Which clause?

**Mr. Al-Rawi:** Clause 23.

**Ms. Eversley:**—of the agreement now includes the words “United States of America”.

**Mr. Chairman:** So the only thing that should have been in bold should have been the words “United States of America”?

**Ms. Eversley:** Yes.

**Mr. Chairman:** Also in clause 24.

**Ms. Eversley:** And in 24 also.

**Mr. Chairman:** Next page.

**Ms. Eversley:** And Chair, we are also to delete the words “or (b)” in paragraph (b). So 117(a) and (b) and in paragraph (b), there is a reference to paragraphs (a) or (b), the “or (b)” has to come out.

**Mr. Chairman:** And then it will be paragraph then.

**Ms. Eversley:** Yes, paragraph.

**Mr. Chairman:** So let us go to page 26. You said there are some changes in clause 25, AG? Are you sure?

**Mr. Al-Rawi:** Sorry, Mr. Chairman. Yes, clause 25, there is supposed to be a new (b).

**Mr. Chairman:** Supposed to be?

**Mr. Al-Rawi:** I am just double-checking because the draft that has been circulated is different from the one which we were working on the last couple of days. So clause 25(b), you will see that there is a proposal in section 8 to insert a new subsection (2) at the bottom which is a new (2A):

The Central Bank may disclose information referred in subsection (2) to the Board of Inland Revenue in order to give effect...

The Central Bank wanted to have out of an abundance of caution a positive statement of what they can do by way of disclosure to the BIR. So that clause was included that way.

(2B) The information referred to in subsection (2) may be utilized by the Central Bank as required to give effect...

Again, they wanted a positive statement of their ability to process or utilize the information. They did not want to leave it to implication of law. The subsection (ii) refers to:

In subsection (5), deleting subsection (2), the Central Bank may enter into a MOU with, and substituting with the words “subsections (2A and (2B)”, the Central Bank may enter into an MOU.

So that is to speak to the powers that we have just referred to in (2A) and (2B).

**Dr. Gopeesingh:** That is as a result of the Central Bank having the supervisory and regulatory function over –

**Mr. Al-Rawi:** The Central Bank basically explains it. If I put it in very straightforward language that coming out of litigation in the CLICO matters, a lot of time was spent judicially on interpreting what they could or could not do, what the laws implied as opposed to expressed. So having come through that experience they preferred to have an expressed statement of power that they can receive information from the BIR, that they could send information back to the BIR and that they can utilize that information rather than leave it to implication of law.

**Dr. Gopeesingh:** And that is by an MOU?

**Mr. Al-Rawi:** No, you are talking now about the subsection (2) with the MOUs. There was a previous statement that the Central Bank could enter into an MOU. That was existing. The proposed amendment is that the Central Bank may enter into MOUs with the Board of Inland Revenue to do these specific powers to give effect to the TIEA, and

having the Board of Inland Revenue as the competent authority, it now makes specific reference to this power which is in addition to their general powers to have MOUs.

**Mr. Chairman:** All right. Dr. Tewarie has an issue. Please speak.

**Dr. Tewarie:** Chair, the issue I am raising is a very important one in principle, and in its ultimate effect on how this law operates on how people's rights are guarded. The BIR, we are now establishing as the competent authority. The BIR operates under strict privacy provisions in terms of its employees and so on. As the competent authority its role is to liaise with the US competent authority and to garner all information that it needs to allow it to execute its function under this law.

We cannot have a situation and must not have a situation in which the BIR is providing any information to the SEC, to the Central Bank or any of those institutions. The BIR may acquire information from these institutions, but it must not be reciprocal. I think that we need to clarify that important principle here.

**Mr. Al-Rawi:** I think that is a good articulation of caution, Sen. Tewarie. Let us look at the language of (b), the (2A) says:

The Central Bank may disclose information referred in subsection (2) to the BIR. So it is a one-way communication there.

**Dr. Tewarie:** But AG, I mean, if you look at the verbatim notes you will see that you mentioned reciprocal, which is why I intervened. I would have had no problems otherwise, but we need to clarify that and make sure that in the law it is not reciprocal.

**Mr. Al-Rawi:** Sorry, just so I can capture you right. In the verbatim notes of which of the matters?

**Dr. Tewarie:** The notes that would come out of what you just said.

**Mr. Al-Rawi:** I see.

**Dr. Tewarie:** Two paragraphs ago.

**Mr. Al-Rawi:** Okay. I do not recall saying it, but I would accept that that is what you heard. In any event, let us deal with the point. So let me state it clearly, subsections (2A) and (2B) as proposed to be included in the Financial Institutions Act, (2A) is only the Central Bank giving to the BIR. (2B) is that the Central Bank can process information itself. They wanted a positive power for whatever they may have gotten themselves in terms of from the banking institutions to them that they can process, and the statement for the MOU is simply to empower (2A) and (2B) which is to resend to the BIR and also to process whatever the banks may have given them. So there is no information which flows back from the BIR of a sensitive nature to the Central Bank. So there is no reciprocity there at all, it is a structured communication route.

**Dr. Tewarie:** Well, I think somewhere we need to make that clear, you know, believe you me. It is a serious matter and it has also to do with the matter I raised about the fines and the breach of information and so on. You see, the reason why we fought so hard to have the competent authority non-political in any way and to have it as an institution which had certain jurisdictions and which we know has to operate in a certain way, and then the issue of the fines for breach, all of that is related to keeping the competent authority a "secret" organization for this purpose only. And I put secret in quotes to ensure that this law operates as it is supposed to and does not become an opportunity for

the BIR to be disseminating information all about.

**11.45 a.m.**

There is a matter pending, as you know, AG, in your hands, in which the Auditor General, through you, is seeking to have access to certain information in the BIR, something which we might well support because it is important for the Auditor General to have that, but beyond that, I think we have to be very careful of what the BIR can do with its information.

**Mr. Al-Rawi:** Sen. Tewarie – Dr. Tewarie, forgive me. I apologize. I just remembered in our erstwhile incarnation. Sorry, Dr. Tewarie. Your point is a very solid and careful one. Section 4 of the Inland Revenue parent law prohibits disclosure squarely. Any amendments to flow of information out could only be done by way of an amendment of section 4, let us say an Auditor General or FIU or somebody. So the check valve, the one-way valve in place in law is section 4. It is governed by the offences in section 121 of that parent law which makes it a summary offence and punishable by way of fine and imprisonment, and the application of that caution is really had by the fact that we are not amending section 4 in any way at all.

**Dr. Tewarie:** All right, so a memorandum of understanding between some institution and BIR does not in anyway – well, must comply with that law.

**Mr. Al-Rawi:** They must comply with the law. Yes, Sir, that is it.

**Mr. Chairman:** “Yuh good now?”

**Dr. Gopeesingh:** And therefore, you want to make that explicit in this statement now?

**Mr. Al-Rawi:** No, the law speaks as the law.

**Mr. Young:** We cannot contract out of law.

**Dr. Gopeesingh:** But it is a little confusing here when we look at the top of page 27, the same 2(B):

The information referred to in subsection (2)...

And we clearly have the information on subsection (2).

may be utilized by the Central Bank...

But what does that word mean “may be utilized”?

**Mr. Al-Rawi:** The subsection (2) is subsection (2) of the FIA.

**Dr. Gopeesingh:** Of the?

**Mr. Al-Rawi:** Of the Financial Institutions Act. So these amendments go into the amendments for the Financial Institutions Act in section 2 of that Act. So the reference in (2B) which says the information referred to subsection (2) is subsection (2) of the Financial Institutions Act, not the TIEA.

**Mr. Chairman:** What is happening, Dr. Gopeesingh, is that the Central Bank will gather information from the commercial banks as the regulator and it wants to make sure that when it gathers that information and gives it to the Board of Inland Revenue, it is not running afoul of the Financial Institutions Act. In other words, it is closing all the borders. So you want to make sure that when it is complying with the Tax Information Exchange Agreements Act, it is not breaching the Financial Institutions Act.

**Dr. Gopeesingh:** Could we consider putting something a little more explicit:

Information referred to in subsection (2) may be utilized by the Central Bank in

accordance with the FIA.

**Mr. Chairman:** Let us go to page 26.

**Dr. Tewarie:** All you need to do is to say subject to section 4 of the BIR.

**Mr. Chairman:** No, hold on. If you go to page 26, go to the top, you will see that clause 25 is amending the Financial Institutions Act.

**Dr. Gopeesingh:** I am seeing that you know but I—

**Mr. Chairman:** “So what yuh want?”

**Dr. Gopeesingh:** I was just looking at this (2B), it is vague “yuh” see. The information referred to in subsection (2) may be utilized by the Central Bank. Probably, tie it into something, tie it into the FIA.

**Mr. Chairman:** All right, you want to say under this Act? AG.

**Mr. Al-Rawi:** Mr. Chairman, the difficulty with putting the limitation words is that when you do consequential amendments or interpretation, you may leave out other laws. Let me start off by reading subsection (2) of the Financial Institutions Act. So the Financial Institutions Act, Chap. 79:09, starts with confidentiality. This is in section 8:

“No director, officer or employee of the Central Bank or person acting under the direction of the Central Bank shall disclose any information regarding the business or affairs of a licensee or any of its affiliates or information regarding a depositor, customer or other person dealing with a licensee, that is obtained in the course of official duties.”

Subsection (2):

“Notwithstanding subsection (1) or any other written law, the Central Bank or a person authorised in writing by the Central Bank, may disclose the information referred to subsection (1) to—

- (a) any local or foreign regulatory agency or body that regulates financial entities, for purposes” — of — “regulation;
- (b) the Deposit Insurance Corporation for purposes related to its operations; or
- (c) the designated authority under the Proceeds of Crime Act, if the Central Bank is satisfied that the information will be treated as confidential by the agency or body to whom it is disclosed and used strictly for the purposes for which it is disclosed.”

So that is the FIA.

The reason why we have to amend the Central Bank Act, the Securities Industries legislation and the FIA is because the SEC and the Central Bank, as the persons who will act to enforce the tax information exchange laws, they act within their powers specified under the Central Bank Act, the Financial Institutions Act and also the SEC legislation. So we had to put in powers inside of those laws to allow those entities to actually perform the TIEA. So these are what these amendments are about.

The clause that we are talking about right now which is in amending section 8 by adding in a (2A) and a (2B) is to give a specific power to speak in that law that they could actually perform the TIEA obligations. Firstly, in (2A) by the Central Bank disclosing only to the Board of Inland Revenue whatever information it got from a licensee for the

purposes of applying the IGA and two, in adding in the new (2B) that the information referred to in subsection (2), which is what I just read into the record, that that information may be utilized by the Central Bank for the TIEA.

So the information in subsection (2) is generally information which the financial institutions can give to law enforcement people or to other external regulators where, for instance, the consolidated companies in different jurisdictions, et cetera, and that information, we are now saying, in case the BIR wants to have that information to comply with the TIEA, that they can also have that. So that is what it is about.

**Dr. Gopeesingh:** We heard you, AG, and colleagues, can I direct you to the brief that the CPC sent to us on pages 2 and 3 of the Central Bank Act that you are speaking about, AG and the Securities Act which indicate that the Central Bank Act has two amendments – two substantive amendments are being made to the Central Bank Act. Now, could you clarify whether these amendments have been made or are they going to be made?

The first one is a small amendment, introduce the definition of “declared agreement” as the term will be introduced in the Act. The definition refers to both the 1989 TIEA and the 2016 IGA as being declared agreements. But the second substantive amendment would have been section 36 of the Act which sets out the authorized business of the Central Bank. You have just enunciated the business of the Central Bank and so on but currently section 36 sets out the business of the Central Bank Act as is and it comes to the end on page 5 that amendments would see a new paragraph (dd) being inserted to require the Central Bank to now supervise financial institutions and insurance companies on the implementation of declared agreements as one of the Central Bank’s authorized business.

Were you referring to that issue of the amendment to section 36 and have these amendments or are these amendments to come forward? If the CPC will tell us, with you, the two amendments on the Central Bank Act which you just mentioned.

**Mr. Al-Rawi:** Okay. Let me just stick with the one that we are talking about. So this amendment here to the FIA, the Financial Institutions Act, which is in clause 25 of this Bill, this amendment came specifically from the Central Bank when they came and gave their oral position the other day. It was not in their written paper. So you will see an amendment here to the FIA and you will see an amendment to another clause which is in (d) which would be 25(d) where we are adding in a different point which I will explain in a little while.

This was not in that written correspondence, Dr. Gopeesingh. However, the matters raised by Central Bank did not occupy them any further. So they sent in – that correspondence that you are reading there, was an erstwhile position. When they came before us, they said, look, we are fine with the Bill as it is, however, we want you to do two things. One, we want you to give us this FIA amendment to give us, out of an abundance of caution, an expressed ability to give the BIR information which the licensees have given us otherwise a licensee can bring a claim against us that we have breached their licence, and we could be deemed to be liable. So if you want me to be the person to carry out the functions for this purpose because I am the regulator, give me the power to give the BIR because they are bound and they cannot give information unless it

was for law enforcement purposes, et cetera. Right, so that is one.

The second thing that they raised is going to come up in paragraph (d) of clause 25 which deals with something called a legal fiction, how you are deemed to actually have an opinion on a particular point, but I will explain that one when we come to that.

**Dr. Gopeesingh:** So these two original written suggestions by the Central Bank for change in their two pieces – amendments to their legislation, no longer applicable?

**Mr. Al-Rawi:** We applied some of them. We had discussions with them. We worked through the themes, et cetera –

**Dr. Gopeesingh:** So it is encapsulated in what –

**Mr. Al-Rawi:** So their concerns were encapsulated. Their confirmation of positions came when they appeared before us and they said we are good with the Bill that we have seen, we only want two more things and the two more things, one of them we are now discussing and the other one, we will discuss in a moment in paragraph (d).

**Dr. Gopeesingh:** All right, okay.

**Mr. Chairman:** Okay? So could we go to page 28 please and that is the other thing you are talking about. The top of page 28. AG?

**Mr. Al-Rawi:** Sorry, Mr. Chairman. So this is – just to be sure that we are reading because my numbers are different, right, I am on a page 26. So that is in paragraph (d) of clause 25. That (d) adds in an amendment for a new subsection.

**Dr. Gopeesingh:** AG, I do not know if you have a different document from us.

**Mr. Chairman:** We are giving him one.

**Mr. Al-Rawi:** I am literally not on the same page as you because I am working with working papers.

**Dr. Gopeesingh:** Yeah, so we will make it easier for you.

**Mr. Al-Rawi:** Thank you. Parliament always gives me my papers last. *[Laughter]*

**Mr. Chairman:** At all, not at all, it appears. Right, page 28 of our draft.

**Mr. Al-Rawi:** So page 28 of our draft says – yes, it is a new (ed). Right. So:

Notwithstanding any other action or remedy available under this Act, if the BIR indicates to an inspector that a licensee or financial holding company controlling shareholder or significant shareholder of a licensee or director, officer, company, controlling shareholder or significant shareholder of a licensee has failed to give effect or comply with a declared agreement, the Inspector may direct the licensee, financial holding company or controlling shareholder or significant shareholder... – et cetera – to:

- (a) give effect to the declared agreement or comply; and
- (b) perform such acts

Let me just simplify this. Technically, we are asking somebody who is not the Board of Inland Revenue – and in this case here, it is the Central Bank – to go out and tell a licensed institution, you are in breach of a declared agreement and I need you to do something. What happens is the Inspector of financial institutions has to form an opinion than you are actually in breach so there are certain steps, et cetera, that the person would have to perform to now properly ask someone to comply with a declared agreement.

Because the Board of Inland Revenue is the entity that really has formed that view,



the Board of Inland Revenue is really telling the Inspector of financial institutions, look, these people are in breach of a declared agreement. The method by which the IGA is supposed to function is that the US tells the competent authority in Trinidad, these people are in breach.

**12.00 noon**

The Board of Inland Revenue looks at its position and it is supposed to have compliance. The Board of Inland Revenue does not regulate a financial institution. The Central Bank does, and the Central Bank now, if we did not have this clause, would have to go and restart a process of forming an opinion that the licensee was in breach.

This clause is in effect seeking to allow the Inspector of Financial Institutions the ability to deem them to be in breach, in other words then, not have to go and conduct an independent exercise in a very fresh way. It is a request which came from the Central Bank and what they wanted to have was the ability to act upon the say-so of the Board of Inland Revenue and that is how the drafters have expressed it this way.

**Mr. Chairman:** Sen. Ramdeen, you have a point here?

**Mr. Ramdeen:** AG, from what you said, I was wondering if it would not be better if we specify what the inspector can or cannot do. Because I think in relation to how it is drafted here as 2(b):

perform such acts as in the opinion of the Inspector are necessary to remedy the situation;

It opens up the inspector to judicial review from the time he does anything and it will just stymie. If you start judicial review, this decision of the inspector you could end up in a situation where you stymie the entire process where I expect what your intent would have been by putting in this is to actually move the process along and if it is that we, whether it be by virtue of a penalty because there was another clause – *[Interruption]*

**Mr. Al-Rawi:** I think you are right. Would it help if we were to delete (b) entirely?

**Mr. Chairman:** I think so. Just take out (b).

**Mr. Ramdeen:** Well, only to the extent that what you have does not violate – when you have (a), which is to give effect, I guess that is moral suasion. But when you go beyond that, should we really not give the Central Bank the power, as the supervisor of financial institutions, to actually have the power to do something more than just ask you to comply?

**Mr. Al-Rawi:** The power, could you consider, is a compliance direction and also the guidelines which are built in there. So there are guidelines to be issued by the Central Bank.

**Mr. Chairman:** I think if we take out – in fact looking at now – *[Interruption]*

**Mr. Al-Rawi:** I just want to address Sen. Ramdeen's point first because he has made a very good point. (b) is dangerous in the context suggested. I agree with him. We could help out by avoiding a JR position by deleting (b).

Secondly, the manner in which they give effect to an agreement is by virtue of the compliance directions, which come pursuant to the guidelines. And there is actually a penalty for breach of guidelines.

**Mr. Ramdeen:** I thought that would have been the better way.

**Mr. Al-Rawi:** It is later down in the Bill where we have breach of the guidelines. So, yeah, we could delete (b).

**Mr. Chairman:** I thought we had deleted (b) a long time ago. So we are deleting (b). Right. So that gone. All right?

**Dr. Gopeesingh:** Just for some clarification. The bottom of page 27, No. 2:

“Guidelines made under subsection (1)(e) shall be subject to the approval of the Minister.”

**Mr. Chairman:** Yes.

**Dr. Gopeesingh:** I am looking for (1)(e), could you help me in directing where the (1)(e) is and what are these guidelines that we are speaking about? I know it is related to, is it Central Bank’s guidelines?

**Mr. Chairman:** Yes.

**Dr. Gopeesingh:** (1)(e) would be what? Guidelines made under subsection (1)(e).

**Mr. Chairman:** Let me just find it.

**Dr. Gopeesingh:** See if you could help us.

**Mr. Chairman:** Ms. Eversley, where is the power of the Central Bank to make guidelines?

**Mr. Al-Rawi:** Mr. Chairman, sorry, excuse us for one moment. I am just getting a view from the CPC on the matter which we were just discussing, which was the deletion of (b). Just to let you know where (b) came out from. It came pursuant to 86(1) of our Financial Institutions Act. So, in that Act, the inspector has a power to do things but specifically says perform such acts as in the opinion of the inspector are necessary to remedy the situation or minimize prejudice. That sweep-up clause was given to cause multiple things to be done. So I just wanted to just tell you what the CPC was just saying. I am not so convinced that we really do need the language here, because I think that that could be implied in the giving effect to comply with a declared agreement and then guidelines can issue there, and the guidelines are covered on the other base. So we were not paying full attention to your new point.

**Mr. Chairman:** Where is the Central Bank empowered or authorized or directed to prepare guidelines? Which clause is that?

**Mr. Al-Rawi:** If you look to page 32 of the Bill, you would see that we are putting into the Central Bank Act, if you look to subclause (4), guidelines made under this section shall be subject to approval of Minister.

**Mr. Chairman:** No, no, where are we giving them the power to make the guidelines, or telling him to make the guidelines?

**Mr. Al-Rawi:** At 10.

**Mr. Chairman:** At 10 what? What page is that?

**Mr. Al-Rawi:** Let me get the page, 10(1)(a), which is on page 23.

**Mr. Chairman:** Page 23? I am not seeing any guidelines there.

**Ms. Eversley:** Page 27, sorry, paragraph (c), which means in section 10 by (2)(c): inserting at the end of paragraph the following new paragraph (e): to give effect to a declared agreement.

**Mr. Chairman:** Yes, but where is the —

**Ms. Eversley:** The chapeau provides for the Central Bank to make guidelines. So this is

under, this is done under the – is the sanction he wants?

**Mr. Chairman:** So they already have the power to make guidelines and we are extending it to this. Right, so that is it Dr. Gopeesingh.

**Mr. Al-Rawi:** And section 86 of the FIA gives the sanction of the breach.

**Mr. Chairman:** No problem. So it is already there. So we are just extending its applicability to this.

**Dr. Gopeesingh:** Of course, the guidelines that you speak under the Central Bank are already subject to the Minister's approval.

**Mr. Al-Rawi:** All guidelines, yes.

**Mr. Ramdeen:** Chair, did we not agree to negative resolution?

**Dr. Gopeesingh:** So these guidelines, which the Central Bank has –

**Mr. Chairman:** Take it easy. We would come to that at the end.

**Dr. Gopeesingh:** All right, all right.

**Mr. Chairman:** Let us move on.

**Mr. Al-Rawi:** Just let me clarify that statement. It is not that the guidelines for the Central bank generally are subject to the approval of the Minister. We can remove the guidelines being subject to the approval of the Minister here.

**Mr. Chairman:** No, problem. I want to get to page 28.

**Mr. Al-Rawi:** Do members have a view on that?

**Dr. Gopeesingh:** Yeah, we would like to see it.

**Mr. Al-Rawi:** What is generally under the Central Bank is that they can issue guidelines of their own accord.

**Mr. Chairman:** We have a route to allow parliamentary scrutiny. So it is not just me, it is them. So let us leave, let us stand that down until we get to the end. Can we go to page 28, please? All right, I think we have taken out (b). So let us go to page 29. What is happening on page 29 now?

**Mr. Al-Rawi:** These are not new, Mr. Chairman, from the previous drafts. The only new bits would be – [*Interruption*]

**Mr. Chairman:** So there are a lot of bold here that should not be bold?

**Mr. Al-Rawi:** Well no, remember what we did is we showed the strike throughs and bolds for how we were amending the existing law. So that is why it is bolded. This is a marked up copy for ease of track.

**Mr. Chairman:** I understand. So we have already dealt with all of this?

**Mr. Al-Rawi:** Yes, Sir.

**Mr. Chairman:** You sure?

**Mr. Al-Rawi:** The only one that would pop up as new is in clause 27, which is on page 30.

**Mr. Chairman:** No, I am on page 29. So there is nothing new on page 29?

**Mr. Al-Rawi:** No.

**Mr. Chairman:** Okay. Take your word for it for now. Anything new on page 30?

**Mr. Al-Rawi:** Yes in (b), page 30.

**Mr. Chairman:** In 27(b)?

**Mr. Al-Rawi:** In 27(b), in 6(a), this is the second suggestion which came up from the

Central Bank. It reads just as we had just described. So we are inserting that the Central Bank may disclose information referred to the BIR to give effect to the TIEA Act in general.

**Mr. Chairman:** And if you did not have that, they will be in breach of the Insurance Act.

**Mr. Al-Rawi:** They would probably be in breach of the FIA with the licensees.

**Mr. Chairman:** No, but this is, we are amending the Insurance Act.

**Mr. Al-Rawi:** Yeah, yeah. Remember they are regulators to the insurance industry.

**Mr. Chairman:** I know.

**Mr. Al-Rawi:** So, it is there other power, correct.

**Mr. Chairman:** I did remember, that is why I am telling you. So this is in relation to the Insurance Act. So if they did not have this they would be breaching the Insurance Act.

**Mr. Al-Rawi:** Yeah, and this is to pick up the same flavour of what we did for the other one.

**Mr. Chairman:** No problem. Let us go to page 31. This is new?

**Mr. Al-Rawi:** No, the matters in bold are not new, Mr. Chairman. Sorry, 65 is new. This is red in our copy.

**Mr. Chairman:** Very new to me. Could you explain this?

**Mr. Al-Rawi:** Yes. In 65, notwithstanding – *[Interruption]*

**Mr. Chairman:** In 65 of what? Section 65 of what?

**Mr. Al-Rawi:** Section 65 of the Insurance Act:

Notwithstanding any other action or remedy available under this Act, if the Board –

*[Interruption]*

**Mr. Chairman:** Same thing.

**Mr. Al-Rawi:** Yup.

**Mr. Chairman:** So take out (b).

**Mr. Al-Rawi:** We are taking off the (b) as we did for the FIA.

**Mr. Chairman:** I understand. It is the same thing with respect to the FIA with the banks. This is for insurance companies.

**Mr. Al-Rawi:** Ticking the box now.

**Mr. Chairman:** That if they are in breach –

**Mr. Al-Rawi:** Correct.

**Mr. Chairman:** – they tell them comply. Okay? All right? And these guidelines that follow now, this is for insurance companies or for everybody? Only insurance companies, right? So these are guidelines specific to insurance companies, AG? Because I am assuming it is in the Insurance Act.

**Mr. Al-Rawi:** Yes, Mr. Chairman.

**Mr. Chairman:** So it is to give the Central Bank now – *[Interruption]*

**Mr. Al-Rawi:** Correct.

**Mr. Chairman:** – extending the power of the Central Bank – *[Interruption]*

**Mr. Al-Rawi:** As we did under the FIA and the CBTT.

**Mr. Chairman:** – to the Insurance Act.

**Mr. Al-Rawi:** Correct.

**Mr. Chairman:** So let us move on to page 30. Anything new here? Page 32.

**Mr. Al-Rawi:** No, there is nothing new here.

**Mr. Chairman:** Nothing new here? Okay, page 33. We only have two sticking points left. If we could finish page 33 it is only two items we need to settle. Page 33, anything new here? Nothing?

**Mr. Al-Rawi:** No.

**Mr. Chairman:** All right, let us deal with two matters now, the validation of matters.

**Mr. Al-Rawi:** It is in clause 30.

**Mr. Chairman:** Okay, so that is clause 30. The BIR was supposed to tell us what these things were. Have they told us, Keiba? Yes, apparently we gave them a deadline of Friday, which is silly. We should have given them a deadline of today. So I will now give them a deadline of today. Right? So you all will get it tomorrow. And we believe it is very few things. It is not much, based on what they told us when we examined them.

So we now come to how come these guidelines cannot be subject to negative resolution?

**Mr. Al-Rawi:** Because guidelines are not subsidiary legislation or primary legislation, as section 79 of the Interpretation Act.

**Mr. Chairman:** Yeah, but I have seen like the forms for the Integrity Commission.

**Mr. Al-Rawi:** That is prescribed.

**Mr. Young:** That is why they say as prescribed.

**Mr. Chairman:** But those are subject to.

**Mr. Al-Rawi:** Wherever you use the formula "as prescribed by the Minister" it becomes subsidiary.

**Mr. Chairman:** I would have to make them.

**Mr. Al-Rawi:** Yes.

**Mr. Chairman:** For them to be subject to parliamentary scrutiny, I would have to make the guidelines?

**Mr. Al-Rawi:** Correct. No, we would have to be saying such guidelines as may be prescribed by the Minister. But in this case here these guidelines are just guidelines. So none of the guidelines – *[Interruption]*

**Mr. Chairman:** I am aware. Just saying, in order to coincide with your argument that you have just presented the guidelines – *[Interruption]*

**Mr. Al-Rawi:** Yeah, we will have to be make it subsidiary legislation, correct –

**Mr. Chairman:** – would have to be made by me. All right? So how do we get around this? I have no problem with the guidelines going in Parliament, you know.

**Mr. Young:** Then you have to say "guidelines as prescribed". It is specific language you have to use.

**Mr. Chairman:** Okay, good. Let us do it that way then.

**Dr. Tewarie:** I mean, it is true that the Minister has an arm's length relationship with the Central Bank but he is still the Minister responsible.

**Mr. Chairman:** So you want to use it "as prescribed" and say "subject to negative resolution"?

**Dr. Tewarie:** Yes.

**Mr. Chairman:** Let us do that. AG, we are going with “as prescribed, subject to negative resolution”. Okay? Guidelines.

**Mr. Al-Rawi:** Mr. Chairman, hold on. The drafters are having a little bit of filtration concerns. Just give us a moment.

**Mr. Chairman:** Filtration?

**Mr. Al-Rawi:** Yeah, what I mean is we may not be able to use the expression guidelines. We may have to use some other form of – [Interruption]

**Mr. Chairman:** That is fine.

**Mr. Al-Rawi:** Just give me a moment.

**Mr. Chairman:** We know what we want. Okay? Now, hold on. AG, we only have one more sticking point and that is we have to decide whether we are going along with triable both ways.

**Mr. Al-Rawi:** Mr. Chairman, if it is a sticking point.

**Mr. Chairman:** Good, so that point has now become unstuck. It is now unstuck. Summary 103, indictment 205.

**Mr. Al-Rawi:** We would take the Data Protection Act formula. Right?

**Mr. Chairman:** Okay. So the only thing we have and then we have agreed that the guidelines or rules or whatever we want to call them, AG, Attorney General – well he “ain taking meh on”, so.

**12.15 p.m.**

**Mr. Al-Rawi:** Mr. Chairman, hold on. The drafters are having a little bit of filtration concerns, so just give us a moment. What I mean is, you may not be able to use the expression “guidelines” we may have to use some other form. So just give me a moment.

**Mr. Chairman:** We know what we want. Okay? Now, hold on. AG, we only have one more sticking point, and that is we have to decide whether we are going along with triable both ways.

**Mr. Al-Rawi:** Mr. Chairman, if you are okay with that.

**Mr. Chairman:** If it is a sticking point –

**Mr. Al-Rawi:** We will deal with it.

**Mr. Chairman:** Good. So that point as now become unstuck. It is now unstuck. Summary, \$100,000 and three; indictment, \$200,000 and five.

**Mr. Al-Rawi:** But we will take the Data Protection Act formula. Right?

**Mr. Chairman:** Okay. So the only thing we have – and then we have agreed that the guidelines or rules or whatever we want to call them – AG, Attorney General – [Pause]

**Dr. Gopeesingh:** But Colm, you had indicated something else for two areas something and three years.

**Mr. Chairman:** No, it was, we are going with \$100,000 and three years on summary conviction and \$250,000 and five years on indictment.

**Mr. Al-Rawi:** Madam Chairman, I need to repeat what the CPC’s team is cautioning. The construction of the Central Bank regime is that they issue guidelines. They have the ability to have breach of guidelines penalized by compliance directions. If we now ask them to use their existing approach to manage their financial institutions and insurance companies, et cetera, if we ask for a new regime which is no longer guidelines which are

punishable by compliance directions, et cetera, we are now asking the Minister to prepare regulations—let us call it that, let us not say guidelines—and that is a totally different construction for the operation of how the Central Bank regulates itself.

The mischief on the table which we are trying to address—Dr. Tewarie can help me out here—is whether this is going to be something which the Parliament ought to have sight of and approval, because there is method for negative or for affirmative resolution. So the CPC's concern is that we would be creating a hybrid or some type of model which is not familiar to Central Bank in how it regulates itself.

**Mr. Chairman:** I have a suggestion. Since this is the only remaining sticking point, I am subject to correction, let us try and make it work. We know what we want. We want whatever the rules, regulations, guidelines are—AG—*[Pause]* Attorney General, AG, I just want to make my position clear. What I want to do is to satisfy the request of the Opposition and Independents if this is their request as well, that whatever rules, regulations or guidelines are issued with respect to giving effect to all of this, are subject to negative resolution. Okay, if it can be done, of course, if it is possible.

**Mr. Al-Rawi:** All right. There is quite strong opposition from the CPC's department at present. We are trying to find solutions to it, and it is not so much the theory, but we do need to have a conversation with Central Bank to see if we are going to interrupt all of their positions. I understand what is requested. It may involve if we use the regulatory approach, regulations, a host of consequential amendments to certain aspects. We got to cross-check section 10, 86, et cetera. That is what it is going to involve. It is not that we want or do not want. It is going to involve that. So we have to be careful in how we approach the issue.

**Mr. Chairman:** When the FIU, the Financial Intelligence Unit issues guidelines, those do not come to Parliament?

**Mr. Al-Rawi:** No, none of them do. No guidelines at all come to Parliament. The reason for it in all of the parent laws that have it is that the guidelines are so fluid and so fast that they wanted the ability to change them from time to time without the bureaucracy, if I could unfortunately use that of the point.

**Dr. Gopeesingh:** Stick a pin there, AG. Through you, Mr. Chair, suppose they want to make new guidelines that would impact upon this IGA.

**Mr. Al-Rawi:** Well, the guidelines are for compliance with the IGA, nothing more, nothing less. The parent law speaks. It is administrative. We are going to put some procedures which are going to be the one exception to the entire rule.

**Mr. Chairman:** I have a solution but, again, members of the Opposition have to tell me if they agree. Can we tighten the language to control those guidelines?

**Mr. Al-Rawi:** We could lay the guidelines.

**Mr. Chairman:** We could lay them, of course. We could say laid in Parliament, but can we tighten the language to control them so they cannot go outside of the parameters of the agreement or the Act? In other words, it would be ultra vires? They would be ultra vires if they go outside of the—

**Mr. Al-Rawi:** I did not say ultra vires, I say guidelines.

**Mr. Chairman:** I am not saying you say that. I am just saying that if the published

guidelines that are not in keeping with, they will be ultra vires. Somebody could go to court and get them struck down and that kind of thing.

**Mr. Ramdeen:** What I think we have to be careful about is that remember when we take out clause (b) what you will be doing is perhaps giving up power, and you want to be clear that the Central Bank will have that power under the parent legislation for the guidelines to be lawful in the first instance and effective.

**Mr. Chairman:** We want to do that. What we want to do is try and kill several birds with one stone. What we are trying to do, make sure the guidelines are lawful, but also make sure they cannot create arbitrary guidelines.

**Mr. Young:** They could be taken to court and struck down.

**Mr. Ramdeen:** The guidelines are trying to prevent, prevent opening a door for somebody to challenge it like that.

**Mr. Young:** I was thinking you say, "The guidelines shall be limited to obligations under the IGA" or something like that.

**Mr. Ramdeen:** I agree with that, is just that if we have to give like, for example, the Central Bank the power to compel somebody to do something within the framework of the IGA whether we would be doing something that they ought – whether we need to put that in the parent legislation.

**Mr. Young:** Specific power for them to be able to do it. Remember these guidelines are for the financial institutions over whom they already have jurisdiction, so they need to go back and look at the parent legislation and see whether that is possible or not.

**Mr. Ramdeen:** I was wondering, the AG might be able to do it if you do an amendment to the parent legislation instead of doing it through the conduit of this Act because, for example, if you take (b), for example, if you have to give the Central Bank a substantive power to compel a financial institution to give instead of just saying: "After they make the request to the financial institution", if that proves unsuccessful, you want to give the Central Bank the power to do something more.

**Mr. Al-Rawi:** Well that is why we are amending the parent laws in them: in the Insurance Act, the Central Bank, the FIU, but the removal of (b) causes a bit of concern, and by (b) I mean "perform such other acts as in the opinion". That is where the inspector could have used any other suite of powers that he had. Now this exists for all others, but we are taking it out.

**Mr. Ramdeen:** Is there any clause in the parent legislation that we have not used here that we could add on in relation to the powers that are defined for the inspector, to add on in that clause in relation to an IGA?

**Mr. Al-Rawi:** Let me ask. We will check it.

**Mr. Ramdeen:** I do not think it is something we should rush. I mean, it is something that is very important. I think we should give the CPC the opportunity to go through the legislation, see if we could fit it in somewhere else, if we can do it, we will agree to it.

**Mr. Al-Rawi:** Agreed.

**Dr. Tewarie:** Chair, through you, to the AG. AG, I just want to reinforce because I know you know this. I mean the banks – any bank as a bank has certain responsibilities and obligations, both to comply with what we are doing here in relation to the automatic



submission of information and special request that might come through the competent authority to deal with individual accounts of a certain kind and that is circumscribed in a certain way.

The Inspector of Financial Institutions – banks and insurance companies – in the Central Bank has a certain jurisdictional authority in relation to the banks, but he cannot ask for anything that he wants from the bank. It is circumscribed in a certain way and it has to do with the management of the financial system. I mean, this law that we are making here in which the Central Bank is exercising its authority to get information to comply with a request, let us say from the Inland Revenue, the competent authority, have to be circumscribed in a certain way. I would suggest that we not interfere with that too much. I mean, we will create more complication, believe you me.

**Mr. Chairman:** All right. So where we are going with this?

**Mr. Roach:** Chair, I just want to ask one question. I just want to put back a question to Mr. Ramdeen. What is the alternative if it cannot be accommodated, what you are suggesting, so we do not stick if it cannot be accommodated by the CPC? Do you have an alternative?

**Mr. Ramdeen:** At this time, I do not have an alternative. I want to be able to see whether we could fit it in. The first thing was the negative resolution. I am sure that there are provisions that give the inspector those powers, and if we just add on in relation to IGA we solve the problem.

**Mr. Chairman:** What are the powers you are referring to?

**Mr. Ramdeen:** Under the Central Bank Act. The inspector must have powers by which he implements breach of the guidelines that presently exist with financial institutions.

**Mr. Al-Rawi:** It is under compliance directions which is section 86 of the FIA and section 10 as well which we have amended.

**Mr. Ramdeen:** So, why do we not just add the IGA?

**Ms. Eversley:** The amendment to 86.

**Mr. Al-Rawi:** That is the one where we are removing the (b)s, so those are the specific amendments. The issue that we are having now is taking out a very different approach for just this TIEA on the guideline approach.

**12.30p.m.**

**Mr. Chairman:** No. What I am suggesting is that we are laying these things in Parliament. They will be laid and we are also circumscribing the guidelines with respect to these amendments.

**Mr. Al-Rawi:** But we are going to look at it because we have to take a step back and have a look at it –

**Mr. Chairman:** All right.

**Mr. Al-Rawi:** – and come back to you.

**Mr. Chairman:** And then my office is raising a point about section 117 of the Income Tax Act, that you took out some powers of the inspector, inadvertently it appears. You are going to put them back, right? You took out the whole thing; this the Income Tax Act.

**Mr. Young:** Mr. Chairman, might I be excused?

**Mr. Chairman:** Yeah. Sure. Just read out what they are, please. You have the Income

Tax Act?

**Mr. Ramdeen:** Attorney General, it was taken out –

**Mr. Chairman:** Yes. It was taken out in this. In which clause is this?

**Ms. Watson:** This is clause 23, which are the amendments to the Income Tax Act. Right? So 117(6) refers to the clause or the section that reads the TIEA into the Income Tax Act. Right? So we are deleting this and replacing it with a new section to allow for it to also apply to the IGA. But however, in section 117, there are also powers that the BIR has to compel a bank to come before them. They can write to them and come before them to give them information, if some information is not –

**Mr. Al-Rawi:** All right. Mr. Chairman, sorry.

**Mr. Chairman:** Things have come out inadvertently.

**Mr. Al-Rawi:** No. No. It was not inadvertently. The Treasury Solicitor had originally told us delete 6, replace with a 7. This morning we received a request that we keep 6 and attenuate 7.

**Ms. Watson:** It is not to keep 6.

**Mr. Al-Rawi:** I am putting it in very simplistic terms. So what we will do, we will go back and look at 6 to make sure we are not giving away anything at all.

**Mr. Chairman:** It not 6, you know, it is 1 to 5.

**Mr. Al-Rawi:** I know, hold on. It is deleting subsection 117(6). That is what clause 23 of the Bill was doing and then substituting a new 117A. So we want to make sure that we are not throwing away the baby with the bathwater. So, we are going to go back and have a look at 117(6) and make sure that everything is there.

**Mr. Chairman:** I understand. What happened in 116 – the original, the existing – is that it referred to subsection (2), subsection (3), subsection (4), subsection (5) and you have not, in putting in your new clause, referred to 2, 3, 4, and 5.

**Mr. Al-Rawi:** I understand clearly.

**Mr. Chairman:** Yeah. All right. So, we need to do that.

**Mr. Al-Rawi:** I understand clearly.

**Ms. Watson:** It is not all. It is just 2 and 5.

**Mr. Chairman:** Two and 5, she is saying. Sections 2 and 5.

**Mr. Al-Rawi:** I understand clearly.

**Mr. Chairman:** No. Problem.

**Mr. Al-Rawi:** Yeah.

**Mr. Chairman:** All right. Okay?

**Mr. Al-Rawi:** So I am going to go back and look at it.

**Mr. Chairman:** So you all have no objection in principle to that, eh?

**Dr. Tewarie:** No. What are 2 and 5?

**Mr. Al-Rawi:** All right. So let me read this here. Subclause (6) said this:

For the purpose of giving effect to a declared agreement, within the meaning of the Tax Information Exchange Act – that was the old Act – the board is deemed to have powers set out in subsection (2) notwithstanding the absence of an assessment or objection, and subsections (3), (4) and (5) shall apply mutatis mutandis.

**Dr. Tewarie:** The board here is BIR?

**Mr. Al-Rawi:** BIR. Yeah. This is under the Income Tax Act, Chap.75:01. So what we are going to go back to do now is to make sure that we did not give away any of those wider perambulating powers by a simple deletion of subclause (6). It may very well be that (6) should stay there and we amend the language for the TIEA.

**Mr. Chairman:** So you have no objection in principle, Dr. Tewarie? Right?

**Dr. Tewarie:** No. We are okay.

**Mr. Chairman:** Okay. Good. All right. So what are we going to do about this inability to have these things subject to negative agreement?

**Mr. Al-Rawi:** Not yet, but what we are going to do is that we are going to go back and look to see how we can get it done and report to you what the complications, if any, are.

**Mr. Chairman:** And this cannot be done, what is the alternative? Ms. Eversley?

**Ms. Eversley:** I just wanted a clarification. If the power that we can give is simply making the guidelines by the – the Central Bank making the guidelines and it be simply laid, is that okay? – because there would be no –

**Mr. Chairman:** So that is the alternative? Just to lay it?

**Ms. Eversley:** Yes. A simple laying.

**Mr. Al-Rawi:** With a simple lay it means a member would have to literally get a Motion to do something about that and then Parliament can get involved that way. But at least there is a positive step of not just the Central Bank running off and doing its guidelines, but it comes to the Parliament table and then you have a committee of Parliament that could pick it up or you could move a Motion in respect of it which is designed to take notice of those things. That is the effect of just a simple lay.

**Dr. Gopeesingh:** Chair, let me ask Ms. Eversley. In the same way that you are laying it and then a Motion can be brought on it for its interpretation and for discussion, in the same way that you lay it, why can it not be brought to Parliament for negative resolution? It goes through and if there are no questions about it, it is automatically –

**Mr. Chairman:** Apparently because of the nature of the instrument, it cannot be subject to negative resolution because it is not made by the Minister.

**Mr. Al-Rawi:** It is not a section 79 of the Interpretation Act.

**Mr. Chairman:** The only thing that could be subject to negative resolution, apparently, is something made by a Minister.

**Mr. Al-Rawi:** Remember when we did the validation Bill for the THA thing, the reason why that order came up was because under section 79 of the Interpretation Act, that fell to be treated that way. Guidelines are not equal to subsidiary legislation by definition of law because they are treated in a different way. They are administrative.

**Dr. Gopeesingh:** Yeah. The CPC sent that information for us here and then they differentiated between those and regulations? All right.

**Mr. Chairman:** You follow?

**Dr. Gopeesingh:** Yeah.

**Mr. Chairman:** What they are saying, [*Crosstalk*] it is only subsidiary legislation can be subject to a negative resolution and this is not subsidiary legislation. Sure. Sure. Sure. But okay. Go ahead.

**Mr. Al-Rawi:** Mr. Chairman—

**Dr. Tewarie:** All the issues we have raised about not having—the Minister of Finance not having the powers, had nothing to do with the present Minister of Finance. It had to do with the role of the Ministry, the head of the Ministry of Finance in any government deriving out of a political party in a combative situation. Right?

But the Minister of Finance when you have a crisis in the financial system or when the Central Bank is responsible for something, as indeed it was in the case of Clico, the Minister of Finance ends up holding the stick. Right? Everybody is up the Minister of Finance's throat for that.

So while you have an independent Central Bank that operates in a certain way, and you have a situation which the Government of Trinidad and Tobago, whoever is the Government, is now responsible for engaging the United States in a certain way, the BIR is the entity. If the Central Bank is now making new rules to accommodate a new situation under this specific law, I think we have to give the Minister of Finance oversight of this matter and bring it to the Parliament. See if you can find a way of doing that.

**Mr. Al-Rawi:** Definitely, we are going to look at it. I understand the point. Can I just address one last issue? Sen. Shrikissoon had raised the issue of double taxation relief. I was specifically informed by the CPC Department when they had checked that there was none for the US. We went back and had a look. The Ministry of Trade and Industry found a double-taxation relief treaty.

**Mr. Chairman:** Well, we circulated it this morning.

**Mr. Al-Rawi:** Yeah. Yeah. I know. But the question now has to be asked: does this in any way, is it affected by—

**Mr. Chairman:** That is what we spoke about before you came.

**Mr. Al-Rawi:** Okay.

**Mr. Chairman:** Now we discovered that document, one of the tasks that the CPC was given, in your absence, just make sure that there is no conflict.

**Mr. Al-Rawi:** Right. And from a perusal of this, in particular when we looked at the powers and the general rules of taxation, which say that you would only be taxed in one area and not in the other, what it appears is that there is no apparent conflict, because what the US will be getting is information of the existence of something. So the fact that there is information in another jurisdiction and then they can now check to see whether there has been avoidance or evasion. But what they apparently want is the knowledge of these things in other jurisdictions as opposed to something else.

**Mr. Chairman:** We got that. In other words, they are trying to see if people are cheating.

**Mr. Al-Rawi:** Yes.

**Dr. Tewarie:** Do we need to include in here, I am just asking through you, Chair, anything related to the double-taxation agreement as we have with the TIEA—

**Mr. Chairman:** That is a point he made, should we reference it at all?

**Dr. Tewarie:** I am just asking—

**Mr. Al-Rawi:** My view on that is that we do not because what is going is just information of the existence of something. What they do with it and how they treat with it is up to them.

**Mr. Chairman:** All right. But you will just double-check that. Right? All right. I want to bring this meeting to end. I want to bring these meetings to an end. Right? Sure.

**Mr. Ramdeen:** There is an issue; I would have the views of everyone on it.

**Mr. Chairman:** Yeah.

**Mr. Ramdeen:** I think at the outset we had all agreed that this was a matter that was sent to the Joint Select Committee because of the public effect that it would have on all and the public importance. Whereas we have conducted all – and you, compliments to you in the way in which it has been done, I think we have achieved a lot – I think the one thing that we have not addressed our minds to is the fact that the public has not had any input in relation to anything that we have been doing as a committee. And I think that we have – from starting off with the understanding that when you read the *Hansard* it seems to have been in a preliminary stage that people were saying, this has no effect on Trinidad and Tobago citizens. We have now understood that Trinidad and Tobago citizens can be caught indirectly by the provisions of it because of their interests in different companies or institutions. What are we going to do about any views or contributions that could be made from the public as a committee?

**Mr. Chairman:** The public will have two views; either this is important, and if we do not do it, we will have serious problems; or they do not want us to do it. How do we solicit the views of the public?

**Mr. Ramdeen:** I was just throwing –

**Mr. Chairman:** “I doh know mehself.” Because it is so extreme, you are going to have two views. Is either you have to do this otherwise you lose your corresponding banking, et cetera; or no, they do not want it done because it affects privacy.

**Mr. Ramdeen:** Well, I do not think it is as narrow as that. But I think that there may be people who may have, I mean, one of the things that I think was very useful for us to agree on, was that we limited the amount of people who came before the Committee. I think the flip side to that is that we should have given people who could not have come which, I think, we agreed to. If we could just put out an ad and ask people to –

**Mr. Chairman:** No problem. I was just looking at time.

**Mr. Ramdeen:** Yeah. I know that time is a concern, but I think it would not reflect well –

**Mr. Chairman:** I hear you.

**Mr. Ramdeen:** – and I think it really –

**Mr. Chairman:** AG?

**Mr. Al-Rawi:** Mr. Chairman, I just wanted to also add that I think we need one more meeting because we have some issues that need to be resolved. And importantly, is the work of this Committee apart from the report that will go, is the work of this Committee going to be – see the amended Bill attached with list of amendments?

**Mr. Chairman:** The whole point of this Committee is to –

**Mr. Al-Rawi:** I know. But if that is the case –

**Mr. Chairman:** – come up with an amended Bill and recommend it; it will be adopted.

**Mr. Al-Rawi:** – if that is the case, the one point that we have to have a view on by all members is the negative resolution approach which we will look at immediately. We dealt with the amendments to be. We have re-crafted the offence to the data protection

model. So those are all off the table because we have agreed to those, but the last point is this method by which we get –

**Mr. Chairman:** But we do not have to have a meeting for that. We can do that by round robin.

**Mr. Al-Rawi:** So what happens if we get to – oh, I see.

**Mr. Chairman:** We will do that by round robin. I am just trying to address the point that – because it is just one point – I am trying to address the point that Sen. Ramdeen made about the timing of this whole thing. If we put out an ad tomorrow, how much time you are going to give people to respond?

**Mr. Ramdeen:** I just think it does not reflect well on the Committee. I mean, I think as a Committee, having regard to how we came here and why we came here, I think it might not be much, but I think that there are people who would want to just express their views, not on whether we should pass the Bill or not. I think we are long beyond that. But there may be somebody who might see something that we do not see or somebody who has a view to express that we did not.

**Dr. Tewarie:** Is there not a normal provision. I mean, you could lay the Bill or lay the report.

**Mr. Chairman:** A kind of hybrid approach. Let us go ahead. We have to debate it anyhow, so let us go ahead and – yeah, and do the public ad, because we would not be debating this on Friday.

**Mr. Ramdeen:** Since we are strapped for time, can we not send out an ad immediately in the newspaper and invite that and whatever we do after in terms of an ad hoc way whatever we come up with –

**Mr. Chairman:** That is what I am proposing. Put out the ad, but let us lay this thing and debate it. If something comes up while we are debating, because we will not be debating it right away. Okay?

**Mr. Roach:** Chairman, could just I just say – sorry. Chairman, you know, it is “kinda” late in the day to bring a suggestion like this at this hour. This has been going on for a time, a very long time in Parliament that is being referred to us. Members of the public would have been following this. Up to this morning, I am watching the head of the banking association, a guy came before us speaking that they had an international person from Deloitte Touche dealing with it as well and their comments. People have been calling in on shows and different things like that and commenting continuously along this line.

You appoint a government, and the Government that exists here is everybody in the Parliament, the Opposition, the Government and the Independents as well, the Executive and they are representing constituencies all over. When you debate a Bill in Parliament you expect that you are representing constituencies, and by having Independent Senators in the Upper House, you want to believe that they are bringing a nonpartisan approach to this whole thing, a wider capture of views from the public is being brought to bear in the Parliament.

So to delay this again on going out to the public is to say that somebody “may this” and “may that”, to me, it is just taking this to an extent down to the wire. I do not

see the need for it. And if it is going back to Parliament to be discussed, views can be filtered in through representatives and things like that.

**Mr. Al-Rawi:** Mr. Chairman, if I could just perhaps assist. The FATCA position is well publicized that a committee is afoot. The material is on the Parliament website as well. If I borrow from another bit of law which we were considering –

**Mr. Chairman:** AG –

**Mr. Al-Rawi:** Just one second just to make a point.

**Mr. Chairman:** – you are trying to persuade me?

**Mr. Al-Rawi:** No. Just one point. I want to say this.

**Mr. Chairman:** Because I already good, you know. So go ahead.

**Mr. Al-Rawi:** When we were debating the children's position for marriage, for instance, I received and continue to receive a host of unsolicited responses from the public. To date, I do not know if you have received, but we have received absolutely nothing in the AG's office other than the interest groups that came before us – bankers, et cetera, et cetera – nor has the Parliament received anything at all. So, I think that if we lay our report and we have a debate sometime thereafter that there still is enough room to get the public's input.

**Mr. Chairman:** I thought I had already reached there. So, I just wanted to clarify what Sen. Roach said. I think Sen. Roach, you misunderstood. Sen. Ramdeen made that recommendation and I modified his recommendation to say, let us go ahead. We finalized clauses and so on. Let us lay this report. This thing will not be debated on Friday, maybe a week from now or two weeks from now, and during that period any information that comes in, people who are going to be debating it can address it. But I am not slowing down the – I should not say, I am not. I do not wish to miss my deadline of the 3<sup>rd</sup> of February, because if I do, we lose credibility as a country.

**Mr. Ramdeen:** I never intended for that.

**Mr. Chairman:** Good.

**Mr. Ramdeen:** That is why I said, we could issue an ad –

**Mr. Chairman:** Just send it out.

**Mr. Ramdeen:** – and send it out.

**Mr. Chairman:** Nice.

**Mr. Ramdeen:** Right? Whatever time it takes –

**Mr. Chairman:** I want to make the deadline of the 3<sup>rd</sup>. Okay? That is why, AG, we will do whatever this thing by round robin. All right?

**Dr. Tewarie:** What happens to the submissions that we requested that have not come in and the requests that we are sending out today? We said that we would send out requests to three institutions today.

**Mr. Chairman:** Again, we will have to treat with that in the same way we are treating this advertisement to the public because we already have wide representation of views, eh? I cannot see a merchant bank or whatever having any other different view to a commercial bank. They will be affected the same way. Yes. So, I suggest that we treat that in that way. We wait and see what they say, but I cannot see it being materially different from what we have been told already.

Can we agree as a Committee, the Parliament will – you will have to get these ads in the papers tomorrow? You could achieve that? [*Discussions with the Secretary*] Well, we are trying for tomorrow. Okay. [*Discussions with the Secretary*] Sure. But we are trying the newspapers for tomorrow. Okay? That is your mission. Right? And it is simply inviting public comment on the Bill, [*Crosstalk*] and yes, tell them the website they can go to look for it. And how much time do you want to give them?

**Mr. Ramdeen:** You would know when you are debating this. So let us give them –

**Mr. Chairman:** A week?

**Mr. Ramdeen:** A week. Yeah.

**Mr. Chairman:** A week. One week. Right? By next week Friday. By the 10<sup>th</sup>.

**Dr. Tewarie:** You should give them more than that. Make it credible, you know.

**Mr. Chairman:** It is just that then they will come in after, [*Crosstalk*] well right. So, I want to come in before Carnival. If I go more than a week I will go into Carnival.

**Dr. Tewarie:** Yeah. But you could still debate the thing in February.

**Mr. Chairman:** Nah. Nah. We have to finish this thing in February, you know. [*Crosstalk*] Both Houses, you know. [*Crosstalk*] Ten days. How about 10 days? Ten days. Ten days from today. Okay? Right. All right.

So, we have a lot of work to do folks, a lot of work. CPC, you have to finish tidy up everything and deal with this last remaining point, this complication with negative resolution and so on. Okay? [*Crosstalk*] No. But hold on. Secretary, you and your staff, you have to turn night into day now, you know. You have to have a report by tomorrow. [*Discussion with the Secretary*] You will have it by today then? By today? It will be ready today? [*Discussion with the Secretary*]

**Miss Jacob:** I have copies. These are the drafts. So, we could circulate it to members with their comments, because this is just what we have done so far.

**Mr. Chairman:** So you will circulate the first draft. Okay? It is very simple when I look at it. All right? So the objective is to lay a report in Parliament on Friday stating that we have reached agreement. Okay?

**Mr. Ramdeen:** You will say laid and debated.

**Mr. Chairman:** Yeah. So the objective is that we have reached agreement. I want to say that one more time. I intend to or wish to lay a report indicating that the Committee has reached agreement. Everybody okay with that? Thank you very much. All right. I thank you very much for your cooperation.

**Dr. Tewarie:** An agreement on what? On the Bill?

**Mr. Chairman:** On the Bill. Yes. On the Bill to be debated. Okay? Amendments to the legislation, let us put it this way. All right? Thank you very much.

**Dr. Gopeesingh:** Chairman, that last piece –

**Mr. Chairman:** Yeah. Yeah. Of course. Of course. Of course. I would like to do it, so I have to find out why we cannot. Okay? And then arguments will need to be presented to you, so you understand why we cannot do it. [*Crosstalk*] Tomorrow, eh?

**Mr. Al-Rawi:** We will work overnight to get it to you.

**Mr. Chairman:** Tomorrow, midday. By tomorrow midday.

**Mr. Al-Rawi:** So we will continue working.



**Mr. Chairman:** By tomorrow midday, you will get the position paper.

**Dr. Gopeesingh:** With your indulgence, look at the Miscellaneous – “the Minister may by Order” on certain things. You are comfortable with that?

**Mr. Chairman:** Where is this? [*Crosstalk*]

**Dr. Gopeesingh:** Under Miscellaneous, “Minister may by Order”.

**Mr. Chairman:** But that is the agreement. It is not the hard copy.

**Dr. Gopeesingh:** The agreement.

**Mr. Chairman:** I am not amending the Act.

**Dr. Gopeesingh:** So, I am just wondering whether my colleagues are comfortable –

**Mr. Chairman:** Yeah. You see, that amends the agreement. It does not amend the Act. Okay? All right.

**Dr. Tewarie:** Chair, the meeting is over? I just wanted to say –

**Mr. Chairman:** Folks! Folks! Dr. Tewarie wants to say something.

**Dr. Tewarie:** No. I just wanted to say that I thought that you managed affairs very well as Chairman.

**Mr. Chairman:** Thank you very much.

**Dr. Tewarie:** And I am putting it on the *Hansard*.

**Mr. Chairman:** She said, she is putting it in the advertisement. She “jus kicksin”.

**Dr. Tewarie:** You see, these kinds of politicians I cannot deal with. Anyway, I just wanted to say that you managed the situation very well and I thought that you were accommodating and reasonable in the engagement of members of the Committee –

**Mr. Chairman:** Thank you very much for those kind words.

**Dr. Tewarie:** – and we are happy for that.

**Mr. Chairman:** And you speak on behalf of the Opposition in this case.

**Dr. Gopeesingh:** I want to say that, based on my previous association with the Chairman, the conduct of these meetings accommodated the views of the Opposition and we are grateful for it. That brings a solution to the discussion that emanates from why it came to the Joint Select Committee, and that is in keeping with good governance and the principles of parliamentary practices where we solve the problems at a Joint Select Committee. And if needed to come to the Joint Select Committee and here we have worked for about four meetings and we have solved the issues. So if we had come from – we needed only two weeks, as we said, we would have dealt with the matter.

**Mr. Chairman:** You want to snatch victory from the jaws of defeat or the other way around; defeat from the jaws of victory. Thank you very much. Okay.

**12.54 p.m.:** *Meeting adjourned.*

**VERBATIM NOTES – SIXTH MEETING  
FRIDAY, FEBRUARY 17, 2017**

Mr. Colm Imbert	Chairman
Mr. Faris Al-Rawi	Member
Mr. Stuart Young	Member
Miss Marlene Mc Donald	Member
Dr. Tim Gopeesingh	Member
Dr. Bhoendradatt Tewarie	Member
Mrs. Paula Gopee-Scoon	Member
Mr. Clarence Rambharat	Member
Mr. W. Michael Coppin	Member
Mr. Gerald Ramdeen	Member
Mr. H. R. Ian Roach	Member
Mr. Taurel Shrikissoon	Member
Miss Keiba Jacob	Secretary
Mrs. Angeliqye Massiah	Asst. Secretary

**CHIEF PARLIAMENTARY COUNSEL**

Ms. Ida Mariana Eversley	Deputy CPC
Ms. Kimberly Superville	

**OFFICE OF THE ATTORNEY GENERAL**

Mrs. Solange De Souza- Ransome	Legal Counsel
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**MINISTRY OF FINANCE**

Ms. Nnika Watson	Senior Legal Officer
Ms. Carla Carter	Treasury Solicitor

**Mr. Chairman:** All right. Let us get going and thank you all for coming. I heard some crosstalk there from Minister Gopee-Scoon—you want to know why we are here? Minister Gopee-Scoon?

**Mrs. Gopee-Scoon:** Yes.

**Mr. Chairman:** Because we gave in to the Opposition's demand for another meeting.

**Mrs. Gopee-Scoon:** No, it is just that I thought we had concluded very well on the last meeting.

**Mr. Chairman:** I thought so too, but the Opposition clearly want us to continue.

**Mr. Ramdeen:** We are so enjoying your company.

**Mr. Chairman:** [*Laughter*] And the feeling is not mutual. Okay, the Attorney General is in the building somewhere, so we can get going. I have not received any excuses from anyone. Sen. Coppin, was there somebody else here with you? Rambharat?

**Mr. Coppin:** Yes, he is downstairs.

**Mr. Chairman:** Somewhere around. As I said, Minister Al-Rawi is in the building, just across the hall. I do not know where Minister Young is, but I am assuming he will show up at some point in time.

Now, we had an issue in the debate with the Minutes, so I would like to get that out of the way. So, could members identify for me what was the particular Minutes

that it is said that we did not confirm?

**Dr. Gopeesingh:** Let us go to Minute No. 5.

**Mr. Ramdeen:** Let us do it in order.

**Dr. Tewarie:** Let us do it one by one.

**Mr. Ramdeen:** The third Minutes. The Minutes of the Third Meeting.

**Mr. Chairman:** Okay, Secretary, is that – so we did not confirm the third.

**Mr. Ramdeen:** That was the meeting that was held on January 28<sup>th</sup>.

**Mr. Chairman:** What about the fourth? Fourth was confirmed, third was not confirmed, fifth was not confirmed. So we will start with the third; that would be January 20<sup>th</sup>.

**Dr. Gopeesingh:** Which one you are starting with?

**Mr. Chairman:** You are not hearing me? You sure you are not hearing me?

**Dr. Gopeesingh:** I am now hearing you.

**Mr. Chairman:** You want me to shout?

**Dr. Gopeesingh:** No, no, no.

**Mr. Chairman:** Minutes of the Third Meeting, January 20, 2017.

**Dr. Gopeesingh:** That part was inaudible.

**Mr. Chairman:** –held in this room at which you were present. So can we go to those Minutes? Are there any corrections on page 1? You have a copy, Dr. Gopeesingh? You have a copy of that? Keiba, make sure everybody has a copy, please.

**Miss Mc Donald:** You have the fourth, one time?

**Mr. Chairman:** Fourth was already confirmed. So can we go now to page 1 of the Minutes of the Third Meeting? Any corrections on page 1. I assume there are none. Any corrections on page 2? Any corrections on page 3? And this was the problem we had, Dr. Gopeesingh. You had said you needed time to look at the table in the Appendix. I assumed you have looked at it since. So can we get someone to confirm the Minutes, please?

*[Confirmed by Mr. HRI Roach]*

*[Seconded by Miss M. Mc Donald]*

Let us go to Matters Arising from the Minutes now. Sorry. Let us confirm the Fifth Meeting and then we will go back into Matters Arising. Minutes of the Fifth Meeting on February 1st. Any corrections to page 1? Any corrections to page 2? Any corrections to page 3?

**Dr. Gopeesingh:** Yes. Other Matters, is it on page 3? 7.5:

The Committee agreed to lay a Report on Friday, February 3<sup>rd</sup> in the House which would reflect its agreement to the amendments to the Bill.

One of the Minutes that we had –

**Mr. Chairman:** No, we are dealing with corrections. We could deal perhaps with what you want to raise as Matters Arising.

**Dr. Gopeesingh:** Okay. All right.

**Mr. Chairman:** All right then, can I get someone to confirm the Minutes of the Fifth Meeting?

*[Confirmed by Mrs. P. Gopee-Scoon]*

*[Seconded by Mr. W. M. Coppin]*

**Dr. Gopeesingh:** Can I ask whether this is the same Minutes that were circulated before for the Fifth Meeting because I remember on the Fifth Meeting we had pointed out that on page 5, section 3.1, that that indicated that you are going to lay a report because the work of the Committee was complete.

**Mr. Chairman:** What are you referring to? No, which page?

**Dr. Gopeesingh:** Well, I am not seeing that here.

**Mr. Ramdeen:** What Dr. Gopeesingh is referring to is 3.1 of the Report, not of the Minutes. 3.1 of the Report.

**Dr. Gopeesingh:** Good. That clears it up.

**Mr. Chairman:** Fine. So let us go back now to the Minutes of the Third Meeting. Are there any Matters Arising on page 2 of those Minutes?

**Dr. Gopeesingh:** Yes, Chair.

**Mr. Chairman:** The third Minutes, eh. The Third Meeting.

**Mrs. Gopee-Scoon:** What date it is?

**Dr. Gopeesingh:** 20th of January. So item 4.1, Chair, you indicated that “the list of stakeholders to be interviewed shall be:”, and we interviewed Board of Inland Revenue, Central Bank, bankers’ association, co-operative credit, Securities and Exchange, but we did not interview the trust corporation, not within a bank, merchant banks that fall outside of the commercial banks framework, and Association of Trinidad and Tobago Insurance Companies.

**Mr. Chairman:** Yes, that is true.

**Dr. Gopeesingh:** You want to make some comments on that?

**Mr. Chairman:** Go ahead. We did not do it. It is a fact. Probably we were pressed for time.

**Dr. Gopeesingh:** Well, we do not know whether they would have submitted any recommendations or made any submission. In the absence of not interviewing them –

**Mr. Chairman:** All right. Just stick a pin, Dr. Gopeesingh. [*Chairman confers with the Secretary*] Yes, they wrote to Unit Trust, they wrote to ANSA Merchant and they wrote to ATTIC. That covers everybody in those categories. Pardon?

**Dr. Tewarie:** Do we have them?

**Mr. Chairman:** We have some, yes. So we do.

**Dr. Gopeesingh:** And the Secretariat will circulate it?

**Mr. Chairman:** Well we will deal with that later on in the meeting. That is a substantive matter I want to deal with later on in the meeting – responses of a general nature. General and specific. Anything else arising from these Minutes on page 2?

**Dr. Gopeesingh:** Chair – well, I will give way to Dr. Tewarie, but let me raise 4.4. Per item 4.5:

The Chairman advised that the CPC had submitted a comparative brief on the various approaches used by other countries for the implementation of the Tax Information Exchange Agreements and that the brief was circulated.

I want to indicate that I am not clear without – well I did some law. I did two years of law, but I never completed the final year. But from a legal perspective, I find that to be a little confusing and is there any way that we can get some more explanation from the

CPC on those matters so that they can clarify –

**Mr. Chairman:** You did not find the brief was exhaustive enough, or explanatory enough?

**Dr. Gopeesingh:** Yes, I think you have put it in.

**Mr. Al-Rawi:** Insofar as the CPC falls under my domain, could I have an understanding as to what was not helpful in there?

**Dr. Gopeesingh:** Well, what the different countries signed in to and how they worked with the United States Secretary, Treasury Department; where some of them amended the original laws; some did not include the constitutional aspect of the rights to privacy and so on. So in those areas, example Barbados, we need to clarify what happened.

**Mr. Chairman:** Let us see if we could bring this to a closure. I think what he is saying is that he would prefer more in-depth explanation as if you are talking to a layman.

**Mr. Al-Rawi:** I would just like to put it – perhaps it may be helpful. What was circulated, the request which came was, “Look, could you tell us which jurisdictions have TIEAs, which you have other structural points”, because the discussion was whether we were comparing apples with apples. In that listing which was sent around, we showed all of the jurisdictions who had a Tax Information Exchange Agreement, who dealt with it by amendments to their income tax laws, et cetera. Now, I just want to respectfully introduce the fact that the breadth of understanding as to what each jurisdiction does differently involves – potentially, if I get the question right – it potentially involves a very large exercise as to the legal construct of another jurisdiction.

**Mr. Chairman:** AG, just let me intervene here. You understand what he wants?

**Mr. Al-Rawi:** I do not think it is possible to give that position.

**Mr. Chairman:** I was going to reach there, but you understand what he wants and we will see whether we could accommodate him within reason.

**Mr. Al-Rawi:** I could say that I certainly do not think that I can –

**Mr. Chairman:** It is not possible.

**Mr. Al-Rawi:** – because it involves a very deep legal explanation.

**Dr. Tewarie:** Chair?

**Mr. Chairman:** AG, we got the point.

**Dr. Tewarie:** Chair, with your help, I want to help to simplify the matter I think. What is it that allowed some jurisdictions not to breach the privacy provisions of their Constitution; and what is it that requires us to address the issue of sections 4 and 5 of the Constitution?

**Mr. Chairman:** Maybe I can help by telling you what the bankers told me in a meeting with them this week. They indicated that if this legislation is not passed, what they will do in order to ensure that they remain viable as commercial banks with international connections and the ability to transfer funds and so on, is that they will ask their customers to give them permission to disclose personal and private information to foreign banks, and if their customers declined they will close the account.

So what has happened in other jurisdictions it all depends on the culture, I suspect, where it was done by individual banks and it is up to the customer to decide whether you want to give this information or not. If you do not want to give it, well

you have no bank account, and some countries probably have eliminated certain customers from the entire banking system. So each country approaches things in a different way. We went the way of an agreement because that is the track Trinidad and Tobago was already on.

My predecessor having already initialled the Model 1 agreement and communicated that to the US Treasury, and US Treasury had already, since 2013, or whatever, said that as a result of that action by him, Trinidad and Tobago is deemed to be compliant as of that time. So the US Treasury is expecting us to continue on this track. The former Government did not have to do that. The former Government should have said, look, let us not bother with this and let the banks make their own arrangements.

**Dr. Tewarie:** No, no, but what is this—I think it is important to understand why it is we are going the route of basically making provisions for the violation of sections 4 and 5 of the Constitution. Can it be done without doing that? That is the question.

**Mr. Chairman:** Well that is the point I am making.

**Dr. Tewarie:** No, no, but you are telling me that the banks, even now, can make arrangements which basically would be a relationship between the bank and the customer which would be either continued or severed. But do we have to have in the legislation the provision which makes for notwithstanding—

**Mr. Chairman:** Well the answer is yes.

**Dr. Tewarie:** That is the question I am asking.

**Mr. Chairman:** Having signed the intergovernmental agreement and committed to enact the agreement into domestic law, the answer is yes. If we had not done that, if we had not gone on that track, the answer would have been we have options, but we no longer have an option as far as the United States is concerned. Let me also explain something to you.

If we go the other way, if you all decide you are not supporting the legislation, hypothetically speaking, the banks will do what they said they will do. They will close accounts, they will refuse to— but that is simply the first consequence of what will occur. What will happen then is that most of the correspondent banks will stop dealing with banks in Trinidad and Tobago, and then Trinidad and Tobago will then be listed as a jurisdiction that is difficult because there is a cost attached to all of this.

**Dr. Tewarie:** Yes, I agree.

**Mr. Chairman:** So once you have these individual agreements between each bank and a foreign entity, Trinidad and Tobago becomes a very difficult and very costly jurisdiction and they just stop doing business, and that is what happened to Belize.

**Mr. Al-Rawi:** Can I just add something, sorry, before we go too far away from the point? To answer why we have to intrude on the section 4 rights, which is the crux of the matter—it is the spot-on question—the answer includes the following:

1. Because our income tax is dealt with by legislation and section 4 has a secrecy provision;
2. Because our Constitution guarantees right to private life, albeit subject to the exceptions that you can put into law, and because the Data Protection

Act contemplates the treatment of sensitive personal information, we have to recognize those as positions which require a three-fifths majority.

There is another very large point, however. Trinidad and Tobago has been in a tax information exchange arrangement by law with the United States of America since 1989, and then 1990 when the IGA was added to the tax information exchange legislation which we are amending now. So not only did we sign the Model 1A by initialling it and being deemed to be bound to that track in 2013 move on, but we were already in a fixed relationship with them as a result of the original 1989 law, and therefore, our law path had to be the utilization of the 1989 go forward structure. And the other jurisdictions did not have TIEAs. So they organized it very differently and that—

**Dr. Tewarie:** I suspect it also has to do with the fact that the BIR, as the competent authority now, is also covered by sections 4 and 5 of the Constitution.

**Mr. Ramdeen:** Chair?

**Mr. Chairman:** Sen. Ramdeen, we are going a little off track here. I want to be on the Minutes.

**Mr. Ramdeen:** I know.

**Mr. Chairman:** So could you tell me which item?

**Mr. Ramdeen:** The same item.

**Mr. Chairman:** 4.4?

**Mr. Ramdeen:** Yes.

**Mr. Chairman:** No problem. I just wanted to make sure we are on track.

**Mr. Ramdeen:** I just want to make it clear. We were provided with a document from the CPC which gives an explanation and I want the record to reflect that the explanation that is contained in this document is wrong—

**Mr. Chairman:** Wrong? What you mean by that?

**Mr. Ramdeen:**—and I will tell you why it is wrong. Because it says that:

Since Trinidad and Tobago—this is the explanation in bold—already had—

**Mr. Young:** What date is that? Just show me the front.

**Mr. Ramdeen:** The table

**Mr. Young:** Caricom FATCA countries.

**Mr. Ramdeen:** Correct.

**Mr. Chairman:** Mr. Young, we are dealing with item 4.4—I know. But I am just dealing with that.

**Mr. Young:** What page?

**Mr. Ramdeen:** Two, the bold part, starts:

Since Trinidad and Tobago already had legislation governing the sharing of tax information with the United States which gave effect on agreement concluded in 1989 and the IGA Agreement signed between Trinidad and Tobago and the United States speaks to the existence of that Agreement—this is the part I have problem with—the approach by Trinidad and Tobago was to amend the TIEA of 1989.

That is not the approach that we have suggested. I asked in the Second Meeting why

did we not go the way of amending the TIEA, which would have been to keep the original legislation and amend it, which is what they are saying in this document. That is not the approach that we have adopted.

**Mr. Roach:** What page is that?

**Mr. Ramdeen:** Page 2, and this is the explanation that is given throughout in every single jurisdiction since Trinidad and Tobago has adopted – we have not chosen to amend our TIEA. We have chosen to repeal it.

**Mr. Chairman:** All right. Could you tell me what page you are on?

**Mr. Young:** Exactly, it is the wrong page.

**Mr. Chairman:** Just now. What page you are on?

**Mr. Ramdeen:** Page 2 in the bold part, it says that –

**Mr. Chairman:** I am seeing it.

**Mr. Ramdeen:** Since...between Trinidad and Tobago and the United States speaks to the existence of that Agreement, the approach by Trinidad and Tobago was to amend the TIEA Act of 1989 to include the IGA 2016.

That is just simply wrong.

**Mr. Chairman:** All right, all right. Take it easy.

**Mr. Al-Rawi:** Sorry, just to say how it is wrong. I want to understand how it is wrong.

**Mr. Ramdeen:** Because we are not amending the 1989 Act. I asked in the Second Meeting that we had, why did we not go the approach of amending the '89 Act and, Chair –

**Mr. Chairman:** All right. The way to deal with this, leave it, when the author of this document comes into this room we will ask that person, that would be Ms. Eversley, I assume, AG?

**Mr. Al-Rawi:** Um-hmm.

**Mr. Chairman:** When she comes in to the room we will ask her to clarify this, and whether this is a mistake –

**Mr. Al-Rawi:** Hold on. I just want to address the point before she comes in, however.

**Mr. Chairman:** No, she is not coming now.

**Mr. Al-Rawi:** Yeah, but I want to put this onto the record as well, because things that go on the record need to be attended to as they go on. The Bill says, An Act to repeal the Tax Information Exchange Agreements Act and replace it with Tax Information Exchange Agreements/United States of America Act. Substantively, what we are doing in this draft here, as is shown in the marked-up copy, we are in fact amending what was in the 1989 legislation and introducing –

**Mr. Chairman:** AG, I do not want to have an argument about this here. At this point, we have not even got to the Minutes of the Fifth Meeting yet. Sen. Ramdeen –

**Mr. Al-Rawi:** I just want to finish the point.

**Mr. Chairman:** I know, AG.

**Mr. Al-Rawi:** So amendment includes the ability to repeal and replace.

**Mr. Chairman:** AG, I do not want you to go down that road. Okay? Let the CPC come and explain what they meant by these words. Okay? All right. Are there any other issues on page 2 of Minutes of the Third Meeting?

**Mr. Ramdeen:** Chair, at item 4.5 (iii), I am just enquiring whether that was done.



**Mr. Chairman:** Just a minute, I may have the wrong one. Item 4.5 (iii), “to tell the US Treasury”? That is what you are asking?

**Mr. Ramdeen:** Of course, yes.

**Mr. Chairman:** All right. I have communicated with the US Embassy electronically and they have forwarded that message to the United States Treasury electronically. So the United States Treasury is aware of what we are doing, that there is a JSC.

**Mr. Young:** That there is a what?

**Mr. Chairman:** There is a joint select committee. Minister Young, we are talking about 4.5, Roman (iii).

**Mr. Young:** Sorry, I did not hear what you said at the beginning.

**Mr. Chairman:** Yeah. So I am responding to him. He asked if it was done, and I am saying a, yes, this was communicated electronically to the US Treasury. Anything else on page 2?

**Dr. Gopeesingh:** Yes. That correspondence relates to item 4.5 (ii), in relation to the timelines...the correspondence into record and provided explanations in relation to the timeline;

**Mr. Chairman:** Dr. Gopeesingh, you have lost me.

**Dr. Gopeesingh:** Uh?

**Mr. Chairman:** Explain.

**Dr. Gopeesingh:** Well, you said that there is correspondence on further request and you gave that electronically to the United States –

**Mr. Chairman:** No, no, I answered 4.5, Roman (iii). 4.5 per 4.6 Roman (iii), that is what I dealt with.

**Dr. Gopeesingh:** Okay. All right, (i) and (ii).

**Mr. Chairman:** You want to know what is the status of (i) and (ii)?

**Dr. Gopeesingh:** Yeah,

...to circulate correspondence from Mrs. –

**Mr. Chairman:** I have done that. Everybody has received, yes, per 4.6 Roman (i) was received before we debated. Anything else?

**Dr. Gopeesingh:** I think we had asked for a –

**Mr. Chairman:** Dr. Gopeesingh, let us keep this tight.

**Dr. Gopeesingh:** Sure.

**Mr. Chairman:** Let us just deal with what is in here. The matters you are raising can be raised at another stage in these proceedings. Okay? So Per 4.6 Roman (i) that was circulated. Per 4.6 (ii) –

**Dr. Gopeesingh:** Chair, I am not too clear with that, you know, because the letter that I read did not really deal with the issue of the request for further extension of time because –

**Mr. Chairman:** Dr. Gopeesingh –

**Dr. Gopeesingh:** You remember the letter that you read here?

**Mr. Chairman:** – it was circulated and it did.

**Dr. Gopeesingh:** The only issue that came up there was the September 17<sup>th</sup>, is that the time you are talking about?

**Mr. Chairman:** No, Dr. Gopeesingh. It was circulated and it did deal with the request for the extension of time. It did.

**Dr. Gopeesingh:** You could draw our attention to that particular area?

**Mr. Chairman:** I will make sure you get another copy this morning so you can read it in its entirety again, and you will see that they dealt with the extension of time.

**Dr. Gopeesingh:** Okay.

**Mr. Chairman:** So anything else on page 2? Okay. Can we go to page 3?

**Dr. Gopeesingh:** I am not too sure whether my colleagues are clear, but to my recollection item 5.4:

The Chairman requested that CPC provide a Brief outlining the type of information which will require consent and those which will not.

**Mr. Chairman:** You are asking whether that was done?

**Dr. Gopeesingh:** I cannot remember having that.

**Mr. Chairman:** No, but are you asking whether that was done?

**Dr. Gopeesingh:** Okay, well first let me make this statement: I am not aware of having received any communication if it was done.

**Mr. Chairman:** Yeah, but that is not the point, you know. Is either you asking whether it was done or not.

**Dr. Gopeesingh:** Well, was it done?

**Mr. Chairman:** Okay. AG was it done?

**Mr. Al-Rawi:** I will check it.

**Mr. Chairman:** All right, we will check. See how easy it is.

**Dr. Gopeesingh:** Well that answers my question.

**Mr. Chairman:** If you just deal with the thing straight, you see how easy it is. Anything else on page 3?

**Mr. Ramdeen:** 6.2, Chair.

**Mr. Chairman:** Yes, I do not think this was done, but I will check. You are talking about 6.2 (i)? Or you want 6.2 (i) and (ii)? The whole of 6.2?

**Mr. Ramdeen:** Let me ask as you said this procedure should be, was is done?

**Mr. Chairman:** I am not sure, but I will check for you.

**Mr. Al-Rawi:** I am told that there was a submission from BIR to the Secretariat. So I ask the question: do you have anything from the BIR?

**Mr. Chairman:** Leave that for now. We are going to check it. Okay? Anything else on—well there is nothing else on that.

**Dr. Tewarie:** What about 5.5?

**Mr. Chairman:** 5.5?

The Chairman requested the CPC submit the majority of briefs.  
What briefs is that?

**Mr. Young:** What briefs are you referring to?

**Mr. Chairman:** Oh, you are using a word? You really mean document, responses, that kind of thing. That is what you mean by “briefs”?

**Dr. Gopeesingh:** We are asking, that word “briefs”, what does it include?

**Mr. Chairman:** It means all the things we asked for. All the things that we asked the

CPC – is what we asked them to submit, certain documents and explanations and so on, and they were supposed to do most of them by Tuesday and the balance by Wednesday. So we will clear that up when they come in as well. All right?

Okay, can I get a confirmation of these – well, we have already confirmed the Minutes. So, let us move now to the Minutes of the Fifth Meeting. Page 2? Any matters arising on page 2?

**Mr. Ramdeen:** 5.1, 3 and 4.

**Mr. Chairman:** Did we get anything from the President of the Law Association?

**Mr. Al-Rawi:** Nothing.

**Mr. Chairman:** Okay. We got something from the Dean of the Faculty of Law, but unfortunately it was comments on the original September 2016 Bill, which has changed so many times. So we have since sent the lady the latest version that was in the JSC Report and asked her to comment on that as quickly as possible.

**Dr. Gopeesingh:** Chair, can I verify whether these people were written to, like the Chamber and AMCHAM? Is there any evidence that they have been written to?

**Mr. Chairman:** I beg your pardon?

**Dr. Gopeesingh:** Is there any evidence that we can see that they were written to, or were they spoken to verbally, or how? – Chamber and AMCHAM.

**Mr. Chairman:** Stop, I got your point. Secretary, do you have any evidence that you communicated with the Chamber and AMCHAM? [*Chairman confers with the Secretary*]

**Mr. Chairman:** Okay. I am told the Secretary both faxed the letters and caused the hand delivery of the letters. You want to see somebody signing for receiving it?

**Dr. Gopeesingh:** No, the Secretariat is very honourable. We will accept that. The question is: have they given any response whatsoever?

**Mr. Chairman:** Okay, we will come to that. So, has the Chamber responded, Trinidad and Tobago Chamber of Commerce? No. Has AMCHAM responded? Yes? AMCHAM has responded. Okay, AMCHAM has simply acknowledged receipt of the request for a comment. The Chamber of Commerce has not responded at all, not even with an acknowledgment. The Law Association has not responded. Oh, sorry. They also acknowledged receipt of the request for comments, but have not sent a comment.

**Dr. Gopeesingh:** That is the Law Association?

**Mr. Chairman:** That is the Law Association and the Dean of the Faculty of Law commented unfortunately on the September 2016 version of the Bill, which has almost changed shape. So, as I said, we sent the latest version to her and asked her to comment on that quickly. Anything else on page 2? Can we go to page 3 then? And by the way, just to deal with a matter raised by you previously, Dr. Gopeesingh, look at 5.4. That was what you asked. Those are the only entities that fall outside of the commercial banks and so on – ANSA Merchant, Unit Trust and the association of insurance companies.

**Dr. Gopeesingh:** Chair, what about ATTIC and Unit Trust?

**Mr. Chairman:** Well Unit Trust – I do not know, “nah”. Sometimes I get worried. Unit Trust did not comment on the Bill. They comment on the agreement. We could not believe it.

**Dr. Gopeesingh:** So we can have some information on that, seeing –

**Mr. Chairman:** No, well they did not comment on the Bill.

**Dr. Gopeesingh:** Give us a copy of the letter –

**Mr. Chairman:** No, I am just saying they did not comment on the Bill, so there is no point. They commented on the agreement we already signed. Like they just missed the boat. What happened with ATTIC? Similar kind of thing? Similar. I just find this thing incredible, you know. Some people are on point and they are going through clause by clause. Like BIR, you will see that when you get – we have some responses there to circulate. They are on point. Some people just out of space. It is amazing. All right. Anything on Page 3? Any matters arising on page 3?

What I want to do now, I got a communication from Sen. Ramdeen –

**Dr. Tewarie:** Do you have to confirm the Minutes?

**Mr. Chairman:** Oh, I am sorry. I thought they were confirmed. [*Chairman confers with the Secretary*] Minister Gopee-Scoon moved the motion for confirmation, and Sen. Coppin seconded the motion for confirmation of the Fifth Meeting. Okay?

**Dr. Gopeesingh:** Chair, I crave your indulgence on 7.3. You remember we had given up to 10 days for public comments.

**Mr. Chairman:** Yes, I am coming to that in a while. I will deal with that in a general way.

**Dr. Gopeesingh:** You will come back to that?

**Mr. Chairman:** Yes. What I want to do now before we go into feedback from the public and stakeholders and so on, are there any clauses in the Bill that are still of concern to members of the Committee?

**Dr. Tewarie:** Yes, there are some.

**Mr. Chairman:** Okay. Do we have the latest version of the Bill? Do members have it? [*Chairman confers with the Secretary*] Do members have in front of them, on their desk, a copy of the latest version of the Bill? Could you check and make sure everybody gets, now? Thank you very much.

**Dr. Tewarie:** I have mine.

**Mr. Chairman:** “Doh worry, Dr. Tewarie. We going to check now.” So could you all go around and show them the thing and find out if they have that? By the way, this would be the Bill that was submitted to the Parliament and debated in the Report. There may be somebody who does not it, you know. You never know. Sen. Coppin, you do not have it, right? You see, we would bounce up at least one person already who does not have it. And if Dr. Gopeesingh has it, I will open a bottle of champagne.

**Dr. Gopeesingh:** I have it.

**Mr. Chairman:** You have it?

**Dr. Gopeesingh:** I have it.

**Mr. Chairman:** Well, you buying the champagne. [*Laughter*] Is there any clause of this latest version of the Bill that any member of the Committee has an issue with?

**Mr. Ramdeen:** I think we agreed, Chair, or subject to what you have to say, clause 29. I think the parliamentary scrutiny is something that we accepted, or something that was inadvertently left out.

**Mr. Chairman:** Yes. This has to be amended to indicate that it would be subject to negative resolution. So AG, you will put the appropriate form of words –

**Mr. Al-Rawi:** We did recirculate it in Parliament –

**Mr. Chairman:** I know that. We are not in Parliament now. We are in committee.

**Mr. Young:** Well if I may then, Chair, what we had proposed, subject to the group, is an insertion of a new subparagraph (2) that reads:

An Order under subsection (1) shall be subject to negative resolution of Parliament.

**Mr. Chairman:** So you will have to add (1) to –

**Mr. Young:** Correct, you add (1) –

**Mr. Chairman:** So that you make it –

**Mr. Young:** So you insert a (1) in parentheses and then you go to a subclause (2).

**Mr. Chairman:** Right. Okay. Is that satisfactory? Okay. Good. Any other clause that anybody has any issue with?

**Mr. Ramdeen:** Well I do not know if the procedure is that we are going to deal with the Bill itself here and deal with the issues raised in the letter separately. I do not know if that is how you want to because in the letter there were certain things.

**Mr. Chairman:** No. What I am trying to do is to short-circuit a loose discussion. So I am just asking – yes, go ahead, Sen. Roach.

**Mr. Roach:** Chairman, would it be appropriate since we are dealing with this, is it we could bring in the CPC at this point in time?

**Mr. Chairman:** If you wish, yes.

**Mr. Roach:** I think we should.

**Mr. Chairman:** All right. I am going to circulate responses we received from the following organizations: the bankers' association, the Board of Inland Revenue – this is in response to questions asked in the oral examination and otherwise. So it is Bankers' Association, Board of Inland Revenue, Central Bank, Co-operative Credit Union League, Securities and Exchange Commission. These are the people who responded to the questions that we asked, and did not respond to questions that we did not ask, and did not respond to questions that have no relevance. So these can be circulated. Okay? [Chairman confers with the Secretary]

Okay. I am further advised that these comments were circulated to all members on Monday the 6<sup>th</sup> of February, and on what other date? So that you were previously circulated with these. For those of you who read your emails, you were previously circulated with these documents.

All right. We have CPC, we have Ministry of Finance, here. AG, can I have your presence at my side? I see you are trying to coach the witness.

**Mr. Al-Rawi:** No, no. I am just asking a question.

**Mr. Chairman:** All right. Let us just deal with some matters that came up in the examination of the Minutes of the third and fifth meetings. There was a question with respect to the CPC – Dr. Gopeesingh, help me here. What was the question? 4.4? Let us deal with item 4.4 of the Minutes of the third meeting.

**12.00 noon**

CPC, there is a table that is headed CARICOM FACTA Countries and it gives details of the country, the model IGA, the legislation, the existing Tax Information

Exchange Agreements, et cetera. On page 2 of that table –

**Ms. Eversley:** One minute, Chair.

**Mr. Chairman:** At the bottom, in bold, are you seeing the bold print? Okay, if you read the bold print and then go over to page 3. No, you do not have to read it, just look at it. Go over to page 3 and it says:

“...the approach by Trinidad and Tobago was to amend the TIEA Act of 1989 to include the IGA 2016.”

A question was raised this morning as to the accuracy of those words, because there was a view expressed that we are not amending the TIEA Act of 1989 per se, we are repealing it and that repeal and amendment are not the same thing. Could you respond to that?

**Ms. Eversley:** Sure, Chair. Yes, we are repealing and replacing. But what we were actually doing was using with the substantive provisions that existed under the 1989 Act to form the basis of the Bill that was before the Chamber.

**Mr. Chairman:** No, I think we all know what you are doing. It is just the language. The language was that you have put in here “the approach by Trinidad and Tobago was to amend” and there is an objection to that word because repeal and replace is not amendment. That is just a point I would like you to just comment on it. Do you have a view on that?

**Ms. Eversley:** Well, it was really just for clarity, but we can use the words repeal and replace, but the impact was really just, almost like an amendment to what we had with the TIEA 1989.

**Mr. Chairman:** So in your opinion it is language?

**Ms. Eversley:** It is just language, yes.

**Mr. Chairman:** Sen. Ramdeen, would you prefer the language is corrected to say repeal and replace.

**Mr. Ramdeen:** I would prefer that the language is corrected.

**Mr. Chairman:** So instead of saying “amend”, say “repeal and replace”. Okay?

**Mr. Ramdeen:** Correct.

**Mr. Chairman:** Good. So that settled that. Now there was some other issue, [*Crosstalk*] “We go deal with that later.” We are just getting agreement on the substance. There was another question I asked as to whether the CPC, is it 5.4? Which Minute are you on; which meeting?

**Mr. Roach:** Third meeting.

**Mr. Chairman:** Third meeting, 5.4. CPC, do you have the Minutes of the third meeting of the Committee?

**Ms. Eversley:** Yes, we have it here, Sir.

**Mr. Chairman:** Page 3.

**Ms. Eversley:** Yes, Chair.

**Mr. Chairman:** There is some commentary throughout that page where the CPC was asked to provide a brief, outlining the type of information which would require consent and those which did not and then – that is 5.4. And then 5.5 said that I asked for you to submit the majority of briefs, which we have taken to mean documents and explanations,

by the evening of Tuesday and the remainder by Wednesday. Was this done?

**Ms. Eversley:** Yes, Chair. It was done under the documents that were submitted, that is entitled Joint Select Committee request on the 20<sup>th</sup> January, 2017, that was Item (e) and it was provided for in that –

**Mr. Chairman:** This one here that says, Joint Select Committee request of 20<sup>th</sup> January.

**Ms. Eversley:** Yes.

**Mr. Chairman:** And this was circulated?

**Ms. Eversley:** Yes.

**Mr. Chairman:** This was circulated, Keiba? When was it circulated? [*Crosstalk*] By the way members, the reason I am doing this is that in the debate I was being told that the Minutes were not confirmed and there were errors in the Minutes and I really do not want to go through that again. So I am being very meticulous, Okay. When was this circulated, please? At least you all could say it, but I could refute it. [*Crosstalk*]

On the 27<sup>th</sup> of January. Okay. So this document which deals with – 26<sup>th</sup> of January, sorry, I am corrected. This document that deals with the brief on the intended changes to the Central Bank Act, Securities Act, proportionality of the suggestion to increase the fines, the effect of clauses 10 to 12, et cetera, and most importantly, to distinguish information that will be automatically transmitted versus information that will require consent, the effect of the guidelines, the effect of a negative resolution procedure. This was circulated on 26<sup>th</sup> of January. So does that settle that Dr. Gopeesingh? You asked if it was circulated. The answer is, yes, and it was circulated on the 26<sup>th</sup> of January. [*Crosstalk*] You want to get it again? No, problem. Could you give him a hard copy now, please and Sen. Ramdeen has, sotto voce, indicated that he has possession and sight of the document. Sen. Roach was there anything else you wanted to say? You good? Right. So you would give him a hard copy and send him a next email on that.

**Dr. Gopeesingh:** Chair, as the CPC is here now, on that same CARICOM FATCA Countries, the issues related to Bahamas and Barbados –

**Mr. Chairman:** All right, could you just hold on that, just hold on that. So we have dealt with everything. The only outstanding matter now, before we get into the meat of what we are discussing this morning, is feedback from the public. I have dealt with feedback from stakeholders. Unfortunately, the methodology used by the Parliament to solicit feedback from the public was by way of Facebook messaging and email. Am I saying anything that is not correct? Facebook and email is the way comments came in from the general public.

Unfortunately, again, Parliament did not put any – [*Crosstalk*] Pardon? Are you not hearing me?

**Hon. Member:** Chair, advertisement was placed and sponsored ad.

**Mr. Chairman:** No, I am talking about coming back, not going out. I am talking about how the comments came back to the Parliament, is by Facebook messaging and by email. There may have been one person who hand delivered, or two. This one person who personally showed up and delivered that document, okay. Unfortunately, the Parliament did not put any security measures in place to determine whether these people who sent

Facebook messages and emails were real people, okay. They did not ask them to produce any form of identification and having looked at the feedback it is obvious that some of these people are fake profiles. So, that is on both sides of the spectrum, “eh”, because you have people saying, “This is a wonderful Bill”; “Why are you delaying this thing?”; “Go and pass it now.” And then you have people saying it is a horrible Bill, it is abhorrent, reject it. And it appears the fake profiles were on both sides of the spectrum, both on the positive and both on the negative.

I was advised informally, I cannot—do not hold me to this—that it was sort of equal. So you have half of the responses saying fantastic, half of the responses saying horrible. So I asked the Parliament to communicate with each one of these “individuals” and ask them to produce proof of identity, okay. As soon as I get it you will get the comments. I did not think it was proper to circulate comments that could come from an internet troll or a fake profile or whether supporting the Bill or opposing the Bill. [Crosstalk]

I spoke to the Parliament again this morning, I spoke to them since Monday. Keiba, you have any feedback on that for me, on the question of identifying these people? [Crosstalk] Has anybody provided any proof of identity? Two so far. All right, so we got about 25, right. In all there are about 25 responses that came in, approximately? Approximately, 25 responses came in by email and Facebook, of which two have so far provided proof of identity.

So I am hopeful by the end of the day or by the weekend these people will prove that they are real people and not the—what is the legal term for it? The “altered ego”. The alt—I am using the legal term, the altered ego of interested parties. You catch my drift, Dr. Tewarie? So I am hopeful by the end of the day or by the weekend we will be able to identify these— whoever is real, and whoever is real I will circulate the comments. I do not want to embroil us in confusion.

**Miss Mc Donald:** May I ask a question?

**Mr. Chairman:** Hold on, hold on, yes, I cannot remember who put up their hands first. I think it was Sen. Coppin.

**Mr. Coppin:** I do not know if it might be useful, but there was a sponsored ad placed on Facebook, yes? It might be useful to go into the analytics to see how many people, I do not know, view the ad and so on.

**Mr. Chairman:** We have 25 responses.

**Mr. Coppin:** Just for, the analytics would show like really how many people actually saw the ad, how many people actually— [Interruption]

**Mr. Chairman:** Understood.

**Mr. Coppin:** It might be useful.

**Mr. Chairman:** No problem. That is fine. [Crosstalk] Minister Young you said something.

**Mr. Young:** I was just wondering what is the harm of circulating, because the people could comment all that they want. It does not mean that we as a Committee need to take on the comments—

**Mr. Chairman:** I want to be very meticulous and very proper. I do not want to introduce contaminated material. This is a serious Committee, I do not want anything in here. I



mean, I could have, although I would never do this, generated a 1,000 responses of my own. I do not want to do that, right, and I am not accusing anybody in here of generating any responses. But you know people have an interest in this thing and you never know what is motivating them to create a fake profile and send a fake message saying — I mean, we picked up six or seven of them from people who do not even live in Trinidad and Tobago. When you check back the IP address and so on, it is not even in Trinidad and Tobago.

**Dr. Tewarie:** But, Chair, that should not be a consideration, eh. Because the person not living in Trinidad and Tobago may have an account in Trinidad and Tobago. We do not know.

**Mr. Chairman:** But Dr. Tewarie — *[Interruption]*

**Dr. Tewarie:** I am just dealing with that in particular.

**Mr. Chairman:** But Dr. Tewarie you cannot say that. If the person is someone who has an interest and is affected by the legislation, of course, they could be living in Timbuktu — *[Interruption]*

**Dr. Tewarie:** That is right.

**Mr. Chairman:** But if the person has no connection whatsoever to Trinidad and Tobago —

**Dr. Tewarie:** But how can we know?

**Mr. Chairman:** You wait. When I get the validation you would find out.

**Dr. Tewarie:** All right. Anyway, I was just going to ask one simple question which is that, among the 25, notwithstanding the fact that we have not validated them, and knowing that some simply indicated their preference for or against the legislation, et cetera. Is there any submission that spoke to any specific thing in the Bill that might be worth any consideration?

**Mr. Chairman:** The simple answer is, no.

**Dr. Tewarie:** Okay.

**Mr. Chairman:** And that is the other problem, and I think — you had spoken to Sen. Mark, about this? *[Chairman confers with Secretary]* The Secretary had mentioned this to Sen. Mark that just on the first blush, this is not a critical examination, it appeared that the comments do not really add value. They do not go to any specific clause and amend this and they do not like this and that kind of thing. Yes, Sen. Ramdeen.

**Mr. Ramdeen:** But I think that for a proper consideration by the Committee, Chair, I think it would be right for us to at least look at them and be able to say —

**Mr. Chairman:** Off course, no, I want to give an undertaking, you will get them.

**Dr. Tewarie:** Yeah.

**Mr. Chairman:** But we have to, I am going through the process to ask the person to prove that they are real and they have a locus.

**Mr. Ramdeen:** I have no difficulty with that. I think the Committee should be able to look at it and say — *[Interruption]*

**Mr. Chairman:** No, I am not going to conceal anything. I am just saying that we are going through to determine whether these are real people and where they are from and what is their citizenship and whether they have accounts in Trinidad and Tobago and

whatever.

**Dr. Gopeesingh:** Chair, we have made the determination to give at least 10 days and so on. We put out on various newspapers the date for closure and some of the newspapers, unfortunately, the advertisement was published, one was seven days before, five days before – *[Interruption]*

**Mr. Chairman:** You did say that during the debate, let us get the facts. Secretary, I heard a complaint from Dr. Gopeesingh during the debate that not all of the advertisements in all of the newspapers went out the following day. You have the facts? You can speak up, you know. Go on record.

**Miss Jacobs:** The ad was published in the *Newsday*, on the 2<sup>nd</sup> of February, in the *Trinidad Express* on the 5<sup>th</sup> of February, in the *Trinidad Guardian* on the 7<sup>th</sup> February.

**Mr. Chairman:** So there was a staggered advertising schedule. That is a fact.

**Dr. Gopeesingh:** That depleted the purpose of giving 10 days because as you read there, one would have given eight days, one would have given five days and one would have given three days.

**Mr. Chairman:** No, well actually we met on the 1<sup>st</sup> of February, did we not? And the first ad appeared on the next day, 2<sup>nd</sup> of February.

**Dr. Gopeesingh:** Chair, no. The point I was making, based on advertisements with respect – *[Interruption]*

**Mr. Chairman:** Hold on Dr. Gopeesingh, I am being told as well, the first ad appeared in the print media the next day as we had asked, because it was impossible to have it before that. On the same day that we met the advertisement was published on Facebook, okay. That is what I am being told.

**Dr. Gopeesingh:** Okay, well, there are people who read the newspapers and there are people who follow Facebook and there are different sectors of the population. So, those who follow the newspapers well, of course, they were short-changed in terms of the days that they were asked to consider sending submissions, one three days, one five days, one seven days. So it is something for the future I think we need to be – *[Interruption]*

**Mr. Chairman:** I totally agree with you, but I want to compliment the Parliament for a fantastic achievement of us meeting here, adjourning the meeting at 12.30 p.m., whatever it was, and getting an advertisement to the newspapers before they close press time and getting it out in the papers the next day. And I think they must be complimented for that.

**Dr. Gopeesingh:** Sure, they are complimented, but just it is only one – *[Interruption]*

**Mr. Chairman:** No, I understand, but I mean just getting it in one, I think it is a fantastic achievement, okay. And I hear you in terms of the future.

**Mr. Roach:** Mr. Chairman, excuse me, bear in mind discussions where it is being made in public awareness, I mean, this matter has been before the public – *[Interruption]*

**Mr. Chairman:** I know.

**Mr. Roach:** – for quite some time now, and it seems to a bit tedious and worrisome for me because to what weight all of this would be placed. I mean, we have 1.4 million I think is the population, recently censured in Trinidad and Tobago.

**Mr. Chairman:** It 1.35 million.

**Mr. Roach:** They rounded it off at 1.4.

**Mr. Chairman:** Yeah, for some reason they rounded it off.

**Mr. Roach:** I mean, a Government is supposed to lead and we are here to represent the Government and interest on all sides in the Parliament. We have involved a wide cross section of the business community and the wider community in commenting on this Bill for some time now. We are at a critical stage in either dealing with this one way or the other. As I understand it was supposed to go back to Parliament by next week Thursday – *[Interruption]*

**Mr. Chairman:** The 23<sup>rd</sup>, yes.

**Mr. Roach:** Whether or not the public at large is being informed and given 10 days, 15 days, we must be able to make a decision or cut off at some point in time. What weight is being put on anybody at this point in time saying X, Y and Z? I do not understand why the great emphasis is on the extension to the public – let me finish please – *[Interruption]*

**Mr. Chairman:** Dr. Gopeesingh, wait until I recognize you. Okay, go ahead Sen. Roach.

**Mr. Roach:** So I understand the public's involvement, yes, but the public also made a decision to appoint people to represent them in Parliament and we have done, to me, as wide a coverage as possible in dealing with this debate.

To me, for my three years in Parliament this is probably the widest consultations I have seen, one that availed itself, apart from the constitutional reform that went on a roadshow. I am at an end at this point in time to understand the significance that we are placing on one or two comments, 25 came in so far, whether 50 come in, or another 100 come in, at some point in time as a Government we have to make a decision.

**Mr. Chairman:** Sen. Roach, I could not agree with you more.

**Dr. Gopeesingh:** I want to defer with Sen. Roach and yourself.

**Mr. Chairman:** That is okay.

**Dr. Gopeesingh:** This is a democracy and the will of the people must be put forward and Sen. Roach would be privy to individuals from the national community, writing letters to the editor. Just today there are about three letters to the editor on FATCA and people are continuing to air their views and I think it is incumbent upon this Committee, which I sit, and I have been a member of several joint select committees which were of national significance, the Breathalyzer, the Tobacco Control Bill, the Children Bill, which I sat on all three with the Chairman now and – the issue is people must be given the opportunity to be heard and we made the decision in the Committee, we got 25 people and if 25 people responded at least we would have made sure that the national population became aware from a formal area – *[Interruption]*

**Mr. Chairman:** Dr. Gopeesingh, I think you made the point. In the same way Sen. Roach made his point, I think you made your point. Now what I would like to do is, can we go to the Bill please and could I ask – *[Interruption]*

**Dr. Gopeesingh:** I just had some questions for the CPC on this CARICOM FATCA – *[Interruption]*

**Mr. Chairman:** Oh, you are quite right. We were dealing with that. Could you identify the specific page that you are talking about?

**Dr. Gopeesingh:** One deals with Barbados by section 83 of the Income Tax Act – *[Interruption]*

**Mr. Chairman:** What page please?

**Dr. Gopeesingh:** Page 1.

“...makes provision for Double Taxation relief by way of an international Agreement.”

Could you clarify for us, having gotten information from us, from the Attorney General eventually that we do have a double taxation treaty? And you said that Barbados went in a different way and we also have a double taxation treaty. How does that impact upon the present Bill that we are looking at in terms of the Income Tax Act, the Data Protection Act, et cetera? And why would Barbados have chosen to go a different route? Could you explain the difference between Barbados and Trinidad, if it is possible?

**Ms. Eversley:** Yes, Chair. Whilst Barbados has a double taxation treaty, Barbados does not have a tax information exchange agreement with the United States of America. In addition to having a double taxation treaty, Trinidad and Tobago also had a tax information exchange agreement. In the models that we could have signed, the Model 1A and Model 1B, Model 1A also had two versions, one in which you had in existence a double taxation treaty or where you had in existence a tax information exchange agreement.

Since we had the Tax Information Exchange Agreements and a double taxation treaty it was decided that we would go the way of the agreement with the Tax Information Exchange Agreements reference. Barbados would not have used that mechanism. They used the double taxation mechanism. Hence, our draft would have been to look at our existing legislation which was our Tax Information Exchange Agreements Act and to either amend that Act or repeal and replace that Act, which we chose to do, to now reflect the IGA together with the TIEA which is what was required of us.

**Dr. Gopeesingh:** Through you, Chair, could you give a little explanation of why we chose the latter and not the former to amend the 1989 TIEA –

**Mr. Al-Rawi:** Just a moment. Dr. Gopeesingh –

**Mr. Chairman:** AG.

**Mr. Al-Rawi:** It was the last Government that chose that.

**Mr. Chairman:** AG, AG, let her talk. Go ahead Ms. Eversley.

**Ms. Eversley:** Yes, Chair, the decision to use TIEA route was because we had in existence a TIEA Act. Therefore we could not have used the double taxation route, we had to use the TIEA route. So I do not know if that answers the question.

**Dr. Gopeesingh:** The clarity is not there. I am just asking, why we did not chose to amend the 1989 TIEA rather than going with a new Bill, the TIEA, United States of America.

**Ms. Eversley:** Well, in preparing the legislation, at the time, we knew that we had a number of other agreements coming on stream, not just the IGA, but those that would come under Global Forum. The existing TIEA Act recognizes the entering into, by the State, of other agreements, but would have been on the same basis that the 1989 TIEA was based. The IGA goes a lot further than the 1989 TIEA in terms of the information and the basis of the information, the requirement for due diligence, et cetera. We could

not therefore simply amend the TIEA Act because the structure would have had to change, certain things would have had to apply generally and then the Act would have had to reflect certain things that would apply only to the TIEA and certain things that would have only applied to the IGA.

So in redrafting the Bill, because we were at that point looking to also make provision for future agreements, the Bill that was laid in the House reflects a repeal and replace of the TIEA with provisions for TIEA 1989, the IGA and future agreements. That was, however, amended to now only reflect the 1989 TIEA and the IGA. But still it could not use the existing TIEA Act because the two agreements have their own niceties that apply to them individually.

**Mr. Roach:** Mr. Chairman, can I just ask a question.

**Mr. Chairman:** Sure, Sen. Roach.

**Mr. Roach:** Just to get how this thing operates. Is it that in this instance is that the cart went before the horse? Is it, this decision to make which route to go, was it taken by Cabinet or was it taken by you all?

**Ms. Eversley:** In terms of how to amend the legislation?

**Mr. Roach:** No, which route to take? We went with the IGA Model 1, right. Model 1 or Model 2, would that be taken by you or taken by the Cabinet.

**Ms. Eversley:** That would have been taken by the Cabinet.

**Mr. Roach:** By the Cabinet. And this information is now being given to us as a Committee. Would that not have been available to Cabinet in order to make an informed decision?

**Ms. Eversley:** Yes.

**Mr. Roach:** So I am taken aback that doctor – with the greatest of respect – *[Interruption]*

**Dr. Gopeesingh:** Sen. Roach, I am not in Cabinet.

**Mr. Roach:** No, at the time.

**Hon. Member:** No, it is your Cabinet he is talking about. *[Crosstalk]*

**Mr. Chairman:** Sen. Gopeesingh, let him talk. You can talk afterwards.

**Mr. Roach:** I am not being facetious, “eh”, because I have never been in a Cabinet and hopefully I will not be in one, right. I just wanted to know, what is the process? If it is that the Cabinet that preceded this present Cabinet made a decision, and made a decision without all of this information, then something went wrong there. To me, to make a decision of this nature that would affect, that had such significance that this has proven to be, to me all that information should have been brought in the Cabinet and I would have hoped that the Cabinet would have been operated – probably Dr. Bhoewarrie – *[Interruption]*

**Mr. Chairman:** Dr. Gopeesingh stand down. Dr. Bhoewarrie, go ahead.

**Dr. Bhoewarrie:** I just want to say that from my recollection, and it could be easily verified, no legislation ever came from the CPC’s office through the legislative committee or to the Cabinet during the time that I was in Government up to 2015. And that could be easily rectified if the Attorney General or the CPC’s office will indicate what was the legislation that was prepared – *[Interruption]*

**Mr. Chairman:** Are we talking about the same thing? I think Sen. Roach is talking about

something a little bit different. He is talking about the policy, not the Bill.

**Dr. Tewarie:** I agree that the policy was set in motion by us.

**Mr. Chairman:** It is the policy. It is the policy that I think he is speaking to.

**Dr. Gopeesingh:** But the issue about the CPC saying that the Global Forum was coming, that is anticipating that that is coming, the Global Forum. And actually where we are –  
[*Interruption*]

**Mr. Chairman:** Dr. Gopeesingh, let me explain something about that. One of the first things I had to do when I was appointed Minister of Finance was request an extension from the Global Forum for the compliance with the requirements of the Global Forum that had been agreed to by the previous administration as being September 30, 2015. So that your Cabinet also agreed with the Global Forum to have various Tax Information Exchange Agreements – [*Interruption*]

**Dr. Gopeesingh:** Did you not say September 20, 2015?

**Mr. Chairman:** The deadline I was confronted with, I was appointed Minister of Finance on the 11<sup>th</sup> of September, 2015 and a couple of days after that I was told that there was a looming deadline of September 30, 2015 with respect to compliance of the Global Forum that had been agreed to by my predecessor Minister and by your administration.  
[*Interruption*] I just thought you need to know that.

Now, the other point I would like to make gentlemen and ladies, I do not think we should be arguing about all of this. I mean the history is the history. The fact of the matter is that the former administration started us along this road by agreeing to the Model 1A IGA and by initialling it, and by communicating with the US Treasury and setting a train in motion. And the train has left the station, okay.

They also committed the Government of Trinidad and Tobago to do certain things with respect to the Global Forum. Arguing about who did what – I mean, the record is there, that when I came this is what I found, that the IGA was already agreed to and the Global Forum compliance was already agreed to. Those are facts and Sen. Roach was just simply making an observation about how policy decisions are taken. It is unfortunate, but I really do not want us to spend all our time this morning quarrelling about who agreed to what and whose fault it is. Let us not do that “nah”, okay. What I really want to do is get to the substantive issues before the Committee which is the Bill and clarification of certain questions posed to the CPC and other entities within the public service so we could try and understand what is going on.

**Dr. Gopeesingh:** I just have one last issue with for clarification by the CPC.

**Mr. Chairman:** Yes.

**Dr. Gopeesingh:** That is with respect to the issue of whether the existence of a double taxation –

**Mr. Chairman:** Yes, we have a paper from them. I have looked at it. It is not as clear –  
[*Interruption*] Dr. Gopeesingh hold on. I have a one pager from them. It is not as clear as I would like it to be, but we would work with it. Could you circulate this, please? Do you have copies of it? Please, circulate.

There is a one pager that deals with this question Dr. Gopeesingh which I am not sure who asked it.

“Does the Existence of a double taxation treaty between the United States of America and the Republic of Trinidad and Tobago in any way affects the operationalization of the Tax Information Exchange Agreement Bill in its present form?”

**Dr. Gopeesingh:** That was on page 75 of the verbatim notes.

**Dr. Tewarie:** I asked that.

**Mr. Chairman:** Dr. Tewarie, there is a one pager and could I ask the CPC as soon as it is circulated to explain, because I am not sure, at least as far as I can see, it did not really answer the question.

**Ms. Eversley:** Chair, the advice that is being circulated simply explains, first it explains the difference between a double taxation treaty and a tax information exchange agreement. The focus of a double taxation treaty is to want to avoid taxing a person in two places, because as you know, a person when they reside, or a citizen of a particular place is required to pay income tax in that place unless they are exempt from paying that tax. So if it is I am a citizen of the US and I reside in Trinidad and work in Trinidad I would normally be required to pay tax both in the US and in Trinidad.

To avoid me paying tax twice to two administrations, double taxation treaties are crafted between territories so that if you are taxed in one place you will not be taxed in the other. Double taxation treaties are usually very necessary for the purposes of trade, to facilitate trade, et cetera. So that is the purpose of a double taxation treaty.

TIEA however is Tax Information Exchange Agreements. It has nothing to do with the collection of the tax in one place or another, but really the information that is necessary to determine if a person is liable to the tax and must pay the tax. Because a person can reside in the US and have property in Trinidad which he is renting in Trinidad and therefore earning an income in Trinidad but not paying a tax in Trinidad on that income and should then be required to pay the tax on that income in the US. It really does not affect the operationalization, but the TIEA helps a State to determine if a tax is required to be paid by a person who is subject to that tax.

**Mr. Chairman:** Thank you Ms. Eversley. Now I just want to clear up something with Dr. Gopeesingh. You could have a person who is liable to pay tax either in Trinidad and Tobago or the US and does not. So they are tax evaders. And this is what the Tax Information Exchange Agreement is at, at a tax evader. The person under the double taxation agreement could pay and declare so that they do not get taxed twice, but you are not dealing with that kind of person. You are dealing with the person who is trying to avoid paying tax in either jurisdiction and that is why you need the Tax Information Exchange Agreements, okay.

**Mr. Al-Rawi:** Mr. Chairman, I just want to add to this. The two, the TIEA and the double taxation relief are essentially and effectively mutually exclusive. The TIEA is simply to provide information. There is a citizen, a person, an entity, determined under the IGAs of 1989 and 2016, who qualifies for disclosure to the US authorities and how that person is taxed is an entirely different structure. They may or may not be the beneficiary of a relief by way of double taxation relief or they may be in fact subjected to other regimes.

So the two issues are completely separate. This one is to deal with the exchange

of information. And just to confirm for the record, the Attorney General's Office was informed that there was no double taxation relief and treaty with the US. The Ministry of Trade and Industry eventually, because we had sent a request to them, confirmed that there was. So I gave you the information that was given to me and I gave it exactly as I got it relying upon the sources that I got it from.

In any event now the real position is, does one affect the other? The answer is, no, that they are mutually exclusive.

**Mr. Chairman:** Okay, thank you very much. Sen. Ramdeen.

**Mr. Ramdeen:** AG, respectfully, who would it have been at the AG's Office would have been depended on to get that information about that double taxation relief.

**Mr. Chairman:** Mr. Ramdeen, I would say something that is often told to me, that does not help us at this stage.

**Mr. Ramdeen:** Well, it is quite important to me.

**Mr. Chairman:** I know it is important to you, but it does not really help us. Obviously the Attorney General's Office was misled. You want to know who misled them?

**Mr. Ramdeen:** Yeah.

**Mr. Chairman:** Okay, well if you – I do not think that helps the work of this Committee. I think that is something that helps you. AG you want to say who misled you?

**Mr. Al-Rawi:** Well, as Ms. Eversley would confirm it is the same information she was given.

**Mr. Chairman:** But by who.

**Mr. Al-Rawi:** So the technocrats in the AG's Office would have asked the technocrats at the Ministry of Trade and Industry and that was the answer given. I do not see that it takes us any further to the point.

**Mr. Chairman:** I just said that.

**Mr. Al-Rawi:** Yeah. Thankfully we found out.

**Mr. Chairman:** So it does not help us.

**Mr. Ramdeen:** Ms. Eversley, I have a concern. When you look at the Barbados model, the way they implemented their model to operationalize FACTA, they did it by way of regulations pursuant to the Income Tax Act. But Barbados in their constitution has a wider privacy provision than we have in ours. I was wondering if the CPC had considered, how is it that the Barbados model, when I say model, I mean legislation, was able to be past where the Barbados constitution has a privacy provision wider than ours?

**Mr. Chairman:** Sen. Ramdeen, I can help you. If you look at the actual table itself, page 1, go down to the seventh line going into the eighth line, under section 83 of their Income Tax Act, "the prevention of fiscal evasion". If you have an agreement with another country that deals with the prevention of fiscal evasion it has the force of law in Barbados. So it appears that the Income Tax Act in Barbados will allow for a treaty to be signed or an agreement to be signed that supersedes the secrecy provision in the Barbados constitution, from what I am seeing here. So could you clarify that, Ms. Eversley? Is that what you are saying?

**Ms. Eversley:** Yes, Chair.

**Mr. Chairman:** So that is what she is saying. So that section 83 of the Income Tax Act in



Barbados has a provision in it that allows for agreements with another country with respect to the prevention of fiscal evasion and if you signed an agreement under section 83 that trumps the secrecy provision in the Barbados constitution.

**Mr. Al-Rawi:** That is precisely it and the point is that the Barbados existing law did not need to be affected by any change.

**Mr. Ramdeen:** Well that is the other question I was going to ask. That that can only viably be the position if the Income Tax Act is a safe law on the Barbados law.

**Ms. Eversley:** Mr. Chair, as the AG is saying, that is really how their Income Tax Act functions.

**Mr. Chairman:** That is how they deal with it.

**Ms. Eversley:** For us, because we have, ours is not being done as a double taxation, but really being done as a tax information exchange agreement we had to get the constitutional majority because we will be introducing this, not under income tax, the Income Tax Act does not provide for this.

**Mr. Ramdeen:** If it does not, well what is it in this Act that requires you to have a special majority? What is it that we are enacting here that requires you to get a special majority?

**Ms. Eversley:** The sharing of personal information belonging to individuals with other entities. So personal information that belongs to individuals that are in a bank are now being shared without their consent. The Act requires, under section 13, that information relative which is sensitive, personal information which falls under the privacy requirements under section 4 of the Constitution is now being shared without the consent of the person.

**Mr. Ramdeen:** And the validation.

**Ms. Eversley:** Pardon? The—-[*Interruption*]

**Mr. Chairman:** Yes, yes. Any actions taken by the BIR under the 1989 TIEA Act.

**Ms. Eversley:** The 1989 TIEA, we were informed that the Board, whilst the agreement was silent in terms of how that sharing could occur, we interpreted that sharing when we drafted the legislation in 1989 to mean that it would be shared on the basis of a request.

However, the US was of the view that that sharing was automatic and the information was being shared automatically. The validation is to recognize that that information under the TIEA should have been done upon request and not automatically.

**Mr. Ramdeen:** But I just want to ask one more question. In your consultation with the BIR in order for us to justify a validation clause for the sharing of information between 1989 and today, under the old, what I can term the old Act—

**Mr. Chairman:** The existing Act.

**Mr. Ramdeen:** The existing Act. You would have had to be informed by the BIR that there were in fact instances where information was shared, otherwise we would just be validating something that did not happen.

**Ms. Eversley:** Yes, they indicated that they were sharing, they had shared, in the past, information spontaneously and not upon request and in fact that was indicated by the Board when they came before you.

**Mr. Ramdeen:** Thank you, Ms. Eversley. That was very helpful.

**Mr. Chairman:** Okay.

**Dr. Tewarie:** There is an indication here from the BIR, I just looked it through carefully, in which they said that between 2006 and the present time they had shared 11 pieces of information.

**Mr. Chairman:** Right.

**Dr. Tewarie:** And that six of them involved US citizens.

**Mr. Chairman:** So it is not a big – it is not a large number. I did not want to say it is not a big deal. It is not a large number. All right, I now want to get to the point, which I have been trying to, for about an hour. Is there any clause in the Bill, okay, that is a no? I actually got a “no” out of you Sen. Ramdeen?

**Mr. Ramdeen:** I just wanted to clarify, Chair, that with respect to as the Bill stands now the only thing that we indicated was clause 29.

**Mr. Chairman:** Yes, which we fixed.

**Mr. Ramdeen:** Which we fixed.

**Mr. Chairman:** Yes, yes.

**Mr. Ramdeen:** With respect to saying, with respect to the substantive Bill, itself. You know that I made some references to –

**Mr. Chairman:** I know.

**Mr. Ramdeen:** So if you are going to come to that we can deal with – leave what is here as is now, as being agreed to –

**Mr. Chairman:** Yeah. But are there any specific clauses that you want us to look at? You just want clarification on policy and general principle, Sen. Ramdeen?

**Mr. Ramdeen:** No.

**Mr. Chairman:** No. You want clarification on policy or you have clauses that you want us to look at?

**Mr. Ramdeen:** No, with respect to what I referred to in the letter –

**Mr. Chairman:** Yeah.

**Mr. Ramdeen:** Those are – well, some have to – two are to put in two new clauses –

**Mr. Chairman:** Right, so let us deal with that.

**Mr. Ramdeen:** And two are to –

**Mr. Chairman:** Which one you are talking about? The one you sent me last night?

**Mr. Ramdeen:** Yeah.

**Dr. Tewarie:** We have four amendments suggested in that.

**Mr. Chairman:** Miss Jacobs the thing they sent me last night, has that been circulated to members? Circulate it.

**Mr. Ramdeen:** It is only three now Chair, because one referred to clause 29. [*Crosstalk*]

**Mr. Chairman:** In the back you say? [*Crosstalk*]

**Mr. Al-Rawi:** It is the letter dated 14<sup>th</sup> of February.

**Mr. Chairman:** Right, that was sent last night. Even though it was dated the 14<sup>th</sup> of February I received it on the evening of the 16<sup>th</sup>, yesterday was the 16<sup>th</sup>? [*Crosstalk*] Right and the same day the Parliament got it. All right. You want to go through?

**12.45p.m.**

**Mr. Ramdeen:** Essentially, what is left, Chair, is at Item 3, I wish to propose the following amendments to be included and considered by the committee. Essentially, if we could

take, perhaps the easiest of the three would be (c) and it falls in line with what we agreed to with respect to 29. I do not know if there would be much disagreement to it. We changed the Memorandum of Understanding to an agreement and that agreement is an agreement that would be entered into between the competent authority, BIR and the Secretary to the Treasury.

**Mr. Chairman:** Anybody have any objection to this? They are asking for any agreement that is entered into between the Board of Inland Revenue and the United States Treasury – I assume it is with respect to the operationalization of the legislation – would be laid in Parliament. Anybody have any objection to that? I have none.

**Mr. Al-Rawi:** I am just thinking aloud. In principle, I have no objection. What I wonder is: Would any of these MOUs or agreements between these taxing entities, if I could call it that; these competent authorities, infringe any of the mechanisms to inform persons who would otherwise evade, of anything that was sensitive?

**Dr. Gopeesingh:** We are not asking for detailed information on any particular individual and so on. It is a broad approach.

**Mr. Al-Rawi:** No, the details will come in the fact that the agreement itself is given. So would it be – and I am just thinking aloud, – unwittingly discovering or producing for public consumption, something which, for instance, ought not to be. So I do not know if the Department of Treasury in the US would hold a view that, “Look, this may infringe upon some of the secrecy of their mechanism”: how they enter into audit; how they enter into other aspects. So, I have no objection to the principle of what Sen. Ramdeen is proposing, but I wonder what can flow into it by the laying of that, particularly insofar as both the IRS Department of Treasury and the BIR have very strict provisions with respect to confidentiality.

**Mr. Young:** If I may add to that, Mr. Chairman. I agree with that, and again, in principle, what Sen. Ramdeen has proposed, which is the laying in Parliament of the agreement, if it were another whole IGA, I could understand that, but in thinking it through, if you have operational agreements, would that fall under it? You know, operational agreements, for example, that would say it is Sen. Ramdeen, MP Tewarie, MP Gopeesingh, MP Young are the ones who are the points of contact. You know, when you start to get into that level of detail you will have agreements, who is it that will be authorized to share information; how could this information be shared. So operationalization of the IGA – because that is covered by any agreement. When you say, any agreement, anything they agree between themselves.

**Mr. Ramdeen:** In answer to those points, Chair, what I would say is that I would have thought that what is provided for at 18 is also what the legislation itself provides for in relation to the guidelines that come to you later on in the legislation, which we have already agreed to lay, that is in relation to Central Bank and the financial institutions like the Securities and Exchange Commission and the insurance companies.

**Mr. Al-Rawi:** If I could address that latter point. Guidelines have been selected as the method to operationalize. So the US deals with the Board of Inland Revenue as the competent authority locally. The Board deals –

**Mr. Chairman:** AG, no.

**Mr. Al-Rawi:** One second. I just want to do the issue of guidelines.

**Mr. Chairman:** AG, AG, I am moving on. It is 12.49. Let us go straight to clause 18. I am assuming that you are talking about agreement flowing from clause 18, right? AG, just take a look at it, please. The agreements are for the establishment of procedures for the automatic exchange of personal information, setting out rules and procedures for collaboration and compliance with enforcement, and the establishment of procedures for the exchange of information provided to the competent authority on the name of each non-reporting financial institution to which a reporting financial institution has made payment, et cetera.

What we need to do now, Sen. Ramdeen, is we need to determine whether any of these things would involve confidential information that we cannot lay in Parliament. Okay? All right? We need to establish those guidelines.

**Mr. Ramdeen:** I am sure that an enquiry from your Ministry to the relevant authority will be able to determine that.

**Mr. Chairman:** We will check it out, okay? And once it is nothing that violates anything, then we will do it. If not, we may have to do a redacted form or something like that.

**Mr. Al-Rawi:** Yes, but I just want to make the point for the record, the guidelines are always published under law, so this is a very different category of position. Just to distinguish the position of reference to guidelines and fitting into that matrix.

**Mr. Chairman:** That is all right. We are dealing with the substantive issue and I will just check and see what could possibly be in an agreement like this.

**Dr. Gopeesingh:** Chair, to throw in a little part. The Integrity Commission deals with personal information and secrecy and so on and the Integrity Commission lays reports on an annual basis.

**Mr. Chairman:** That is a different thing. That is his next amendment. Dr. Gopeesingh, I am very serious, eh. His final amendment is that, that I would lay a report. We are not talking about that, we are talking about an agreement signed between the Board of Inland Revenue and the US Treasury that will explain how they are going to go about exchanging the information, and in that agreement they would have procedures for automatic exchange, rules and procedures for enforcement and compliance, and procedures for the names of the non-reporting financial institutions. That kind of jumps out at me, the third one: The names of— So I am just going to check and see if there is any issue here and we will try to accommodate the request made by Sen. Ramdeen. Once it is no problem, there is no problem. If there is a problem, I will report back to you. Okay? All right?

**Mr. Al-Rawi:** How do you propose to report?

**Mr. Chairman:** I will email. You will just find out by round robin. Okay? All right? Dr. Tewarie?

**Dr. Tewarie:** No, no, I was just going to add, based on the (a), (b) and (c) here under 18, I do not sense that the agreement between the two exchanging institutions will have anything except operational methodology rules and procedures as they identify here, et cetera, which will be of a general nature. But what that will do at the end of the day is that we will have had the IGA, we would have had the legislation passed and we would

have had the operationalization which is meant to be under the terms and conditions of the legislation, clearly articulated in Parliament and therefore it becomes a public document.

**Mr. Chairman:** Dr. Tewarie, “ah know all dat, yuh know.”

**Dr. Tewarie:** All right. Okay.

**Mr. Chairman:** “Wha is dat? Ah said I will check and I will let you know. Okay?” I understand perfectly what you gentlemen are asking for. I understand perfectly the Attorney General’s concerns. I will check and it may very well be, it is a very bland and innocuous document and it may be no problem at all, and therefore, if it is, which I am hoping it is, then we would have complied with the request of 18(c).

Can we to go to (d)? That “The Minister shall cause to be laid in Parliament an annual report.” No objection, except a month is difficult. Say three months. Okay? And then can we go to (b)? What is this all about?

**Mr. Ramdeen:** Unless the understanding that I have, Chair, is different, and you can correct me—the information that a reporting financial institution would have in its possession to determine whether it is a person has a reportable account and that information is transmitted to the BIR for onward transmission to the US, will come from the information that the financial institution acquires from those persons, whether it be when they open accounts or over time or whatever mechanisms they would have in place. I think that having regard to the nature of the information that is being transmitted, it is important that someone who may think that they are not subject to their personal information being shared, where that information comes from that person, I think it is a legitimate concern that an account holder may want to have notice that their information is being shared. And I want to add to that, that this does not place an added burden upon the BIR because the BIR—

**Mr. Chairman:** Sen. Ramdeen, I got the point. What is your opinion? [*To Mr. Al-Rawi*]

**Mr. Al-Rawi:** I understand the rationale being advanced, but if I could address it in two ways. One, I think, generally speaking, it goes against the grain of what the IGA suggests, which is that there should be spontaneous, unfettered disclosure subject to the national laws of the country, which is why we are doing it this way.

**Mr. Chairman:** All right. Just let me stop you. It is not spontaneous. It is every year—

**Mr. Al-Rawi:** On request.

**Mr. Chairman:** No, no. Every year on September 30<sup>th</sup> automatically. So what we are really looking at is that what Sen. Ramdeen is asking for—

**Mr. Al-Rawi:** Mr. Chairman, let me finish.

**Mr. Chairman:** Just hold on—that you want this done on the 1<sup>st</sup> of September.

**Mr. Ramdeen:** Yes.

**Mr. Chairman:** Right. Go ahead.

**Mr. Al-Rawi:** No, I did not understand that that is what he—

**Mr. Chairman:** That is what he is saying.

**Mr. Al-Rawi:** Well, then I would invite him to—because the language of (b):

“Before a reporting financial institution forwards sensitive personal information on an account holder in respect of a reportable account to the competent authority,

the reporting financial institution shall give 28 days' notice to the account holder that their sensitive personal information is being forwarded."

Just let me factor it the way you have just said it. So you are saying that all of the FFIs under the IGA will issue a notice on September 1<sup>st</sup> that, "take notice, we are going to do this". And is it just that?

**Mr. Chairman:** That is how I see it.

**Mr. Al-Rawi:** Okay.

**Dr. Tewarie:** Yes.

**Mr. Chairman:** Is that not what you are saying?

**Dr. Tewarie:** It is really a back of their customer, eh.

**Mr. Chairman:** That is what I am seeing.

**Mr. Al-Rawi:** If it is that, I—

**Mr. Ramdeen:** Chairman, on the point that you are making, I take your point in terms of a timeline because the 30<sup>th</sup> is a fixed date that the BIR must send the information. A reporting financial institution might decide to give it—

**Mr. Chairman:** No, no. We have to be careful about that. It may very well be that it comes in a month before and then goes—

**Mr. Ramdeen:** That is what I am saying.

**Mr. Chairman:**—or it may come in the day before. So we just need to clarify all of that. Okay?

**Mr. Young:** May I just add on a point of caution that you should really run this past your counterparts, because it is not a breach for us, so to speak, but it is whether that is okay on their side, because remember this is information for—

**Dr. Tewarie:** No, I—

**Mr. Young:** May I finish?

**Mr. Chairman:** Dr. Tewarie, "Wha is dat? We nearly finish de meeting, yuh know."

**Mr. Young:** Because this is really an obligation on their part; this is information on their end. This is really us facilitating their laws.

**Mr. Al-Rawi:** I just have a few—

**Mr. Chairman:** Just hold on. Wait, wait, wait.

**Mr. Al-Rawi:** But I had not finished my point when he interrupted me.

**Mr. Chairman:** But, wait, wait, wait. Minister Young, finish your conversation—your intervention.

**Mr. Young:** Chairman, that is all I am saying, that on a point of caution, if we are going this route, I personally do not have a problem once it does not infringe anything. The only infringement I can see is on their end, you know. Are they comfortable with that?

**Mr. Chairman:** Right, and I do not understand what you mean by that, so explain it to me.

**Mr. Young:** Okay. The same way we have a section 4 on our BIR Act in Trinidad that they cannot provide information, et cetera, understand this information that is being provided from our competent authorities is not for Trinidad's purposes, it is for the IRS and the Treasury. So if we are going this route—because basically what you are asking is for all the financial institutions to notify their customers, "I am providing your

information in accordance with this law”, just make sure that they are comfortable with that because it is really on their end. I mean, this has nothing to do particularly on our end.

**Mr. Chairman:** But does it matter if the banks tell their customers, “Look, under the law, the TIEA, 2017, we are going to send this information.” Does it really matter?

**Mr. Al-Rawi:** Chair, just let me finish my point.

**Dr. Gopeesingh:** Chair, you remember at the beginning of this meeting –

**Mr. Chairman:** Dr. Gopeesingh, “wha is dat?” Wait, stop. The AG wants to speak and I want to finish what I am saying. Okay? So I “doh” really see that it makes any difference if the banks here tell their customers, “We are going to send your information”, but we will check that. Ms. Carter, you got the point just made, that there is a concern expressed that it might be a breach of US law – US rules – if the banks in Trinidad tell the customers a month in advance that “We are sending your information to the Board of Inland Revenue for onward transmission to the US Treasury?” Just go and check and see if that will violate any US regulation, any US law or cause any anxiety on the side of the US Treasury. I just want to know. Okay? Now, AG, let me hear you.

**Mr. Al-Rawi:** My concern is not only what Minister Young has just put out, the question comes now in taking a positive step on the part of the FFI to inform their customers of this. The question of the adequacy of information, the adequacy of notice may cause somebody to complain, “Well, I did not get notice. It was not sent to me in a particular point. I did not receive it.” Now there are ways to circumscribe that. There could be public statements put every year in the papers or however it is done. But my caution is whether we would be opening an argument that the adequacy of notice was not met.

And relative to spontaneous, I think you have clarified that. The spontaneity means that there is an automatic point at a fixed date which is the 30<sup>th</sup>. In principle, I think that it is okay, the proposal going, subject only to; one, US position; two, the issue of whether the adequacy of notice can create a class of objections for people who allege that they have not been adequately notified and therefore there was a breach of a step. And it is in that circumstance, the latter point, that I wondered whether we were going against the grain of the IGA, which is to create this sort of automatic, as I have put it, spontaneous, uninterrupted exchange of information. And those are my cautions.

**Mr. Chairman:** All right. Hold on before we go any further. Do you have any other issues on this clause? Good. Dr. Gopeesingh, hold your fire.

**Dr. Gopeesingh:** Oh, I thought you were allowing me to speak.

**Mr. Chairman:** There are two men before you. Right? Dr. Tewarie.

**Dr. Tewarie:** On the question of adequacy of notice in terms of time and so on, and creating the conditions for the law, I think – I am not a lawyer but the AG has to be aware that if, for instance, they send the information automatically, and I have a problem – and you do not notify me anyway, I still have the basis on which to challenge something once I find out, as a citizen or as a user or as a US – what they call it in the Bill? – a US party. So I mean, that, to me, is not an issue, and if it is an issue we could find a way to do it. I am sure the AG can do that. But the other one I want to caution about, Mr. Chairman, I do not believe in crafting our law, having signed the IGA which is very clear and we have

an agreement with the United States, we should ask anybody in the US whether we have their permission to do so and so. Right? Please.

**Mr. Chairman:** Thank you. I got your point. Sen. Ramdeen, you have no point, right? Good. Dr. Gopeesingh, you have three minutes.

**Dr. Gopeesingh:** Okay, I will be brief. You, at the beginning, indicated that if there is a fall back, let us say if this FATCA is not passed, that the banks indicated that there is a fall back—

**Mr. Chairman:** No, not a fall back. They said what they would do. And it is a most unsatisfactory alternative because there are adverse consequences.

**Dr. Gopeesingh:** Right. But they indicated that they will have to call these people in—

**Mr. Chairman:** No, they will tell their customers that they are required to provide this information to their correspondent banks in the United States and that if the customer does not wish the information to be disclosed, they will close the customer's account. That is one. That is just the beginning. What will happen when that happens is that correspondent banks, by and large, will stop doing business with Trinidad and Tobago permanently and then we will be put on a list by other organizations like the Global Forum, and so on, as an un-cooperative jurisdiction.

**Dr. Gopeesingh:** The first part is not extremely different from what we are trying to achieve here, which is to give some notification of the issue.

**Dr. Tewarie:** It is not the BIR we are asking to notify the customer; it is the bank.

**Mr. Chairman:** What are you talking about, Dr. Tewarie? We finish this. "Wha is dat?" Okay. Dr. Gopeesingh, I got your point. Okay, gentlemen and ladies, I want to wrap up now. Let us—sorry, (a).

**Mr. Ramdeen:** You said negative. It is stronger to put negative.

**Mr. Chairman:** So we change this to negative. Right. So (a) will go from affirmative to negative. *[Interruption]* No, we settle that already. This was done before we settle the point. This recommendation was made before we settle the point. All right? So (a), settle, negative resolution. (b), we are going to check to see what the implications of this are. (c), we are going to check and see what the implications of this are, and (d), change one month to three months where it appears. Right? Have I summed it up correctly?

So in (a) we are changing affirmative to negative; in (d) we are changing one month to three months wherever it appears and in (b) and (c) I am going to make a definitive statement now. We will try our best to accommodate these requests. However, we must check the legal implications of them. Okay? But we will make our best effort to accommodate this request, and if we cannot, we will give a full explanation as to why we feel we cannot accommodate these requests.

**Dr. Tewarie:** Item (b) is critical, Chair.

**Mr. Chairman:** Understood. And Item (c) is not? Well, if yuh say (b) is critical, then (c) is not.

**Dr. Gopeesingh:** That has been the crux of the issue related to the constitutionality—privacy.

**Mr. Chairman:** Could I just get an answer to that? (b) is the most important.

**Dr. Tewarie:** You have indicated that you agree with two. That is fine. And you have



(b) and (c). But I wanted to emphasize, yes, (c) is important and we would like to have that, but I do not feel that there will be an issue.

**Mr. Chairman:** (c) is not a deal-breaker.

**Dr. Tewarie:** Right. But (b) is critical.

**Mr. Chairman:** (b) could be a deal-breaker.

**Dr. Tewarie:** Yes.

**Mr. Chairman:** And (c) is not a deal-breaker. And you said, yes. Right? It is not me saying, okay and silence. We said, yes.

**Dr. Tewarie:** We put forward the proposals because we wanted to have agreement on the issue.

**Mr. Chairman:** I understand. So (c) is not a deal-breaker but you said yes to that.

**Dr. Tewarie:** Well we -- you know what I mean. Do not do that, Chair.

**Mr. Chairman:** Come on. Let us say yes or no, "nuh". Why not?

**Mr. Roach:** Mr. Chairman --

**Dr. Tewarie:** Let us try and accommodate them. They are not --

**Mr. Roach:** I know I may have missed the crux of the (b), (c) discussion, but I think I understand what is going on.

**Mr. Chairman:** Let us go through. (a) --

**Mr. Roach:** I understand. You do not need to go back. It is just the (b) and the (c) aspect of it.

**Mr. Chairman:** No, well, (b) and (c), we will try to accommodate --

**Mr. Roach:** But is not (b) from what I understood before. It is not (b) directly coming from the IGA as --

**Mr. Chairman:** No, no, it is in this document here.

**Mr. Roach:** This document. This is what I am reading here. What I am seeing, the accommodation being sought, the 28 days' or the 29 days' notice is given where information is being forwarded.

**Mr. Chairman:** Yes.

**Mr. Roach:** Does that not run contrary to the automatic transferring of the information?

**Dr. Tewarie:** No, it does not.

**Mr. Chairman:** No, it is just telling them that we are going to automatically send this information.

**Mr. Roach:** Okay, all right.

**Dr. Tewarie:** That is all it is. But what it means is that I have notice and I could take whatever steps.

**Mr. Chairman:** At least I know, so I could hire Sen. Ramdeen and go in court and seek injunctive relief, and a declaratory order.

**Mr. Al-Rawi:** But for the record, it does create a right for an infringement where there has been no notice.

**Mr. Chairman:** I know, I know. Come on. I know.

**Mr. Roach:** Mr. Chairman, just to finish off on this point being made here. So if it is, as you have said before, this is a sacred cow, (b), what will be the alternative if this is going to be the point of --

**Dr. Tewarie:** Chair, let us not get there.

**Mr. Chairman:** No, well, it is a good question. So if we cannot agree to (b), what happen, you would not vote for the Bill? He is asking a question, you know.

**Mr. Roach:** This is a joint select committee to clean up this thing. I mean, really and truly, I mean, we have reached this far. It is not frivolous.

**Mr. Chairman:** He is asking a question. “Yuh doh” want to vote for the Bill? That is what you said?

**Dr. Tewarie:** Chair, we have made a lot of progress.

**Mr. Chairman:** So you are not going to put on the record, if we cannot accommodate you with (b) and (c) what you are going to do?

**Dr. Tewarie:** I want to make it clear that we want to support this Bill and therefore we want you to work with us as we are working with you.

**Mr. Chairman:** You want us to try our best –

**Dr. Tewarie:** Yes –

**Mr. Chairman:** – to find solutions to (b) and (c).

**Dr. Tewarie:** I want you to work with us so that we can support this Bill and we are working with you to try and pass this Bill.

**Mr. Chairman:** Yes, I got that, but Sen. Roach asked a direct question.

**Dr. Tewarie:** The world is not like that. I cannot answer that.

**Mr. Chairman:** But you can answer it by saying you will prefer not to answer it. So could you answer the question, please? You are saying no, you are not answering the question. Okay.

**Mr. Al-Rawi:** Mr. Chairman, could I just ask, for the record so that we do not have to trawl through many pages of verbatim notes: what precisely are the responses expected? How those responses are to be agreed upon, if at all? So for instance, these response that we are giving, if this is the last meeting that we are doing –

**Mr. Chairman:** No, no, no, it is not.

**Mr. Al-Rawi:** Okay, good, I will let you come to that.

**Mr. Chairman:** Just stand off. We have agreed, as a committee – and I am going to put this in the report – that with respect to the four amendments proposed by the Opposition, we have dealt with amendment (a) by indicating we will amend the Bill at clause 29 to allow for negative resolution. With respect to amendment (b) proposed by Sen. Ramdeen and proposed on behalf of the UNC Opposition, I assume, that we will try our best to accommodate (b) but we have to look at the legal implications of it in terms of its constitutionality and its confidentiality, whether it breaches any provision. Similarly with respect to (c), we will have the same approach. We would try our best to accommodate – the Government, that is – the proposed amendment in (c), again subject to the same caveats that as long as it does not raise any legal issues, such as providing an avenue for someone to file for injunctive relief if the notice is not properly worded or whatever the case may be. And we have agreed with (d), the fourth amendment, subject to the change from one month to three months wherever it appears.

And if we can get an accommodation on (b) and (c), it is expected that I can correctly say that the JSC has agreed to the amended Bill. Am I correct?

**Dr. Tewarie:** You mean, if you accommodate all four?

**Mr. Chairman:** Yes.

**Dr. Tewarie:** If you accommodate all four, yes, because those are the amendments that we now propose.

**Mr. Chairman:** Right. You proposed four. If you can get accommodation on all four, yes, you will agree. Yes. And if we cannot get (b) and (c), we have to come back to you and tell you why, and we take it from there. Right? Good? Is that a yes I am hearing from you, Dr. Tewarie? I did not hear you. Was that a yes?

**Dr. Tewarie:** We have put forward four proposals. We would like all attended to with finality, yes.

**Mr. Chairman:** And if they are, you will support the Bill as amended?

**Dr. Tewarie:** Yes, but there are some other matters that we raised –

**Mr. Chairman:** You see, “that is what ah want to get to”.

**Dr. Tewarie:** No. Let us take the thing to completion. The issues are not just the clauses – the other issues. Okay?

**Mr. Chairman:** You sure?

**Dr. Tewarie:** Yes.

**Mr. Chairman:** You want to go beyond your suggested amendments?

**Dr. Tewarie:** No, no. We have no more amendments to add.

**Mr. Chairman:** All right. Okay. Yes, Sen. Ramdeen.

**Mr. Ramdeen:** What I was saying, Chair, is that now that we have gotten past that – and I think you have put forward a way forward – there are certain other matters that we raised, some of which you have already dealt with –

**Mr. Chairman:** Yes, I know. I think I dealt with all. Is there any I am missing?

**Mr. Ramdeen:** The correspondence from Ms. Carter.

**Mr. Chairman:** Oh, sorry. We have that here. I apologize. Could you circulate? Here, I have it. It will be copied and circulated to you.

**Mr. Ramdeen:** Just to be as meticulous as you indicated we should be, I will take care of one. So if we could just run through them so that at the end of the day, we could tick them off and –

**Mr. Chairman:** Let us go. Where are we, what page?

**Mr. Ramdeen:** On page 1 of my letter.

**Mr. Chairman:** Well, you are getting one. That is in this same document. The same thing you are getting now takes care of two as well.

**Mr. Ramdeen:** All right. Three, I do not know what is your position with respect to that.

**Mr. Chairman:** Same thing. The document you are getting now discloses that, together with what you got before. Remember you got an email before. Well, 4, I told you how we are dealing with that.

**Mr. Ramdeen:** That would be subject to the –

**Dr. Tewarie:** So 1, 2, and 3 are satisfied with documentation?

**Mr. Chairman:** That is what you should be getting now.

**Dr. Tewarie:** Right.

**Mr. Chairman:** Four, I said we have a process by which we will authenticate the identity

of the person for 4. Once we do that, you are getting everything. Five, this has been circulated.

**Mr. Ramdeen:** No.

**Mr. Chairman:** No? Hold on, stop. Let us go to 5(a), did you circulate a response from ANSA Merchant Bank? The Secretary did not circulate it because it does not exist.

**Mr. Al-Rawi:** Correspondence written by the Committee to each of the following, so it is the originating letters.

**Dr. Tewarie:** Chair, this is meant to be constructive. In the instances where we wrote to people requesting information, let us attach the request from us and indicate that they have either responded by putting their response or that they have not responded and settle that.

**Mr. Ramdeen:** I totally agree with that, Chair.

**Dr. Tewarie:** Okay?

**Mr. Chairman:** Can I just go through this? You "doh" mind? 5(a), you are going to send the request, right? You will circulate it, right? 5(b), you will send what Sen. Ramdeen has asked for. Right? 5(c), you will send what Sen. Ramdeen has asked for and what comes in the bowl afterwards, you will send them that too. Right.

So we wrote to ANSA Merchant, we wrote to Unit Trust, we wrote to ATTIC and they responded. Okay? So we are sending them the request from the Committee and we are sending what they send. Okay? Now, I told you already Unit Trust commented on the agreement and the ATTIC response was "somewhere". They did not really understand what we asked them or they missed the boat.

Six. Well we have sent the correct version of the Bill to the Dean of the Faculty of Law and we are hoping to get that back as quickly as possible. The Law Association: "that the Members of the Committee be informed of the extension of time. The extension of time was granted by the Committee." What exactly you are driving at here?

**Mr. Ramdeen:** This is simply what you said. They have said that the Law Association has not submitted anything and you indicated that—

**Mr. Chairman:** So you want the correspondence.

**Mr. Ramdeen:** The correspondence; that is it.

**Mr. Chairman:** Right, fine. Seven: yes, you got that. You just got that this morning. Eight: you got that. Right? Dr. Tewarie indicated there were 11—

**Dr. Tewarie:** Yes, I got the documents.

**Mr. Chairman:** So you got eight. Right? You have received that. It is there. You have it too.

**Mr. Ramdeen:** No, I think that only relates to 6 to present, you know. That does not relate—I am just asking. The document that Dr. Tewarie refers to does that not refer from 2006 to present? We are asking from '89. We have been asked to validate from '89, which is what the BIR—

**Mr. Chairman:** Where is the document? Let us identify it.

**Dr. Tewarie:** It is the one with the Bankers Association.

**Mr. Chairman:** Okay. That is the responses.

**Mr. Ramdeen:** It is Item 12 of the table.

**Mr. Chairman:** Well, it would appear, by implication, that there was nothing between 1989 and 2006, but we will check that, because you asked a question. A question was asked: "How many times since 1989 have you provided information?" They said 11 and then they put in brackets "(since 2006)". So my interpretation of that would be that they began to provide information in 2006 and there was nothing before that, but we will double check that.

**Dr. Tewarie:** Let them confirm, please.

**Mr. Ramdeen:** Did we get nine?

**Mr. Chairman:** No. I have to check that for you.

**Mr. Ramdeen:** I think 9 and 10 goes together. They were the same item in the minutes.

**Mr. Chairman:** I think you got 10, did you not? Is 10 not in this response from the BIR? Item 10? It is the practices used by the BIR—it is not there? Yes, it is there in their responses.

**Mr. Ramdeen:** It is?

**Mr. Chairman:** Yes, I think so.

**Mr. Ramdeen:** This comes from the same item, you know. When we had the undertaking to provide the communication plan, this was the Roman i.

**Mr. Chairman:** "A list of the existing practices used by the BIR for the exchange of tax information used in the United States for which an undertaking was given to the Committee at the third meeting of the Committee by the Chairman."

If it is not covered in here, I will get it for you. Thirteen?

**Dr. Gopeesingh:** You will get 9 Chair, if they have the communication plan?

**Mr. Chairman:** I am going to check and see that and I will undertake to get that to you, although, honestly, I cannot see what the communication plan has to do with the clause in the Bill.

11: You got that? You got the submission from credit union society? It is in here.

**Dr. Tewarie:** Yes, it is in here.

**Mr. Chairman:** You have received 11. What about a copy of all correspondence received by the Office of the Attorney General?

**Mr. Al-Rawi:** We have none.

**Mr. Chairman:** No correspondence?

**Mr. Al-Rawi:** The correspondence is what came to the Ministry of Finance and we would have received copies of.

**Mr. Chairman:** What about the one that was sent to the Opposition? That was not sent to you too?

**Mr. Al-Rawi:** They are just CC copies. So that is it. So whatever the Ministry of Finance would have received, we then saw copies of it.

**Mr. Chairman:** Are you saying the Bankers Association did not write to the Office of the Attorney General?

**Mr. Al-Rawi:** Whatever we had, we sent to the Secretary, which was the same points.

**Mr. Chairman:** That is not my question.

**Mr. Al-Rawi:** Let me return the question across to Ida who has the actual packages which we would have received from Finance.

**Ms. Eversley:** All the correspondence that we have received have been received through the Ministry of Finance. Nothing was directly addressed to the CPC's department or the Ministry of the Attorney General.

**Mr. Chairman:** From the Bankers Association?

**Mr. Al-Rawi:** From anybody.

**Mr. Chairman:** Has this been supplied?

**Mr. Al-Rawi:** Yes, it is exactly what you have handed out.

**Mr. Chairman:** You are saying it is being circulated already.

**Mr. Al-Rawi:** No. Look, you just handed a package of information: Bankers Association. So this one was the point. Anything that the Bankers Association and others wrote, they wrote to other persons, not to us, and we received copies by way of CC copies. So, for instance, they wrote to the Opposition, we saw a copy of that. That is it. There is nothing else that originated to us at all.

**Mr. Chairman:** Does that answer your question?

**Mr. Ramdeen:** I think this document that we have before us is what the Bankers had submitted in relation to the JSC request.

**Mr. Al-Rawi:** The JSC, correct. Yes.

**Mr. Chairman:** I am aware of that.

**Mr. Al-Rawi:** That is what I just said.

**Mr. Chairman:** We are talking at cross purposes here, Attorney General. We are speaking at cross purposes. There is correspondence from the Bankers Association that does not appear in this package, written to someone and there was a view expressed that it might have been written to the Attorney General's office. All I am trying to clarify here is, does such a letter exist? Or what you are saying is that any correspondence that was written was written to the Office of the Attorney General or to the Ministry of Finance, and that has been circulated. What are you saying?

**Mr. Al-Rawi:** There was no correspondence written to the Office of the Attorney General, therefore there is none to supply.

**Mr. Chairman:** Okay. Sen. Ramdeen.

**Mr. Ramdeen:** Can I just to bring an end to this? Having regard to what the Attorney General has said, perhaps we can move forward if the Ministry of Finance would just supply copies of whatever was written to the Ministry by the stakeholders, and I do not think that the Chairman will have any difficulty in supplying that.

**Mr. Chairman:** Not at all.

**Mr. Ramdeen:** And that will bring an end to it.

**Mr. Chairman:** But the AG is putting on record that the Bankers Association did not write to him.

**Mr. Ramdeen:** And I am satisfied with that.

**Mr. Chairman:** Good. Okay, 14.

**Ms. Eversley:** All the correspondence, Chair, have been supplied, that were sent to the Ministry of Finance that we had copies.

**Mr. Chairman:** How was it supplied?

**Ms. Eversley:** It was supplied to the Committee –

**Mr. Chairman:** When?

**Ms. Eversley:** If not the last meeting, the meeting before.

**Mr. Chairman:** So it is in the system?

**Ms. Eversley:** It is in the system and it was circulated as hard copies.

**Mr. Chairman:** You have it already. You are saying, no, you do not have it?

**Mr. Ramdeen:** I am just saying I do not – it would not hurt –

**Mr. Chairman:** It is easy to check.

**Mr. Ramdeen:** Yes, just check.

**Mr. Chairman:** They are saying it has been sent to you already. I will double check that. And if it has not been sent to you already, it will be sent. Okay. 14 –

**Mr. Al-Rawi:** Number 13.

**Mr. Chairman:** No, well, that is in the correspondence that they have there. 13 is in the bundle of correspondence you have there, sent to the US treasury. Okay? The plan is a letter from me to them. 14: Advice of the Treasury Solicitor.

**Mr. Ramdeen:** I think this is important, Chair, for the purposes of just getting the Bill right, because I think different things were said at different points in time. If it is that we are going with the Bill now as in the form that it is now, then we should just know that that has been confirmed because it is different to what we were told at the fifth meeting, when it was said we will check. So it was open at the fifth meeting that we would check it and find out what the position is and I think the verbatim notes confirm that; what the position is with respect to section 117.

**Mr. Chairman:** Of the Income Tax Act.

**Mr. Ramdeen:** It was raised by your counsel, Chair.

**Dr. Gopeesingh:** And particularly subsection (6) and (7).

**Mr. Chairman:** We are on Item 14.

**Mr. Al-Rawi:** Right, I am on 14: “Copy of advice of the Treasury Solicitor referred to by AG in HOR, 13<sup>th</sup> February” –

**Mr. Chairman:** Go on the next page.

**Mr. Al-Rawi:** At the fifth meeting – right. Okay. I am just dealing with the first two lines. So we checked that. I did not make a statement to that effect. I was speaking about – if we check the *Hansard*, I was speaking about the discussions with the Solicitor General.

**Mr. Chairman:** So it was not the Treasury Solicitor.

**Mr. Al-Rawi:** No, so it was not that. On the next page, at the fifth meeting of the committee an issue arose as to the effect that the present legislation would have on section 117 of the Income Tax Act having regard – yes. And I had put onto the record that we would check to see what was arising there. BIR had suggested originally that there be some amendments or re-look at section 117. They then came back to and that they did not need to re-look at it. The committee then read our section 117, in particular subsections (2) and (3) and we were to look at that to see whether there was going to be any impact at all. We did look at it and we found that there is no impact, that the clause

as drafted is the way it should be.

**Mr. Chairman:** Okay, Sen. Ramdeen? Following proposed amendments, we looked at those, and I think that is the last page. Okay? So it appears that there is very little left to be done; not much left to be done. We have to check on the communications plan of the Ministry of Finance.

**Dr. Gopeesingh:** Just a short—

**Mr. Chairman:** Just a second Dr. Gopeesingh—

**Dr. Gopeesingh:** Go ahead. Finish and then I will come in. You want me to come--

**Mr. Chairman:** No, I do not. I would like to finish speaking.

**Dr. Gopeesingh:** Well, no, I want to ask—

**Mr. Chairman:** You can ask anything you want after “ah finish” speaking.

**Dr. Gopeesingh:** It came to my thinking just a short while ago.

**Mr. Chairman:** Yes, Dr. Gopeesingh, “let meh hear yuh”.

**Dr. Gopeesingh:** This Bill or the Act to come, reflects upon the Data Protection Act, the Income Tax Act—

**Mr. Chairman:** And you really could not wait until “ah finish” to tell us that?

**Dr. Gopeesingh:** Oh God, but you would not incorporate that.

**Mr. Chairman:** How you know that?

**Dr. Gopeesingh:** Well, you were trying to close the meeting.

**Mr. Chairman:** I was not.

**Dr. Gopeesingh:** Okay, well, you want me to come with it at the end?

**Mr. Chairman:** I want you to stop.

**Dr. Gopeesingh:** All right. Okay, I will wait.

**Mr. Chairman:** Thank you very much. So that with respect to the correspondence from Sen. Ramdeen, I would like us to settle on what we have agreed. I am taking it from the top. We have dealt with Items 1, 2, 3, 4, 5, 6, 7, 8—although we need clarification on 8; 9; we have to check on—10—we have to check on that. 8, 9, and 10 we have to check. 11, yes; 12, yes, but we are checking to make sure you got it, but we have been told you have. 13, you got that; 14 has been clarified. There was a little misunderstanding.

**Dr. Tewarie:** Should we, then, in that case, get the advice form the Solicitor General?

**Mr. Chairman:** I think he just said discussions. It was discussions.

**Dr. Tewarie:** Oh, it was just verbal.

**Mr. Chairman:** Yes, it was just verbal. Now you can speak, Dr. Gopeesingh.

**1.30 p.m.**

**Dr. Gopeesingh:** What the CPC had sent in, Chair, they had indicated— that is the Joint Select Committee request of 20<sup>th</sup> of January 2017, very detailed and congratulations to them. But in it, they indicated that certain other Acts need to be changed, amended— intended changes to the Central Bank Act and the Securities Act. That is page 2. And they went through a number of discussions on the roles of the Central Bank and Securities and Exchange and I think the Data Protection Act as well that needs certain amendments, and one more, distinguish information which would be automatically transmitted versus the information—on that page 28, the same thing they were saying; I could not understand the difference.



So, in summary, they indicated that they need to have certain changes with different Acts. Can we get an understanding of how they are going to proceed on that or what is going to happen? Certain amendments.

**Ms. Eversley:** Chair, those amendments are already contained in the Bill. They are from section 14, I believe. So the amendments to the Central Bank – let me just get it.

**Mr. Chairman:** Ms. Eversley, it is all right, you have answered the question. I was going to answer the question the same way. The Bill amends those Acts. Okay?

**Dr. Gopeesingh:** Okay, good.

**Mr. Ramdeen:** As a matter of housekeeping, now that there are those things that we say we will check, can we fix a time now by the Committee? So that is the next day, 4.00 p.m. on Monday.

**Mr. Chairman:** Tuesday at 4.00 p.m.

**Mr. Ramdeen:** Tuesday at 4.00 p.m. we will be able to go through back this list.

**Mr. Chairman:** Tuesday at 4.00 p.m.

**Mr. Ramdeen:** And the information will be ready?

**Mr. Chairman:** You will get a response to all of the outstanding matters which I hope that the Secretariat has faithfully recorded.

**Mr. Ramdeen:** You will then decide, Chair, whether there is a need for another meeting?

**Mr. Chairman:** No, I do not think we can have another meeting. I honestly do not think so, seriously. I just do not think we have the time to deal with it. But what are the matters? Hold on, hold on. What is the issue? Explain a possible need for another meeting.

**Mr. Ramdeen:** Well, just depending on the responses that you receive from those persons that you are going to consult with, with respect to the amendments.

**Mr. Chairman:** You are talking about (b) and (c)?

**Mr. Ramdeen:** Yeah.

**Mr. Chairman:** No, well, we are going to try and accommodate you. All right? And if we cannot, we will tell you we cannot accommodate you. I do not see any useful purpose in a meeting. We are going to try to accommodate you on (b) and (c). If we cannot, we are going to give you a written explanation as to why we cannot accommodate you.

**Mr. Ramdeen:** Right. And the Minutes of this meeting will be round robin to be confirmed?

**Mr. Chairman:** I am hoping – when can you get the Minutes out?

**Miss Jacob:** Monday.

**Mr. Chairman:** Monday. Monday when? 4.00 p.m. on Monday. Sen. Ramdeen, the Minutes will be round robin at 4.00 p.m. on Monday.

**Dr. Gopeesingh:** Chair, the issue of laying a report in Parliament, I would prefer that the report be an interim report.

**Mr. Chairman:** You are being anticipatory, Dr. Gopeesingh. You are being anticipatory.

**Dr. Gopeesingh:** I just want to advise that you could probably put it as an interim report.

**Mr. Chairman:** You are being anticipatory, Dr. Gopeesingh.

**Dr. Gopeesingh:** Because that is what we have difficulty with.

**Mr. Chairman:** You are being anticipatory. A report will be laid. Okay. It will be

circulated to members of the Committee. Members are free to sign or not sign the report but it will be a final report. It will be a final report. Okay?

**Dr. Gopeesingh:** Well, I just want to alert you, Chair, from my thinking – I do not know what my colleagues think, I am a member of the Committee – that if I am not satisfied with certain issues that you feel that you have come to a conclusion with, I would probably want to submit a minority statement.

**Mr. Chairman:** I have no objection to that and that is your right. When do you think we could have a report in? [*Discussion with Secretary*] When do you think you could get a response on proposed amendments (b) and (c)? Today?

**Mr. Al-Rawi:** Well, part of it involves finance – most of it involves finance.

**Mr. Chairman:** So when you think? Ms. Carter, did you see what they are asking for with respect to the (b) and (c) amendments from Sen. Ramdeen? Did you see it? Let us just go through it one time. That is the document submitted by Sen. Ramdeen, page 4 – the letter. You have a copy of this? And it is page 4 of the letter and it has a Roman iii over on the left-hand side. Are you seeing that, Ms. Carter?

**Ms. Carter:** Yes, I am seeing that.

**Mr. Chairman:** All right and the b is:

Before a reporting financial institution forwards sensitive personal information on an account holder in respect of a reportable account to the competent authority the reporting financial institution shall give 28 days notice to the account holder that their sensitive personal information is being forwarded to the competent authority pursuant to the provisions of this Act.

That is first one. We want to see if there are any implications there in terms of confidentiality or any arrangement we have with the United States or does this violate any law in the United States.

**Ms. Carter:** Minister, if I may. I find that is quite wide, I am not a US attorney so when you say any agreement, any legislation, I am a Trinidad and Tobago attorney so that is a very wide – [*Interruption*] So, I do not know if you can narrow a bit to more Trinidad and Tobago.

**Mr. Chairman:** Okay, based on what I just asked you, how long would it take you to respond?

**Ms. Carter:** Pardon me?

**Mr. Chairman:** How long would it take you to respond to the request I just made?

**Ms. Carter:** You mean, to look in the United States?

**Mr. Chairman:** To just see whether, if we agree to this, we violate any arrangements we have with the United States.

**Ms. Carter:** You mean with the United States?

**Mr. Chairman:** Yes, with the United States. With.

**Ms. Carter:** Even that and all, the only thing I can look at is with the double tax treaty or the tax information exchange agreement.

**Mr. Ramdeen:** “Dais all?”

**Mr. Chairman:** How long would it take you?

**Ms. Carter:** Well, it would not take me very long.

**Mr. Chairman:** How long is not very long?

**Ms. Carter:** Probably by Monday.

**Mr. Chairman:** What time?

**Ms. Carter:** At 7 o'clock in the morning.

**Mr. Chairman:** At 7.00 a.m. Monday?

**Ms. Carter:** Yes, I will give you a response.

**Mr. Chairman:** Assuming that it is within the narrow confines of what we have just discussed.

**Ms. Carter:** Yes.

**Dr. Tewarie:** No, I just wanted to say, I mean with all due respect, that this is not any agreement, it is the agreement under subsection (1) having to do with the BIR and the Treasury Secretary or his agent signing on an agreement to give effect to the operationalization of this –

**Mr. Ramdeen:** No, you have the wrong subsection. She is talking about b, not that.

**Dr. Tewarie:** Or, okay.

**Mr. Chairman:** Dr. Tewarie, did you intervene at the wrong time?

**Dr. Tewarie:** Yes I did. I am sorry.

**Mr. Chairman:** Would you kindly withdraw?

**Dr. Tewarie:** Yes, I will withdraw what I just said.

**Mr. Chairman:** Thank you. 7.00 a.m. on Monday. Okay, Ms. Carter?

**Ms. Carter:** Yes, Minister.

**Mr. Chairman:** And let us go to c now, that you insert a new clause:

Any agreement entered into between the competent authority and the Secretary of the United States Treasury under subsection (1) shall be laid in Parliament.

And the only concern we are had, Ms. Carter, that agreement flows from clause 18 of the Bill, and it talks about non-reporting financial institutions among other things, and we just want to see if we agree to put this clause in, whether we are going to be in violation of some confidentiality provision or something like that.

**Mr. Al-Rawi:** And the request is to the BIR for that.

**Mr. Chairman:** How long will it take you to respond to that?

**Ms. Carter:** I will respond the same 7 o'clock on Monday.

**Mr. Chairman:** 7.00 a.m. on Monday morning.

**Ms. Carter:** Yes, Minister.

**Mr. Chairman:** Fine, so you have your time lines down. Okay? Is there anything else anybody wants to raise?

**Mr. Ramdeen:** If the information is coming in on Monday, depending on the workload of the Secretary to the Committee, can we have whatever report that is going to be put to the House on Thursday in whatever form, can we have that by Tuesday instead of Wednesday?

**Mr. Chairman:** When do you think you can have the JSC report ready? Tuesday midday. The Secretary will try her best barring on foreseen circumstances, an invasion by another country or something like that.

**Mr. Ramdeen:** I am thinking while we speak.

**Mr. Chairman:** We have answered you.

**Mr. Ramdeen:** No, I am thinking while we speak, the only difficulty with that is that you have given yourself Tuesday as the deadline for the other things so you would not want –

**Mr. Chairman:** Which other things?

**Mr. Ramdeen:** The checks.

**Mr. Chairman:** So when you want it?

**Mr. Ramdeen:** Do not put the report before the timeline for the –

**Mr. Chairman:** So when do you want it?

**Mr. Ramdeen:** Well either two things we can do. You can push the report back to Wednesday morning or you can bring up –

**Mr. Chairman:** Let us do that. So Wednesday morning. Right? What time on Wednesday morning? 9.00 a.m. on Wednesday morning? Fine, that means you are getting it at least 24 hours before the debate. Dr. Tewarie, you have a problem with that?

**Dr. Tewarie:** No, I do not have a problem, Chair, but you know, I appreciate the Chair's position, which is that you do not see how it is possible to have another meeting and you do not think that it is necessary.

**Mr. Chairman:** "Nah", I honestly cannot see that.

**Dr. Tewarie:** All right, and you do not see the need for it.

**Mr. Chairman:** I did not say I did not see the need for it, I did not say – I said I cannot see that it is possible and as an alternative, we will use electronic communication.

**Dr. Tewarie:** Okay, well then, could I then ask that we try to ensure, notwithstanding what you said which is that you would like to put the report before Parliament – lay the report in the Parliament.

**Mr. Chairman:** Dr. Tewarie, let me clarify that. I will put the report before the Parliament.

**Dr. Tewarie:** Right that you will, and indicating that whoever wishes to sign is fine, whoever wishes to write a minority report, fine. I mean, could we try, during the time that we circulate this report, to have a report that, in fact, reflects a completion of the work of the Committee?

**Mr. Chairman:** Well, I think that is self-evident. I mean, the best solution is for you all to vote for the Bill, so I mean, obviously I am trying to accommodate you. I am not trying to make you not vote for the Bill which is one of the allegations made – one of the spurious allegations made in the debate last week. I am trying to get you to vote for the Bill, not to get you to vote against the Bill. Okay? So this meeting is adjourned. Sen. Roach.

**Mr. Roach:** I just want to ask. Is there anything that will prevent this Committee, what we have discussed, from being able to reach a – even by round-robin not having another meeting, to determine that this Bill will go through or not?

**Mr. Ramdeen:** Sen. Roach, that is not an issue for us to determine at the Committee, that is an issue for Parliament so do not force the Opposition to indicate a position now that we have the right to indicate in Parliament. Our job here as a Committee is to deal with it as a Committee.

**Mr. Roach:** No, but you do not understand what I am asking.

**Mr. Chairman:** I am a bit confused.

**Mr. Roach:** You understand what I am asking?

**Mr. Chairman:** Sen. Roach, could you just repeat?

**Mr. Roach:** I am asking at the end of the Committee's deliberation, is there anything outstanding that will stop us as the Committee from agreeing to, as what you say, this Bill as a complete Bill. Is that something that Parliament has to deal with, that is something that we are supposed to determine as far as I am concerned?

**Dr. Gopeesingh:** But we will have to await some of the responses that the honourable—

**Mr. Chairman:** So you are essentially saying that you are unable to say at this time?

**Dr. Gopeesingh:** Well, it was made clear that we look forward to certain responses.

**Mr. Chairman:** You are essentially saying you are unable to say whether there is anything else that could arise between now and Thursday? Just say yes or no. Either you are able to say there is nothing or you are unable to say whether there is something.

**Dr. Gopeesingh:** We await certain responses that you promised.

**Mr. Chairman:** So you are unable to say? Sen. Roach is asking a straight question. Is there anything else? And I get from what you are saying is that you are saying you are unable to say. You are not saying that? So what it is you are saying?

**Dr. Gopeesingh:** I repeat that we await the responses that are to come.

**Mr. Chairman:** Well, it appears, Sen Roach, you have an uncooperative witness here. Okay? The meeting is adjourned.

**1.44 p.m.:** *Meeting adjourned.*

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**Opposition's  
Comments on the  
Tax Information  
Exchange  
Agreements Bill**



## Joint Select Committee - The Tax Information Exchange Agreements Bill, 2016

**To:** Committee Members  
**Re:** Opposition's Comments on the Tax Information  
Exchange Agreements Bill, 2016  
**Date:** 18 January 2017

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### **I. Introduction**

This Memorandum lays out issues raised by the Opposition during debate of the Bill and includes specific comments in the Bill as amended in Committee stage on 6 January 2017. *The Opposition proposes that the amendments presented in its 12 December 2016 release be considered fully. Some of the amendments proposed in said release which have not been addressed by GORTT are listed below.*

### **II. Comments on the Bill as Amended on 6 January 2017**

*Below is a summary of issues the Opposition have with the Bill as amended in the Committee of the Whole in the House of Representatives on 6 January 2017.*

*Some minor drafting issues will be raised during the clause by clause analysis that the Committee will conduct. Further explanation of the below items will be provided during Committee meetings.*

#### 1. Sub-Clause 7(4)

This Sub-Clause is ambiguous and vague. The clause provides no safeguard to the financial institution to which this clause applies. The purpose of the Sub-Clause is to give the BIR the power to require the financial institution to provide the Board with requested information. However, there is grave lacuna in the clause because it fails to make provision for the following:-

(i) How is the request to be made from the BIR to the financial Institution?

(ii) There is no timeline fixed for the provision of the information by the financial institution.

(iii) What is no penalty if the financial institution fails to provide the information?

(iv) What powers does the Board possesses, if any at all, to enforce its request?

#### 2. Sub-Clause 7(7)

This Sub-Clause is inconsistent with Clause 8. Further, Sub-Clause 7(7)(c) may be void due to ambiguity and vagueness.

3. Clause 8

Regarding Sub-Clause 8(1) - there are the procedural protections that would have vested rights in citizens and if information is to be requested by a foreign country and is to be supplied by the BIR it should be supplied in accordance with law as presently exists and if the request cannot cross the threshold of enacted laws the information should not be provided. The enactment of this provision is simply an erosion of our characteristic as a sovereign democratic state. Why should a foreign country have to cross a lower threshold to obtain a citizen's personal information than any law enforcement authority in Trinidad?

We suggest that the CPC should review what laws are captured under 8(1)(c) and opine as to the necessity of sub-clause 8(1).

The penalty for Sub-Clause 8(2) should be increased in line with the penalties for disclosing private information such as Interception of Communication Act s. 23.

4. Clause 10, 11, 12 and 13

These Clauses remove procedural protections that would have vested rights in citizens and if information is to be requested by a foreign country and is to be supplied by the BIR it should be supplied in accordance with law as presently exists and if the request cannot cross the threshold of enacted laws the information should not be provided. Further these Clauses appear to be in conflict with Clause 7(7).

We suggest that the CPC should review these clauses and opine about the necessity of creating Data Protection Act exceptions.

5. Clause 18

The reach of the competent authority agreement found in Clause 18 will affect the manner in which participants in the financial system operate and therefore before any such step is taken there needs to be consultation with all stakeholders in the system that are potentially affected by the entering into this agreement.

Further, the expected contents of this agreement should be discussed by the Committee and the CPC should prepare a brief on the expected contents so

that the operation and costs of implementation/operation of the law are fully considered by the Committee.

6. Clauses 24, 25 and 26

Each of these Clauses empowers an authority (the Central Bank, the Securities and Exchange Commission, and the Insurance....) to make guidelines either in consultation with the Minister of Finance or subject to the approval of the Minister of Finance.

Putting this power in the hands of the Executive would clearly undermine the powers of the independent bodies (the Commission and the Central Bank) and would give the Minister powers that he ought not to have in relation to the governing of financial institutions. As indicated before this is a dangerous power to place in the hands of an executive functionary.

Guidelines to be developed should have Parliamentary oversight and the proposed contents of the various guidelines should be presented to the Committee so that the operation and costs of implementation/operation of the law are fully considered by the Committee.

7. Clause 27

This Clause gives the Minister blanket approval give the effect of law to any future changes to the IGA without disclosure, debate and approval of Parliament.

In order to ensure proper parliamentary oversight of tax sharing agreements, affirmative resolution of Parliament is required prior to any modification/amendment to the IGA becoming subject to the act.

Such protection will ensure that if different/additional infringements to privacy rights are required then Parliament approves the sharing of the private information.

One may question whether the Minister may by Order waive persons' privacy rights without parliamentary scrutiny.

8. Clause 28

This Clause should be amended so that it only protects persons acting in good faith from liability if confidential information is disclosed inappropriately under the Act. Raising the standard should have a deterrent effect.

**III. Comments on further provisions which should be considered by the Committee**

*Below are a decriptions of some of the more major amendments proposed in 12 December 2016 by the Opposition. These amendments should form part of the Committee's discussions.*

1. The Opposition proposed amendments to introduce Regulations subject to parliamentary oversight for certain provisions of the Bill.
2. The Opposition proposed amendments which give an affected person the right to access information through the Freedom of Information Act
3. The Opposition proposed amendments that require the U.S. have privacy protections at least as strong as Trinidad & Tobago for any information shared via the FATCA Legislation before information is shared.

**Comparative Brief  
submitted by Chief  
Parliamentary  
Counsel**

## CARICOM FACTA COUNTRIES

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
Antigua and Barbuda	Agreed in substance Model 1	-	-	-	-
Bahamas	In Force 9/17/2015 Model 1B	Bahamas and United States of America Foreign Account Tax Compliance Agreement Act, 2015	-	-	This Act was not considered as Bahamas signed a different agreement from Trinidad and Tobago
Barbados	In Force 9/25/2015 Model 1	Income Tax (Amendment) (No. 2) Act, 2015 and the Income Tax (Automatic Exchange of Information) Regulations, 2015.	-	yes	Barbados by section 83 of the Income Tax Act makes provision for Double Taxation relief by way of an international Agreement. Under section 83 where Barbados enters into an agreement with another State with respect to the avoidance of double taxation, the prevention of fiscal evasion or other matters relating to taxation of income the Agreement has the force of law in

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>Barbados. The Minister is empowered by that Act to make regulations subject to negative resolution for the purpose of carrying out the Agreement.</p> <p>Barbados also has a Data Protection Act that was introduced in 2005. It is uncertain how the sharing of this information which amounts to personal information under the Data Protection Act under these provisions would be affected by the Data Protection Act. Penalties for breaches of the Regulations are fines of \$10,000.00 and imprisonment for 2 years for summary conviction and \$50,000.00 and 10</p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>years for on conviction on indictment.</p> <p>Since Trinidad and Tobago already had legislation governing the sharing of tax information with the United States which gave effect to an agreement concluded in 1989 and the IGA Agreement signed between Trinidad and Tobago and the United States speaks to the existence of that Agreement the approach by Trinidad and Tobago was to amend the TIEA Act of 1989 to include the IGA 2016. When one looks at the Regulations prepared by Barbados, which is relative to the IGA, the Competent Authority is the Minister of</p>



Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>finance. The Regulations make provisions for the reporting requirements and the obligations on financial institutions. Under the Financial Institutions Act where guidelines have been issued by the Central Bank and the Financial Institution fails to comply with directions or guidelines attracts a penalty under section 86(9) of as much as five million dollars and five hundred thousand dollars for each day. In terms of directors or officers, employees or agents there is also a penalty of five years imprisonment. Trinidad and Tobago also enacted Data</p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<b>Protection legislation and as such provision is made in the T&amp;T Bill to recognise the existing Act and to allow the sharing of personal information to occur.</b>
Dominica	Agreement in substance Model 1	-	-	-	-
Grenada	In Force (16 <sup>th</sup> June, 2014)	No legislation passed to date			-
Jamaica	In Force 9/24/2015 Model 1 A	Revenue Administration (Amendment) Act, 2015. The Revenue Administration (International Tax Compliance Agreement (Jamaica and the United States of America) Regulations, 2015	-	yes	Revenue Administration (Amendment) Act, 2015 In 1985 Jamaica enacted legislation to create a Revenue Authority. In 2015 that Act was amended to include provisions relative to International Tax Compliance. Under that new Part, Part VID the Competent

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>Authority is defined as the Minister with responsibility for finance or any other person as he designates in writing.</p> <p>The Part empowers the Minister to make regulations to give effect to any international agreement for the exchange of financial or other information which will be used for tax purposes.</p> <p>The substantive provisions relative to the IGA are contained in the Regulations. The provisions of the regulations are similar to what is contained in Part III of the TIEA Bill, 2017 including providing for the obligations in relation to</p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>financial accounts.</p> <p><b>As mentioned above Trinidad and Tobago has in existence a Tax information Exchange Agreement Act and as such the approach by Trinidad and Tobago was to amend the TIEA Act of 1989 to include the IGA 2016. When one looks at the substantive provisions in the Jamaican Revenue Administration (International Tax Compliance Agreement (Jamaica and the United States of America) Regulations, 2015 the provisions are substantively what are contained in Part II of the TIEA Bill. Jamaica currently does not have a Data Protection</b></p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<b>Act unlike Trinidad and Tobago. So it will be interesting since the draft Data Protection Bill will be tabled this year in Jamaica to see how it will impact the sharing of personal information under the Jamaica legislation.</b>
Montserrat	Signed Model 1	-	-	-	-
St. Christopher and Nevis	In Force 4/28/2016 Model 1A	Foreign Account Tax Compliance (United States of America) (Implementation and Enforcement of Inter-Governmental Agreement) Act, 2015 (Act No 3 of 2015)	-	-	Foreign Account Tax Compliance (United States of America) (Implementation and Enforcement of Inter-Governmental Agreement) Act, 2015 gave the entire Agreement the force of law in St. Christopher and Nevis. Provision is made in the Act to empower the Minister to by

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>Order amend the Schedule with no Parliamentary oversight where amendments were made to the Agreement. The Financial Secretary is the Competent Authority for the purpose of the Act to administer and process requests made under the Agreement and to render assistance and to facilitate the administration of the Agreement. The Financial Secretary functions under the Financial Administration Act. Under the Act the Competent Authority requests information from the Financial Institution failing which an offence is committed for which a penalty</p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>of one hundred thousand dollars can be imposed. This does not put into effect the automatic exchange as contemplated by the Agreement. Provision is made for immunity from suit and confidentiality. The Act empowers the Minister to make Regulations in respect of the Agreement which are subject to Negative Resolution of Parliament.</p> <p><b>Since Trinidad and Tobago already had legislation governing the sharing of tax information with the United States which gave effect to an agreement concluded in 1989 and the IGA Agreement signed between Trinidad and</b></p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>Tobago and the United States speaks to the existence of that Agreement the approach by Trinidad and Tobago was to amend the TIEA Act of 1989 to include the IGA 2016. The T&amp;T Bill makes provision for the automatic exchange of information without the Competent Authority having to first make a request. Again the penalties for breaches of guidelines under the Financial Institutions Act and the Securities Act are quite substantial. Trinidad and Tobago also enacted Data Protection legislation and as such provision is made in the T&amp;T Bill to recognise</p>



Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<b>the existing Act and to allow the sharing of personal information to occur.</b>
St. Lucia	Signed Model 1A	Inter-Governmental Agreement (Saint Lucia and the United States of America) Act, 2016.	yes		The St. Lucia Act seeks to implement procedural matters and leaves substantive matters for the Regulations. <b>Part I</b> of the Act provides for the Competent Authority but does not define the Competent Authority. It therefore relies on the Agreement to define the term. It requires the Competent Authority to exchange information in accordance with arrangements set out in one of the Schedules. <b>Part II</b> of the Act provides the powers of the Competent

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>Authority which includes the power to enter any premises or place of business of a Reporting Saint Lucia Financial Institution. No consent appears to be required. The Competent Authority is empowered to delegate to a public officer the discharge of any of his functions as he sees fit. <b>The T&amp;T Bill makes no provision for entry without consent as it is not seen to be a necessary power to be given. Further the Regulatory bodies already have those powers for entry in their parent legislation.</b> Provision is made for the confidentiality of documents and information</p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>which comes into the possession of the Competent Authority. A penalty of ten thousand dollars and imprisonment for two years is provided for breaches of confidentiality. Provision is also made to give the competent Authority and persons employed in carrying out the provisions of the Act immunity from Civil proceedings.</p> <p><b>Part II</b> of the Act sets out the obligations of Financial Institutions in St. Lucia in respect of following the due diligence requirements.</p> <p>The provisions contained in the Part are very procedural in nature and are specific as to how</p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>the Competent Authority would operate in relation to Financial Institutions in St. Lucia and procedural requirements for Financial Institutions in St. Lucia. Provision is made for the retention of records and for a third party to carry out the obligations of a Financial Institution under the Act.</p> <p><b>The T&amp;T legislation leaves the procedural matters to be developed in guidelines to be prepared by the various Regulatory bodies such as the Central Bank and the Trinidad and Tobago Security and Exchange Commission.</b></p> <p><b>Part III</b> of the Act provides for the</p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>penalties applicable under the Act. A penalty of five thousand dollars is imposed on a Financial Institution for failing to comply and two thousand dollars for every month the offence continues. Where a Financial Institution makes a false statement or omission in respect of any information the Finical institution is liable to a penalty of fifty thousand dollars. Also where a Financial Institution does not comply with a requirement of the Competent Authority the penalty is fifty thousand dollars for each failure. Provision is made to give the Financial Institution the ability to say that it had a</p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>reasonable excuse for the breaches. The Financial Institution can object to the assessed penalties. <b>Under the T&amp;T Bill the Central Bank which is the regulator of Banks and Insurance Companies and the Trinidad and Tobago Security and Exchange Commission are empowered to make guidelines for Financial Institutions in respect of the TIEA Act. The Central Bank and the Trinidad and Tobago Security and Exchange Commission under its powers can deal with Financial Institutions which fail to comply with guidelines issued by it. Under the Financial Institutions Act</b></p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<p>where guidelines have been issued by the Central Bank and the Financial Institution fails to comply with directions or guidelines attracts a penalty under section 86(9) of as much as five million dollars and five hundred thousand dollars for each day. In terms of directors or officers, employees or agents there is also a penalty of five years imprisonment. Similar penalties exist for breaches of guidelines and failure to comply with directions under the Securities Act (S.90) It is also uncertain how the St. Lucia FACTA Legislation can be resolved having regard to</p>

Country	IGA Model	Legislation	Existing TIEA	Double taxation treaty	Legislative differences with Trinidad and Tobago's TIEA (US) Bill
					<b>the privacy principles that exist in their Data Protection Act, 2011.</b>
St. Vincent and the Grenadines	In Force 5/13/2016 Model 1	Foreign Account Tax Compliance (Implementation and Enforcement of Inter-Governmental Agreement) Act 2015	-	-	Foreign Account Tax Compliance (Implementation and Enforcement of Inter-Governmental Agreement) Act 2015 This Act is very similar to that enacted by St. Christopher and Nevis and the comments above therefore apply.
Trinidad and Tobago	Signed Model 1		yes	-	



**Chief Parliamentary  
Counsel's  
Response to request  
for Information**

**CHIEF PARLIAMENTARY COUNSEL'S RESPONSE TO  
JOINT SELECT COMMITTEE REQUEST  
OF 20<sup>TH</sup> JANUARY, 2017**

- (a) Prepare brief on the intended changes to the Central Bank Act and the Securities Act.
- (b) Prepare a brief on the proportionality of the suggestion to increase the fine in clause 8 to two hundred and fifty thousand dollars and five years imprisonment. Examine similar offences.
- (c) Examine clause 10 to determine whether there are any typos.
- (d) Examine the effect of clauses 10-12.
- (e) Prepare brief to distinguish information that will be automatically transmitted versus information that will require consent by an individual.
- (f) Prepare a brief to consider the effect of guidelines being approved by negative resolution in clause 24.
- (g) Consider the effect of a negative resolution procedure for clause 27 as modified and its annexes.

**(a) Prepare brief on the intended changes to the Central Bank Act and the Securities Act.**

In respect of the Central Bank Act, two substantive amendments are being made to the Central Bank Act. The first amendment would introduce the definition of “declared agreement” as the term will be introduced in the Act. The definition refers to both the 1989 TIEA and the 2016 IGA as being declared Agreements. A small amendment is required to the definition however to now reflect the new short title of the Act- “the Tax Information Exchange Agreements (United States of America) Act, 2016”. The second substantive amendment would amend section 36 of the Act which sets out the authorised business of the Central Bank. Currently section 36 sets out the business of the Central Bank as follows:

- (a) *issue and redeem notes and coins in accordance with Part II;*
- (b) *issue demand drafts and other kinds of remittances made payable at its head office or at the office of its branches, agencies or correspondents;*
- (c) *purchase, and sell gold coin and bullion;*
- (d) *open accounts for and accept deposits from –*
  - (i) *the Government;*
  - (ii) *the Tobago House of Assembly and statutory authorities;*
  - (iii) *such other public authorities as the Minister may from time to time approve;*
  - and*
  - (iv) *financial institutions;*
- (e) *purchase from, sell to, discount and rediscount on behalf of the bodies, authorities and institutions referred to in paragraph (d) bills of exchange and promissory notes issued for commercial, industrial or agricultural purposes and maturing within one hundred and eighty days from the date of acquisition;*
- (f) *purchase and sell treasury bills and securities of or guaranteed by –*
  - (i) *the Government;*
  - (ii) *the Government of the United Kingdom; or*
  - (iii) *such other Governments or international financial institutions as may be designated by the Minister on the advice of the Bank;*
- (g) *with the approval of the Minister, acquire, hold and sell shares or other securities of any statutory body or any company registered under the Companies Act for the purpose of promoting the development of a money or securities market in Trinidad and Tobago or for financing the economic development of Trinidad and Tobago so, however, that total holdings of the shares do not exceed the aggregate total of the paid-up capital and the General Reserve Fund of the Bank;*
- (h) *with the approval of the Minister, make contributions to the capital of, or advances to international financial organisations;*
- (i) *grant to the bodies, authorities and institutions referred to in paragraph (d)(ii), (iii) and (iv) on such terms and conditions as the Bank may from time to time determine, advances for fixed periods not exceeding six months on the security of any of the following:*
  - (i) *gold coins or gold bullion;*
  - (ii) *Treasury Bills of the Government;*

- (iii) *securities issued or guaranteed by the Government;*
- (iv) *such bills of exchange and promissory notes as are eligible for purchase, discount or rediscount by the Bank;*
- (v) *warehouse warrants or their equivalent securing possession of goods in respect of finished or semi-finished products duly insured and secured with a letter of hypothecation from the owner; but in the event of any such debt due to the Bank becoming in the opinion of the Bank endangered, the Bank may secure the debt on any real or personal property of the debtor and may in the event of default secure that property, which may be sold as soon as practicable thereafter;*
- (vi) *such other securities as may from time to time be approved by the Bank;*
- (j) *purchase and sell foreign currencies and foreign bills of exchange;*
- (k) *open accounts with and keep accounts for central banks and international financial institutions and with other banks outside of Trinidad and Tobago and utilise any such accounts as the Bank thinks expedient for due performance of the functions of the Bank;*
- (l) *make arrangements or enter into agreements with any commercial bank or financial institution outside of Trinidad and Tobago to borrow, in such manner at such rate of interest and upon such other terms and conditions as it may think fit, such sums as the Bank may think it expedient to acquire for the purpose of its operations;*
- (m) *underwrite any Government loans in which it may invest;*
- (n) *undertake the issue and management of loans to be issued in Trinidad and Tobago by the Government or by any public authority;*
- (o) *act as agent to the Government in respect of exchange control;*
- (p) *accept for custody securities and other articles of value;*
- (q) *undertake on behalf of customers and correspondents the purchase, sale, collection and payment of securities and credit instruments within and outside of Trinidad and Tobago and the purchase or sale of gold and silver;*
- (r) *establish and maintain in conjunction with commercial banks operating in Trinidad and Tobago a clearing house in Port-of-Spain and in such other places as the Bank may consider necessary;*
- (s) *acquire, hold and transfer or otherwise dispose of special drawing rights (and any foreign exchange proceeds resulting from their use) constituting assets of the account authorised by section 4(6) of the International Financial Organisations Act;*
- (t) *purchase, acquire, lease, sell, let, sublet or create licences over, or otherwise dispose of, real property or any part thereof and provide in connection therewith ancillary services;*
- (u) *lend, borrow or invest in securities other than those specified in this section, but such loans, borrowings and investments shall not exceed ten per cent of the total assets of the Bank for the financial year in which the loans, borrowings or investments are initially made;*
- (v) *give a guarantee and pay any sums and any interest thereon in fulfilment of any such guarantee in respect of any activities in discharge of its functions under this Act or the Financial Institutions Act;*

- (w) *promote the establishment or expansion of bodies to develop and expand the money and capital markets and to provide assistance, including financial assistance to such bodies;*
- (x) *establish subsidiary companies;*
- (y) *provide, for the benefit of—*
  - (i) *the Bank, or for value for any of its subsidiaries or affiliates;*
  - (ii) *the State, any of its agencies, organs, departments, the Tobago House of Assembly or any statutory authority; or*
  - (iii) *any international financial institution, research functions, computer maintenance and security services and such other services as may be related to any activities under this Act;*
- (z) *trade in notes or coins;*
- (aa) *engage in the following:*
  - (i) *effect contracts, the purpose of which is to manage its assets and liabilities;*
  - (ii) *borrow through the issue of bonds or other appropriate instruments in the exercise of its functions under paragraphs (c) and (d) of section 3(3), subject to the condition that the amount outstanding on such borrowings shall not exceed twenty-five per cent of the total assets of the Bank or such other amount as the Minister may approve;*
  - (iii) *establish sinking funds for the redemption of the instruments referred to in subparagraph (ii);*
- (bb) *do any other banking business or carry on any activity not prohibited by this Act which may be requisite, advantageous, convenient or incidental to or consequential upon the discharge of its functions; and*
- (cc) *supervise the operations of payments systems in Trinidad and Tobago generally, Interbank Payment Systems in accordance with the Financial Institutions Act and the transfer of funds by electronic means including money transmission or remittance business."*

The amendments would see a new paragraph (dd) being inserted to require the Central Bank to now supervise financial institutions and insurance companies on the implementation of declared agreements as one of the Central Bank's authorised business.

In respect of the Securities Act, seven substantive amendments are being made to the Securities Act. The first amendment would introduce the definition of "declared agreement" as the term will be introduced in the Act. The definition refers to both the 1989 TIEA and the 2016 IGA as being declared Agreements. A small amendment is require to the definition however to now reflect the new short title of the Act- "the Tax Information Exchange Agreements (United States of America) Act, 2016".

The second substantive amendment would amend section 7. Section 7 of the Securities Act sets out the powers of the Securities and Exchange Commission as follows:

- (a) *formulate principles for the guidance of the securities industry;*
- (b) *treat with such matters as may be referred to it by any person from time to time;*
- (c) *register and regulate market actors in accordance with this Act;*

- (d) *monitor the solvency of registrants that are entities, securities markets and self-regulatory organisations and take measures to protect the interest of investors where the solvency of any such person is in doubt;*
- (e) *adopt measures to supervise and minimise any conflict of interest that may arise in the case of registrants or self-regulatory organisations and where appropriate other market actors;*
- (f) *review, approve and regulate takeovers, amalgamations and all forms of business combinations in accordance with this Act or any other written law in all cases in which it considers it expedient or appropriate to do so;*
- (g) *review the contents of prospectuses and issue receipts therefor, and review any form of solicitation, advertisement or announcement by which securities are proposed to be distributed;*
- (h) *take enforcement action against any person for failing to comply with this Act;*
- (i) *recommend Bye-laws to the Minister;*
- (j) *formulate, prepare and publish notices, guidelines, bulletins and policies describing the views of the Commission regarding the interpretation, application, or enforcement of this Act;*
- (k) *make orders;*
- (l) *monitor the risk exposure of registrants and self-regulatory organisations and take measures to protect the interest of investors, clients, members and the securities industry;*
- (m) *undertake such other activities as are necessary or expedient for giving full effect to this Act; and*
- (n) *do all things, and take all actions, which may be necessary, expedient, incidental or conducive to the discharge of any of its functions and the exercise of its powers under this Act.*

The amendment would see the inclusion of a new paragraph (ja) which would empower the Commission to formulate, prepare and publish, guidelines in respect of declared agreements.

The Securities Act is also being amended in section 14. Section 14 provides that information is required to be kept confidential and not be disclosed. Subsection (2) provides exceptions to the requirement for non-disclosure. The section is being amended to allow disclosure of personal information by the Board for the purpose of a declared agreement.

Section 19 of the Act is also being amended. Section 19 provides for the Commission to consult with certain agencies. The section is being amended to include consultations with the competent authority in respect of declared agreements.

Section 89 empowers the Commission to review the books, records and other documents of a registrant or self-regulatory organisation. The amendment would allow such review to occur in respect of compliance with a declared agreement.

Section 90 of the Act empowers the Commission to issue compliance directions to a registrant or self-regulatory organisation. The amendment would allow directions to be

issued where there is a breach of any requirements of guidelines in respect of a declared agreement.

Section 146 of the Act empowers the Commission to make guidelines. The Act is now being amended to empower the Commission to issue guidelines in respect of declared agreements.

**(b) Prepare a brief on the proportionality of the suggestion to increase the fine in clause 8 to two hundred and fifty thousand dollars and five years imprisonment. Examine similar offences.**

Clause	Offence	Penalty	Similar Offence /comparative penalty
New clause 8	Using or disclosing personal information for purpose other than for what information obtained	\$30,000.00 and two years	<p><b>The Central Bank Act, Chap. 79:02</b> by section 56 requires every director, officer and employee of the Bank to preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Bank, any financial institution or person registered under the Insurance Act or of any customers thereof that may come to his knowledge in the course of his duties. Breach of this requirement attracts a penalty under subsection (2) of a fine of six thousand dollars and to imprisonment for two years.</p> <p><b>The Securities Act, Chap. 83:02</b> <b>Section 14.</b> (1) provides that subject to subsection (3) no person shall make use of or disclose any confidential information other than for the administration or enforcement of the Act.</p>

		<p>Breach of this section attracts a penalty of six hundred thousand dollars and to imprisonment for two years.</p> <p><b>The Data Protection Act, Chap. 22:04</b> by section 95 provides a penalty of-</p> <p>(a) fifty thousand dollars or to imprisonment for a term of three years; and</p> <p>(b) conviction on indictment, to a fine of not more than one hundred thousand dollars or to imprisonment for a term of not more than five years.</p> <p><b>The Anti-doping Act, 2013</b> by section 36 requires information coming to the knowledge of certain persons to be kept secret and confidential the penalty for breach of this provision on summary conviction is a fine of twenty-five thousand dollars.</p> <p><b>Public Procurement Act</b> by section 39 requires a procuring entity to comply with requirements with respect to the confidentiality of information. Breach of this section attracts a penalty of \$500,000 on summary</p>
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			<p>Conviction and imprisonment for one year.</p> <p><b>Whistleblowers Protection Bill, 2015</b> by clause 22 (1) provides for the confidentiality of information received for the purpose of receiving, investigating or otherwise dealing with a disclosure under the Act. The penalty provided for under subsection (2) is on summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years.</p>
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Under the TIEA Bill the Central Bank which is the regulator of Banks and Insurance Companies and the Trinidad and Tobago Security and Exchange Commission are empowered to make guidelines for Financial Institutions in respect of the TIEA Act. The Central Bank and the Trinidad and Tobago Security and Exchange Commission under their powers can deal with Financial Institutions which fail to comply with guidelines issued by them. Under the Financial Institutions Act where guidelines have been issued by the Central Bank and the Financial Institution fails to comply with directions or guidelines attracts a penalty under section 86(9) for as much as five million dollars and five hundred thousand dollars for each day. In terms of directors or officers, employees or agents there is also a penalty of five years imprisonment. Similar penalties exist for breaches of guidelines and failure to comply with directions under the Securities Act (S.90).

(c). Clause 10 contains the following typos:  
 Insert after the words "Reportable Account" the words "if the person". The amended clause would therefore now reads as follows:

"Notwithstanding sections 6, 38 and 40 of the Data Protection Act, a financial institution may, for the purpose of the IGA, process sensitive personal information collected by it in the normal course of business in relation to an account holder of a Reportable Account **if the person** is a United States Person."

Clause 11(1) also contains a typo as follows: Insert after the words "United States Person" the words "which is". The amended clause would now read as follows:

“ 11(1) Notwithstanding sections 6, 30 and 31 of the Data Protection Act, the Competent Authority shall for the purposes of the IGA, receive sensitive personal information on a United States Person **which is** in the possession of a financial institution in respect of Reportable Accounts.”.

#### **(d). The Effect of clause 10**

Clause 10 of the Bill occurs in Part II of the Bill which deals with the 1989 TIEA. The provision sets out the types of taxes under tax laws of the United States of America that are the subject of tax information sharing under the 1989 TIEA Agreement.

The clause reads:

“ 10. The following taxes imposed by, or on behalf of the United States of America apply to this Part:

- (a) Federal Income taxes;
- (b) Federal taxes on self-employment income;
- (c) Federal taxes on transfers to avoid income tax;
- (d) Federal estate and gift taxes; and
- (e) Federal excise taxes.”.

This is provided for in Article 2(1)(a) of the 1989 TIEA. So where the US IRS requires tax information in respect of US nationals in relation to those types to taxes, the Agreement and clause 10 of the Bill recognises that information would be shared in that regard.

The converse taxes which are to be provided to Trinidad and Tobago’s Board of Inland Revenue are also contained in Article 2(1)(b) of the 1989 TIEA Agreement.

The taxes applicable to Trinidad and Tobago citizens are:

- (a) The Income Tax
- (b) The Corporation Tax
- (c) The Petroleum Profits Tax
- (d) The Unemployment Levy.

The US IRS is therefore required to provide tax information on Trinidad and Tobago citizens in respect of these types of taxes. Since this however is an obligation of the United States IRS, Article 2(1)(b) is not contained in our legislation.

#### **(d) Examine the effect of Clauses 10-12**

##### **THE DATA PROTECTION ACT**

New clause 8 provides for the collection, sharing and disclosure of personal information under new Part II (1989 TIEA). This clause re-enacts section 7(1) of the TIEA Act, with amendments to recognise the enactment of the Data Protection Act, Chap. 22:04. Clauses 10, 11, 12 and 13 also provide for the collection, sharing and disclosure of personal information for the purposes of the IGA 2016 in light of the Data Protection Act. Additionally, because the Constitution of Trinidad and Tobago provides by section 4 that persons in Trinidad and Tobago have a right to private life. Section 5 of the Constitution provides that the State should not enact legislation that contravenes that right.

The Data Protection Act was enacted in 2013 to provide additional protection to personal data in the hands of private or public bodies or persons. Under the TIEA(US) Bill, some of the information that is to be provided on an automatic basis to the US IRS amounts to personal information under the Data Protection Act, it therefore becomes necessary to see how the collection, processing, use and sharing of such personal information contravenes the Data Protection Act. Under the Data Protection Act, personal information is defined as:

*“personal information” means information about an identifiable individual that is recorded in any form including –*

- (a) *information relating to the race, nationality or ethnic origin, religion, age or marital status of the individual;*
- (b) *information relating to the education or the medical, criminal or employment history of the individual or information relating to the financial transactions in which the individual has been involved or which refers to the individual;*
- (c) *any identifying number, symbol or other particular designed to identify the individual;*
- (d) *the address and telephone contact number of the individual; and*
- (e) *the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal the information about the individual.”.*

The following are the personal information that are the subject of the TIEA Bill:

- (a) *the name, address and USTIN of a Specified United States Person that is an account holder;*
- (b) *the name, address and USTIN of any of a Non-US Entity that are after the application of the due diligence procedures is identified as having one or more controlling persons that is a specified United States Person and the name, address and USTIN of each United States person;*
- (c) *the account number or functional equivalent in the absence of an account number;*
- (d) *the name and identifying number of the Reporting Financial Institution;*
- (e) *the account balance or value including in the case of Cash Value Insurance Contract or a Annuity Contract, the case value or surrender value as at the end of the relevant calendar year or appropriate reporting period or the appropriate reporting period or, if the account was closed during that year, immediately before closure;*
- (f) *in the case of a Custodial Account-*
  - (i) *the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account, or with respect to*

- the account during the calendar year or other appropriate accounting period; or*
  - (ii) *the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period to which the Reporting Financial Institution acted as a custodian, broker, nominee or otherwise as an agent for the account holder;*
- (g) *in the case of a Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other reporting period; and*
- (h) *in the case of any account not distributed in paragraph (f) or (g), the total gross amount paid or credited to the account holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligator or debtor including the aggregate amount of any redemption payment made to the account holder during the calendar year or other appropriate reporting period.*

“A United States person” is defined to be a citizen of the United States of America or resident individual, a partnership or corporation organised in the United States of America or under the laws of the United States of America or any State thereof, a trust if-

- (a) *a court within the United States of America would have authority under applicable law to render orders or judgements concerning substantially all issues regarding administration of the trust; and*
- (b) *one or more United States person has the authority to control all substantial decisions of the trust or an estate of a decedent that is a citizen of resident of the United States of America.*

The Data Protection Act was assented to 22<sup>nd</sup> June, 2011 and partly proclaimed. Sections 7-18, 22, 23, 25(1) and 28 came into operation on 6<sup>th</sup> January, 2012. The Data Protection Act sets out requirements for public bodies holding personal information on persons and allows private bodies to develop a regulatory framework based on a sector basis. However, there are some principles that apply to both public and private sector.

For the purpose of the Bill, the following sections of the Data Protection Act are referred to:

Section 6 of the Data Protection Act which applies to the public and private sector contains the following general privacy principles which are to be observed in respect of personal information:

- (a) an organisation shall be responsible for the personal information under its control;
- (b) the purpose for which personal information is collected shall be identified by the organisation before or at the time of collection;
- (c) knowledge and consent of the individual are required for the collection, use or disclosure of personal information;

- (d) collection of personal information shall be legally undertaken and be limited to what is necessary in accordance with the purpose identified by the organisation;
- (e) personal information shall only be retained for as long as is necessary for the purpose collected and shall not be disclosed for purposes other than the purpose of collection without the prior consent of the individual;
- (f) personal information shall be accurate, complete and up-to-date as is necessary for the purpose of collection;
- (g) personal information is to be protected by such appropriate safeguards having regard to the sensitivity of the information;
- (h) sensitive personal information is protected from processing except where otherwise provided for by written law;
- (i) organisations are to make available to individuals documents regarding their policies and practices related to the management of personal information except where otherwise provided by written law; and
- (j) organisations shall, except where otherwise provided by written law, disclose at the request of the individual, all documents relating to the existence, use and disclosure of personal information, such that the individual can challenge the accuracy and completeness of the information.

Since the general privacy principles recognise the requirement for the consent of the person to whom the personal information refers, that the personal information should only be retained for as long as necessary for the purpose collected, that the personal information is to be protected by appropriate safeguards except where otherwise provided by written law it is necessary to provide that the personal information could be disclosed even though those provisions exist.

Section 30 prohibits the collection of personal information by a public body unless that collection is allowed by or under a written law if it is for the purpose of law enforcement or if it relates directly to an operating programme or activity of the public body. The TIEA (US) Bill therefore would allow the receipt of personal information not on all persons but only on United States persons.

Section 31 of the Data Protection Act requires the public body in collecting personal information to collect it directly from the individual. Since the information would be collected by financial institutions and forwarded to the Board of Inland Revenue it was necessary to allow the Board to receive that information indirectly.

Section 38 of the Data Protection Act prevents personal information that is in the custody or control of a public body from being used unless consent is first obtained and only for the purpose for which it was obtained or compiled. Since under the TIEA (US) Bill, the exchange of tax information would be will be automatic there will be no opportunity for consent to be obtained. It would therefore be necessary to allow the personal information to be used even though consent was not obtained.

Section 41 of the Data Protection Act specifically prohibits personal information in the possession of a public body from being disclosed without the consent of the person to

whom the personal information relates. Since the information would have to be forwarded automatically, the TIEA (US) Bill is therefore required to allow the disclosure of the personal information by the Board of Inland Revenue without the consent of the person to whom the personal information relates.

Section 46 of the Data Protection Act requires that where personal information is to be disclosed by a public body to a party residing outside of Trinidad and Tobago, the public body must inform the person to whom the public information relates as to the reason for the request and the identity of the party making the request and obtain the person's consent. The public body cannot disclose the personal information without the consent. However, even if the person to whom the information relates does consent to the disclosure of his personal information, the jurisdiction to which the information is being sent must have comparable standards to Trinidad and Tobago for the protection of personal information. The United States of America has no Data Protection legislation and therefore does not have comparable standards for the protection of personal information. It is therefore necessary to provide for the disclosure of the personal information to the US IRS.

Section 69 of the Data Protection Act provides for the application of the general privacy principles under section 6 to the private sector.

**(e) Distinguish information which would be automatically transmitted versus the information which will be automatically transmitted**

Clause 12 of the Bill provide for the disclosure of “**sensitive personal information**” by the competent authority (BIR) to the Secretary to the US Treasury on an automatic basis, once every year (annually).

Sensitive personal information is not all or any information which the competent authority (BIR) receives or possesses. It is only the information of the type defined as “sensitive personal information” in clause 9. That is information which (1) identifies the tax subject (person or entity), (2) identifies the account, (3) identifies the financial institutions and (4) indicates the balance, value or revenue generated from (proceeds of sale, interest, dividends etc) the relevant type of account (reportable account)-

*“sensitive personal information” means-*

- (j) *the name, address and USTIN of a specified United States Person that is an account holder;*
- (k) *the name, address and UNTIN, if any, of a Non-US Entity that are after the application of the due diligence procedures set out in Schedule 4 is identified as having one or more controlling persons that is a Specified United States Person and the name, address and USTIN of each United States Person;*
- (l) *the account number or functional equivalent in the absence of an account number;*
- (m) *the name and identifying number of the Reporting Financial Institution;*
- (n) *the account balance or value, including, in the case of a Cash Value Insurance Contract or Annuity Contract, the cash value or surrender value*

- as at the end of the relevant calendar year or the appropriate reporting period or, if the account was closed during that year, immediately before closure;
- (o) in the case of a Custodial Account-
    - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account, or with respect to the account, during the calendar year or other appropriate accounting period; and
    - (ii) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period to which the Reporting Financial Institution acted as a custodian, broker, nominee or otherwise as an agent for the account holder;
  - (p) in the case of a Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
  - (q) in the case of any account not distributed in paragraph (f) or (g), the total gross amount paid or credited to the account holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligator or debtor including the aggregate amount of any redemption payment made to the account holder during the calendar year or other appropriate reporting period;

By virtue of clause 11 (2), **all other information**, is confidential. This information shall not be disclosed to anyone without the consent of the person to whom the information relates.

**(f) Considerations in respect of making the Guidelines subject to the negative resolution of Parliament: Clause 24**

**1. Guidelines are not a legislative instrument.**

Under section 53 of the Constitution the Parliament may make law" for peace, order and good governance of T&T. Given the mode of exercising legislative power (section 61 Of the Constitution), "law" in section 53 refers to "written law". Section 75 of the Interpretation Act defines "*written law*" as "*the Constitution, the Constitutional Instrument, Acts, subsidiary legislation or applied written law, and includes part of a written law.*".

The making of these is the role of the Parliament.

Guidelines are not a type of subsidiary legislation or other written law, they are administrative documents usually issued by a regulator/ administrator and address procedural versus substantive (obligations or entitlements) matters.

The ordinary/ dictionary meaning of guideline applies. That is, (1) a general principle or advice; or (2) information intended to advice a person on the manner in which something is to be done.

2. The power of the Central Bank to issue guidelines is not otherwise subject to Parliamentary scrutiny.

Under clause 10 of the Financial Institutions Act, the Central Bank presently may issue (without Parliamentary scrutiny) guidelines on any matter it considers necessary to “(a) give effect to the Act, (b) enable Central Bank to meet its objective, and (c) aid compliance with Proceeds of Crime, the Anti-Terrorism Act...(d) regulate the market conduct of licensees.

Similarly, section 146 of the Securities Act, provides that the Commission may issue guidelines without parliamentary scrutiny.

This Bill was inserting a level of oversight (approval of the Minister) for the purpose of the TIEA that does not otherwise exist.

3. “Breach” of a guideline under section 10 of the FIA does not constitute an offence. In keeping with the nature of guidelines, the Financial Institutions Act and the Securities Act expressly provide that the breach of a guideline does not constitute an offence. In both instances a contravention of a guideline authorizes the regulator to issue compliance directions (an administrative remedy). The procedure for the issue of a compliance direction includes notice and an opportunity to respond etc. (natural justice measures).  
**Note:** Section 146 of the Securities Act expressly state that guidelines issued by the Commission shall not be considered a statutory instrument.

4. Typical rationale for providing for guidelines in legislation.

Providing for the issue of guidelines in legislation either in addition to or as an alternative to subsidiary legislation (e.g. Regulations) is often to facilitate efficiency in regulation (responsiveness and timeliness).

If the Bill is amended to provide for the making of Regulations, subject to negative resolution instead of guidelines, for the purpose of the TIEA, the objective of efficiency and responsiveness may be undermined.



**(g) The effect of a negative resolution procedure for Clause 27**

In considering this proposed change, it is important to distinguish (1) the modification of the international agreement from (2) the modification of the Schedule (which contains the international agreement).

The former (**the amendment of an international agreement**) is an executive function. As such, separation of powers would suggest that this function is not subject to parliamentary scrutiny.

The rule that the amendment of international agreements is an executive function is a well-established common law rule that applies to Trinidad and Tobago and the rest of the Caribbean in the absence of expressed treaty-making powers our Constitution. It was expressed by Lord Atkin in the popularly quoted case of *Attorney - General for Canada v. Attorney-General for Ontario* as follows:

*"within the British Empire there is a well established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action."*

It follows that an amendment to the IGA itself ought not to be subject to negative or affirmative resolution of Parliament.

The latter, (**the amendment of the Schedule**) is a legislative function. This legislative function may be carried out by the Parliament or through delegated (subsidiary) legislation that is authorized by the Parliament in an Act. Clause 27 seeks to provide for amendment through subsidiary legislation (an Order). Such an amendment may be subject to negative resolution.

However, it should be noted that this Bill does not contain a provision which gives legal effect to the Schedule or the IGA as set out in the Schedule (automatic incorporation). Instead various obligations are given legal effect through the specific provisions of the Bill.

As such, an amendment to the Schedule cannot by itself change the obligations of the persons to whom the legislation apply beyond the provisions of the Bill. If the IGA is modified to an extent that changes the obligations provided for in the Act, an amendment to the substantive provisions of the Act (not just the Schedule) would be required to give effect to same.

Also, the language of the Agreement places obligations on the State. Specific legislation would be required to provide for the manner (persons and procedures) in which these obligations will be performed in domestic law.

# Questions to Stakeholders

*The following are questions (1-16) that require responses from:*

**CENTRAL BANK OF TRINIDAD AND TOBAGO**

1. Does the Central Bank and the Board of Inland Revenue (BIR) have any formal or informal arrangements for exchange of information, between the two entities?
2. In similar vein, does the Central Bank and the Securities and Exchange Commission have arrangements for exchange of information between the two entities?
3. What information can the Central Bank ask a bank for under current laws?
4. How is this likely to change with the passage of the Tax Information Exchange Agreements legislation?
5. What will be the role of the Inspector of Banks in relation to an individual bank in Trinidad and Tobago?
6. In what ways can the Inspector of Banks enforce compliance by an individual bank?
7. What is the anticipated role and responsibility of the Central Bank with the passage of Tax Information Exchange Agreements legislation? Is the Central Bank comfortable with its anticipated role?
8. What are the lawful terms and conditions, if any, under which the Board of Inland Revenue, the Central Bank, the Securities and Exchange Commission and an individual bank can collaborate to determine facts about an individual or corporate entity?
9. Is there an individual office within the Central Bank that holds insurance companies to account?
10. Are there any important differences between what this person/office does and what the Inspector of Banks does?
11. What are the financial institutions impacted upon by the legislation?
12. What is the relationship among Central Bank, BIR and United States of America Treasury Secretary?

13. What is Central Bank's understanding of the financial information which it is required of it to provide under the proposed legislation?
14. Approximately, how many institutions and individuals will be impacted by this legislation?
15. Who directly, in the Central Bank, will be dealing with the Financial Information and ensuring confidentiality of such?
16. How many financial institutions have already signed agreements with corresponding institutions in the USA and which are they?

*The following are questions (17-18) that require responses from:*

**SECURITIES AND EXCHANGE COMMISSION**

17. Does the Securities and Exchange Commission and the Central Bank have any formal or informal arrangements for exchange of information between the two entities?
18. What are the lawful terms and conditions, if any, under which the Securities and Exchange Commission, the Board of Inland Revenue, the Central Bank and an individual bank can collaborate to determine facts about an individual or corporate entity?

*The following are questions (numbered 19-23) that require responses from:*

**BANKERS ASSOCIATION OF TRINIDAD AND TOBAGO**

19. What are the lawful terms and conditions, if any, under which an individual bank, the Board of Inland Revenue, the Central Bank and the Securities and Exchange Commission can collaborate to determine facts about an individual or corporate entity?
20. How many banks/financial institutions signed on with corresponding institutions in the USA?

21. How does this legislation affect:
- (a) National Banks, for example, First Citizens Bank Limited, Republic Bank Limited etc.
  - (b) Foreign-Owned Banks, for example, Scotiabank Trinidad and Tobago Limited, RBC Royal Bank (Trinidad and Tobago) Limited, Bank of Baroda (Trinidad and Tobago) Limited, etc.
22. What is their understanding of what is required of them with this legislation?
23. What assurances can you give the national community that private and personal information of citizens, companies, etc. do not enter the wrong hands and maintain the confidentiality?

*The following are questions (numbered 24-32) that require responses from:*

**BOARD OF INLAND REVENUE**

24. Does the BIR and Central Bank have any formal or informal arrangements for exchange of information between the two entities?
25. What are the lawful terms and conditions, if any, under which the Board of Inland Revenue, the Central Bank, the Securities and Exchange Commission and an individual bank can collaborate to determine facts about an individual or corporate entity?
26. (a) What is the relationship among BIR, Central Bank and United States of America Treasury Secretary?
- (b) What will be the Board's inter-active relationships with the Banks, Financial Institutions, Central Bank and Treasury Secretary of the USA?
27. What is the degree of readiness of the Board for implementation of the processes required as the custodian of financial information from institutions?
28. How does the Board propose to receive the financial information whether by hardcopy or electronic format?

29. Are the resources financial, human and administrative available at present, and if not how do you propose to satisfy these requirements before the timeline of September 2017?
30. Is there a proposal to educate the general public of the requirements to be satisfied with the enactment of the Tax Information Exchange Agreements legislation?
31. Is information available on:
  - (a) the number of nationals and non-nationals affected by this Bill?
  - (b) the value of taxes that might be under consideration?
32. What are the possible illegalities which the BIR might have committed prior to this legislation which:
  - (a) will need to be addressed and made legal by enactment of the Tax Information Exchange Agreements?
  - (b) may be determined through the Judicial System, if any?

**January 23, 2016**

# **Written Submissions from Stakeholders**



**Bankers Association  
of Trinidad & Tobago**

**PROPOSED ANSWERS TO QUESTIONS 19 – 23 – QUESTIONS TO STAKEHOLDERS  
– JSC TAX INFORMATION EXCHANGE AGREEMENT BILL (2016)**

*19 – What are the lawful terms and conditions, if any, under which an individual bank, the Board of Inland Revenue, the Central Bank and the Securities and Exchange Commission can collaborate to determine facts about an individual or corporate entity?*

Banks do not collaborate with any of the entities mentioned for the purpose of determining facts about its depositors or customers. There are limited instances where Banks can disclose depositor or customer information pursuant to applicable legislative authority.

For example, pursuant to the Financial Institutions Act, the Central Bank has a general power to obtain information from licensees and is empowered to stipulate the form the information should take and the time within which such information is to be furnished (Section 78). Failure to supply information pursuant to any such request constitutes an offence. This general power is counterbalanced by the general prohibition on disclosure of information by the Central Bank's directors, employees or officers except in prescribed circumstances (Section 8).

Another example of allowable disclosure may be found in the Income Tax Act which prescribes that a Bank may be summoned before the BIR for the purpose of determining any objection made by an individual to an assessment of tax. This is subject to the proviso that the individual making the objection is to be notified that a request for information is being made of a Bank, and that individual is afforded a right of objection and can appeal to a Judge in Chambers to rule on that objection (Section 117).

Otherwise, Section 55 prevents disclosure of confidential information of depositors and customers except where the disclosure is required by compulsion of law, there is a public duty to so do, a licensee's interest requires disclosure or where a depositor or customer consents. This prohibition works to prevent Banks from sharing depositor or customer information with any entity for any purpose. This prohibition prompts the need for this Bill to be enacted to give effect to the IGA.

REGISTERED OFFICE: c/o Institute of Banking and Finance of Trinidad and Tobago, 16 Gray Street, St Clair, P.O. Box 1259, Port of Spain,  
Tel: (868) 622-0282, 628-2944 Fax: (868) 628-9718 Email: [secretariat@batt.org.tt](mailto:secretariat@batt.org.tt), Website: [www.batt.org.tt](http://www.batt.org.tt)

Communications to: Corporate Secretary c/o Institute of Banking and Finance of Trinidad and Tobago

Member Banks: Citibank (Trinidad & Tobago) Ltd., Bank of Baroda (Trinidad and Tobago) Ltd., First Caribbean International Bank (Trinidad & Tobago) Ltd.,  
First Citizens Bank Ltd., JMMB (T&T) Limited, Republic Bank Ltd., RBC Royal Bank (Trinidad and Tobago) Ltd., Scotiabank Trinidad and Tobago Ltd.





**Bankers Association  
of Trinidad & Tobago**

**20 – How many banks/financial institutions signed on with corresponding institutions in the USA?** All Banks operating in Trinidad and Tobago have correspondent banking relationships with US Banks to facilitate international transactions. Correspondent banks form part of the infrastructure by which money moves in and out of the banking system. This facilitates individual as well as business needs for the transfer monies, and for export and import. As the US is a major link with Trinidad and Tobago for all of these purposes, US correspondent banks are critical. These banks are subject to FATCA and to compliance with US laws. If Trinidad and Tobago is not FATCA compliant, it is very likely that these US correspondent banks will deem the country non-compliant, and therefore high risk for doing business.

**21 How does this legislation affect:**

- (a) **National Banks, for example, First Citizens Bank Limited, Republic Bank Limited etc.**
- (b) **Foreign-Owned Banks, for example, Scotiabank Trinidad and Tobago Limited, RBC Royal Bank (Trinidad and Tobago) Limited, Bank of Baroda (Trinidad and Tobago) Limited, etc.**

The Government has signed an IGA with the US and therefore failure to operationalize the IGA affects both foreign and local banks equally as the country will be viewed as not complying and possibly reneging on its international commitments.

Among the numerous consequences of failure to pass the legislation, is the potential loss of correspondent banking relationships. Foreign banks, through the strength of their parent banks, will have a stronger likelihood of maintaining correspondent banking relationships than local banks. Trinidad and Tobago could experience a similar state of affairs as befell Belize in 2016, when, as a result of regulatory shortcomings, correspondent banking relationships were terminated country wide with all but two Banks which had international affiliations.

**22 - What is their understanding of what is required of them with this legislation?**

Banks will be required to:

- a) Undertake certain identification and due diligence procedures involving our new and existing customers to identify reportable accounts
- b) Report annually to the Board of Inland Revenue information on (1) customers who are U.S. persons or foreign entities with substantial U.S. ownership (2) accounts of certain customers who fail to provide sufficient information to determine whether or not they are a U.S. person.



**Bankers Association  
of Trinidad & Tobago**

**23. *What assurances can you give the national community that private and personal information of citizens, companies, etc. do not enter the wrong hands and maintain the confidentiality?***

a. Under the FATCA data exchange protocols, financial institutions and the host country tax authority (e.g. the BIR) will be required to transmit and exchange FATCA data with the United States via an International Data Exchange Service (IDES). This system allows the Financial Institutions, banks, IRS and the BIR to exchange tax payer information securely and privately. It is a secure web application where the sender encrypts the data and IDES encrypts the transmission pathway to protect the transfers.

b. Banks currently maintain and store all customer information securely and privately. Existing controls and standards will remain.

c. The national community ought to be made aware that only information on US persons will be sent to the BIR under this proposed legislation and no other TT citizens. As regards those US persons caught by the reporting obligation, it should be noted that they are already under an obligation to report their worldwide income to the IRS. This legislation does not impose any new, expanded or enhanced obligation. It is simply providing legislative authority and a mechanism for Banks to provide the information directly to the IRS as agreed in the IGA between the Trinidad and Tobago and US Governments.





**Bankers Association  
of Trinidad & Tobago**

**FATCA Enabling Legislation – High Level Regional Comparison**

Country	Trinidad and Tobago	Jamaica	Barbados
<b>FATCA Enabling Legislation</b>	Tax Information Exchange Agreements Bill	By Amendment to the Revenue Administration Act, 1985	Income Tax (Automatic Exchange of Information Regulations, 2015 made under the income Tax Act
<b>Competent Authority</b>	Board of Inland Revenue. Central Bank may issue regulations to give effect to the IGA	Minister of Finance, who may make regulations to give effect to any international agreement	Minister of Finance
<b>Specific parameters of information</b>	Refers to “information to administer and enforce any law concerning the taxes...” as well as “sensitive personal information”	As specified in the Revenue Administration Act as amended.	As specified in the Income Tax (Automatic Exchange of Information Regulations, 2015
<b>Secrecy/Confidentiality</b>	An FI and the BIR can receive and process sensitive personal information for purposes of the Tax Information Exchange Agreements Act, notwithstanding certain sections of the Data Protection Act. This is the case even without the Bill except the remit of the BIR is in relation to local taxes as it now stands.	Obligations of an FI and Revenue Authority remain and extend to the foreign information exchange reporting information;  The information which can be shared in the Banking Services Act is imported by the amendment.	FIs and the Competent authority to ensure information is confidential and disclosed only to legally entitled authorities including Courts and the administrative bodies charges with the collection and assessment of taxes covered by the IGA.

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Communications to: Corporate Secretary c/o Institute of Banking and Finance of Trinidad and Tobago

Member Banks: Citibank (Trinidad & Tobago) Ltd., Bank of Baroda (Trinidad and Tobago) Ltd., First Caribbean International Bank (Trinidad & Tobago) Ltd., First Citizens Bank Ltd., JMMB (T&T) Limited, Republic Bank Ltd., RBC Royal Bank (Trinidad and Tobago) Ltd., Scotiabank Trinidad and Tobago Ltd.

			To be used for taxation purposed only.
<b>Legislative Amendments</b>	Income Tax Act Central Bank Act Financial Institutions Act Insurance Act Securities Act	Information permitted is information already covered under the Banking Services Act	None applicable
<b>Offences for Breach</b>	For breach of confidentiality – on summary conviction - 30,000 and imprisonment for 2 years.	For breach of confidentiality- on summary conviction to J\$1,000,000 or imprisonment of a term not more than nine months or both	Various – for a failure of an FI to provide the requested information to the Competent Authority, not for breach of confidentiality.
<b>Suggested amendments</b>	Amend section 7 to qualify information as “sensitive personal information”.  Amendment to s.117 as proposed of the Income Tax Act is necessary.  Amend offences to be on conviction, and a fine or imprisonment or both.		



**MINISTRY OF FINANCE  
INLAND REVENUE DIVISION  
Office of the Chairman  
TRINIDAD HOUSE, ST.VINCENT STREET, PORT OF SPAIN, TRINIDAD AND TOBAGO.  
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Tel. 868-623-4921 Fax 868-627-7967**

**JSC Tax Information Exchange Agreements Bill, 2016  
Written Submission**

24. *Does the BIR and Central Bank have any formal or informal arrangements for exchange of information between the two entities?*

*Response:*

- There is no formal arrangement for exchange between these two agencies.
- BIR adheres strictly to the confidential provisions under Section 4 of the Income Tax Act.
- Electronic information on cashed refund cheques are sent to the BIR from Central Bank.

25. *What are the lawful terms and conditions, if any, under which the Board of Inland Revenue, the Central Bank, the Securities and Exchange Commission and an individual bank can collaborate to determine facts about an individual or corporate entity?*

*Response:* There are no existing formal or informal terms and conditions under which the identified entities collaborate.

Notes:

- The objection section of BIR is allowed to get information from the banks with respect to any taxpayers whose objection they are dealing with. This is provided for under Section 117(2) of the Income Tax Act.
- The Proceeds of Crime Act allows for the court to issue a production order requesting information from BIR in relation to a taxpayer (individual or entity).

26 (a) *What is the relationship among BIR, Central Bank and United States of America Treasury Secretary?*

(b) *What do you envisage as your inter-active relationships with the Banks, Financial Institutions, Central Bank and Treasury Secretary of the USA?*

*Response:*

26 (a) (i) BIR & Central Bank –

- Banking: BIR deposits tax payments to the Central Bank. Central Bank receives wire transfers for the payment of taxes by international companies on behalf of IRD
- Cheques: Central bank sends information on cashed cheques to BIR

(b) (i) BIR & FIs:

- FIs will provide additional information as requested by BIR in order to fulfill request(s) made by the US Treasury Secretary (s7(4))
- BIR will receive financial information from FIs within nine months after the end of calendar year

(ii) BIR & Central Bank

- Receive periodic information on FIs in Trinidad and Tobago for compliance purposes
- Collaborate for public awareness initiatives

(iii) BIR & United States of America Treasury Secretary:

- BIR will respond to queries raised by the US Treasury Secretary
- BIR will provide the information to the US Treasury Secretary based on the form and manner specified by the Secretary to the Treasury
- Provide certified copies of relevant documentation and serve as witness in deposition matters
- Provide taxpayer data (s8(1))

27. *What is your degree of readiness for implementation of the processes required as the custodian of financial information from institutions?*

*Response:*

Degree of Readiness:

- a. Exchange of Information (EOI) Unit
  - a. The EOI unit has been given the additional responsibilities for the implementation of FATCA
- b. Staffing:
  - a. Existing staff from IRD will be utilized initially to form the unit because of the criticality of implementing FATCA. Some staff have already joined the unit (total 3 staff)
  - b. Request for staffing to back-fill in areas where staff were removed will be addressed through appropriate medium
- c. Processes & Procedures
  - a. High level processes have been developed. Processes include:
    - i. Registration by FI
    - ii. Submission of information
    - iii. Non-compliant FIs
  - b. Procedures are being finalized
- d. Actions Item:

- a. IRD has identified additional necessary actions required for implementation
- e. Software Application
  - a. An application for the receipt of data and onward submission to the USIRS has been developed. Testing will begin on February 2<sup>nd</sup> 2017.
  - b. FATCA data is logically separated from other data stored by IRD
  - c. Access Control – authorizations to access the data are based on separation of duties. Unauthorized IRD staff are isolated from the system.
  - d. Security Considerations:
    - i. Encryption of data at various stages - data at rest, data in motion and data at endpoints
    - ii. Restrictions based on IP addresses
  - e. IRD successfully completed the review by the USIRS
- f. Data Classification & Storage – all correspondences relating to FATCA is classified as confidential. Documents relating to FATCA are stored in Fire proof cabinets in a dedicated office area.
- g. Supporting Policies:
  - a. Clean Desk – at various stages of implementation
  - b. Section (4) – Oath of Secrecy covers all IRD operations, including FATCA

28. *How do you propose to receive the financial information whether by hardcopy or electronic format?*

*Response:* IRD will receive the financial information details in electronic format

29. *Are the resources financial, human and administrative available at present, and if not how do you propose to satisfy these requirements before the timeline of September 2017?*

*Response:*

- a. Financial :
  - a. Additional costs are minimum
- b. Human Resources:
  - a. Existing staff are being utilized/reassigned, in the short term, for the implementation.
  - b. Proposal
    - i. Additional staff to replace reassigned staff will be addressed through appropriate medium.
    - ii. Filling of vacancies in areas such as IT, Audit & Compliance
- c. Administrative:
  - a. Existing administrative resources will be leveraged on, in the short term
  - b. Proposal
    - i. Submit requirements for additional administrative resources

30. *Is there a proposal to educate the general public of the requirements to be satisfied with the enactment of the Tax Information Exchange Agreements legislation?*

Response:

1. Yes
  - a. Consultations with FIs
  - b. General information on FATCA (IRD's website)
  - c. FAQs on IRD website
  - d. IRD help desk and email contact account
  - e. Public awareness programmes
  - f.

*31. Is information available on:*

- (a) the number of nationals and non-nationals affected by this Bill?*
- (b) the value of taxes that might be under consideration?*

Response:

- (a) Total no. of Non-resident registered - estimated 1,500  
Dual citizen not recorded in the system
- (b) Information not available

*32. What are the possible illegalities which the BIR might have committed prior to this legislation which:*

- (a) will need to be addressed and made legal by enactment of the Tax Information Exchange Agreements?*
- (b) may be determined through the Judicial System, if any?*

*Response:*

- There have been no illegalities committed

**January 26, 2017**





**MINISTRY OF FINANCE  
INLAND REVENUE DIVISION**

**Office of the Chairman**

**TRINIDAD HOUSE, ST.VINCENT STREET, PORT OF SPAIN. TRINIDAD AND TOBAGO.**

**Web site: <http://www.ird.gov.tt>**

**Tel. 868-623-4921 Fax 868-627-7967**

February 3, 2017

Ms. Keiba Jacob  
Secretary  
Parliament  
Republic of Trinidad and Tobago

Dear Ms. Keiba

**Request for Submission on Tax Information Exchange Agreements Bill, 2016**

Reference is made to your letter dated February 1, 2017 on the above captioned subject. Responses are attached at Appendix I.

Yours Sincerely

*A. Raphael*

Chairman, Board of Inland Revenue

<b>Appendix I – Responses from BIR</b>		
<b>No.</b>	<b>Request</b>	<b>Response</b>
1	How many permanent staff work at BIR?	Total Number of Establishment Position: 1055 Total number of Contract, Short Term, Other: 209 Total: 1264
2	How many unfilled posts exist?	Positions Unfilled/Vacant: 324
3	How many officers with three year contracts or longer work at BIR?	Total number of 3+ year contracts = 105
4	How many persons are on short term contracts and what do these short term contracted officers do?	Total - 86 <ul style="list-style-type: none"> <li>• 1 Book Binder performing duties of binding IRD documents at the District Revenue Services Office- <i>See duties attached</i></li> <li>• 1 Organizational Improvement Coordinator - <i>See duties attached</i></li> <li>• 78 Revenue Monitors- <i>See duties attached</i>. Their services have been retained in the interim of the pending Cabinet approval for the renewal of the contract positions of PAYE/VAT Monitors.</li> <li>• 6 IT Positions</li> </ul>
5	How automated is the BIR as a department?	At least 80 % of the tax administrative functions are fully automated at BIR. An integrated tax processing system was implemented in 2008 and significant enhancements have been to the system to incorporate the core tax functions ranging from return, payments, taxpayer maintenance, audit, collection, compliance and appeal processing.
6	How confidential is the BIR as an institution?	BIR is governed by the secrecy provisions in the Income Tax Act. Section 4 (1) of the Act requires every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment lists, and copies of such lists relating to the income or items of the income of any person, as secret and confidential. Staff must take an Oath of Secrecy prior to assuming work at IRD. Information on taxpayers are based on role of function of the staff. That is, staff can only access taxpayer information based on their assignment and the work that they have to do.
7	What is the main job of the BIR?	The Inland Revenue is a Division of the Ministry of Finance. It

	What are its principal functions?	<p>serves as the principal tax collecting agency in Trinidad and Tobago. The organization is managed by a Board of five (5) Commissioners, one of whom is appointed Chairman. Board members are charged with the primary responsibility of administering taxes in Trinidad and Tobago, in accordance with Section (3) of the Income Tax Act Chapter 75:01.</p> <p>Eighteen (18) main tax types are administered, namely: Income Tax, Corporation Tax, Petroleum Tax, Value Added Tax, Lands and Buildings Taxes, Hotel Accommodation Tax, Financial Services Tax, Insurance Premium Tax, Insurance Surrender Tax, Auctioneers', Money Lenders and Pawn Brokers Licenses, Withholding Tax, Stamp Duty, Green Fund, Unemployment Levy, Business Levy and Health Surcharge.</p>
8	Explain how the institution goes about its work in any given year?	A 5-year Strategic Plan is developed to guide IRD's work. Work plans are prepared and monitored to ensure that targets are met in keeping with strategic objectives.
9	How many institutions in Trinidad and Tobago (TT) does the BIR have direct access to in terms of information and/or research?	<p>Section 117 of the Income Tax Act 75:01 gives BIR the power to inspect books and records held by any taxpayer.</p> <p>BIR receive information from third parties including Government Departments.</p>
10	Which institutions under law, are you currently allowed to ask for information about taxpayers?	Section 117 of the Income Tax Act 75:01 gives BIR the power to inspect books and records held by any taxpayer.
11	Which institutions under the law, can ask the BIR for information about taxpayers?	The Proceeds of Crime Act allows for the court to issue a production order requesting information from BIR in relation to a taxpayer (individual or entity).
12	How many times since 1989 have you provided information to a US authority? Which ones? Has the provision of such information been in strict compliance with the law? If yes, please give reasons for non-compliance? How many involved US taxpayers?	<p>Number of times information provided to US authority: 11 (since 2006)</p> <p>Information provided to : US Treasury Secretary</p> <p>Yes, information has been in compliance with law</p> <p>Number of US taxpayers involved: 6</p>
13	How many times have the BIR sought information about a TT taxpayer from a US authority? Please indicate which ones? Has a US authority ever not complied with a BIR request?	<p>Total No of requests to US for citizen information: 2</p> <p>Information requested from: US Treasury Secretary</p> <p>Total No of times information was not provided to T&amp;T: 1</p>

14	How do informal relationships work in such a situation between the BIR and its US counterpart?	<p>Information exchange is based on formal relationship. A copy of the agreement is available at:  <a href="http://www.ird.gov.tt/Media/Default/IRDTreaties/DTT-USA--1971.pdf">http://www.ird.gov.tt/Media/Default/IRDTreaties/DTT-USA--1971.pdf</a></p> <p>Information exchange provisions based on Article 24 of the tax treaty/convention and article 4 of the TIEA between the Government of Trinidad and Tobago and the government of the United States of America, require exchanged information to be kept secret and subjected to the same disclosure constraints as information obtained under the laws of the requesting State. Received information may only be disclosed to and used by courts, administrative bodies and others involved in and for the purposes of assessment, collection, or administration, enforcement or prosecution, or determination of appeals concerning the taxes covered by the agreement</p>
15	How efficiently and effectively would you say you do you work now? Please rank from 1 to 10 with 10 being the <b>best you can be</b> .	7.5 / 10
16	What increased demand will compliance with FATCA make on the BIR?	<p>Demands are anticipated in the following areas:</p> <ol style="list-style-type: none"> <li>1. Compliance</li> <li>2. Query Management</li> <li>3. Storage Management</li> </ol>
17	What preparations has the BIR made for FATCA?	<p>Preparations:</p> <ol style="list-style-type: none"> <li>a. Exchange of Information (EOI) Unit       <ol style="list-style-type: none"> <li>a. The EOI unit has been given the additional responsibilities for the implementation of FATCA</li> </ol> </li> <li>b. Staffing:       <ol style="list-style-type: none"> <li>a. Existing staff from IRD will be utilized initially to form the unit because of the criticality of implementing FATCA. Some staff have already joined the unit (total 3 staff)</li> <li>b. Request for staffing to back-fill in areas where staff were removed will be addressed through appropriate medium</li> </ol> </li> <li>c. Processes &amp; Procedures       <ol style="list-style-type: none"> <li>a. High level processes have been developed. Processes include:           <ol style="list-style-type: none"> <li>i. Registration by FI</li> <li>ii. Submission of information</li> <li>iii. Non-compliant FIs</li> </ol> </li> <li>b. Procedures are being finalized</li> </ol> </li> <li>d. Actions Item:       <ol style="list-style-type: none"> <li>a. IRD has identified additional necessary actions</li> </ol> </li> </ol>

		<p>required for implementation</p> <ul style="list-style-type: none"> <li>e. Software Application <ul style="list-style-type: none"> <li>a. An application for the receipt of data and onward submission to the USIRS has been developed. Testing will begin on February 2nd 2017.</li> <li>b. FATCA data is logically separated from other data stored by IRD</li> <li>c. Access Control – authorizations to access the data are based on separation of duties. Unauthorized IRD staff are isolated from the system.</li> </ul> </li> <li>f. Security Considerations: <ul style="list-style-type: none"> <li>a. Encryption of data at various stages - data at rest, data in motion and data at endpoints</li> <li>b. IRD successfully completed the review by the USIRS</li> </ul> </li> <li>g. Data Classification &amp; Storage – all correspondences relating to FATCA is classified as confidential. Documents relating to FATCA are stored in Fire proof cabinets in a dedicated office area.</li> <li>h. Supporting Policies: <ul style="list-style-type: none"> <li>a. Clean Desk – at various stages of implementation</li> <li>b. Section (4) – Oath of Secrecy covers all IRD operations, including FATCA</li> </ul> </li> </ul>
18	How prepared are you to comply with FATCA requirements on Trinidad and Tobago’s behalf?	80 % ready
19	How will the BIR secure additional resources that it might need to be effectively functional and compliant?	<p>IRD proposes to manage the demands for increased staff by:</p> <ul style="list-style-type: none"> <li>(1) Meeting with Service Commission Department to fill existing vacancies</li> <li>(2) Use existing staff as back fill (initial estimate – 6 staff)</li> <li>(3) Contracts renewal</li> <li>(4) Short term employment</li> <li>(5) Identify new positions required for FATCA</li> </ul>
20	What does the term “competent authority” mean to you?	<p>“Competent Authority” means that BIR will now be better able to improve its compliance activities by receiving financial information not previously obtained. In addition, BIR will continue its relationship with the US Treasury on exchange of information.</p> <p>BIR’s systems and procedures will be benchmarked against international best practices and standards</p>
21	How prepared is the BIR for this role?	80 % prepared

22	Do you have any concerns about playing the role once the FATCA Bill is passed?	No
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## **Book Binder**

- 1) Performs any one of a wide variety of skilled tasks such as binding, composing, ruling cutting operating presses.
- 2) Records Land & Building Returns and Assessment Rolls for binding from various Warden Offices.
- 3) Repairs and binds Land & Building Returns and Assessment Rolls and other printed material including binding book covers and numbering pages by hand or by press.
- 4) Cuts Straw Boards to cover Assessment Rolls and Land & Building Returns.
- 5) Cuts books, paper and printed press for Assessment Rolls and Land & Building Returns when required to do so
- 6) Any other required duties

## **Organizational Improvement Coordinator**

- 1) The preparation of a Strategic Plan for the Inland Revenue Division for the period 2017 – 2022.
- 2) The relocation of the Inland Revenue Division to the Government Campus building.
- 3) The submission of a proposal for an Organization Performance Management Unit.
- 4) The setting up of the Corporate Communications Unit when the Manager, Corporate Communication assumes duty, which includes sitting on the interview panel.
- 5) The completion of the second phase of a previous two-fold project of the new defunct Reform Unit which produced an Accounting Procedure Manual and processes streamlines for the Accounting Unit. A similar assistance is expected from the Organizational Improvement Coordinator towards the completion of an HR Unit's Manual and standardization of its procedures in collaboration with the Senior Human Resource Officer.
- 6) Assistancess in the area of Communication.



## **IT Solutions Developer**

### *Roles and Responsibilities:*

- Receives business client work requests. Ensures that these requests are recorded and processed through established change management processes.
- Processes client work requests and conducts business analysis of request to provide business client with viable and efficient recommendations, costs and estimated timelines.
- Follow change management procedures to receive formal management approval, to establish priority, to establish estimated completion dates, to have appropriate staff and resources assigned to complete development tasks within an agreed upon timeframe.
- Where appropriate document requirements and submit funding requests through the budget cycle to ensure any necessary funding will be committed prior to expending resources on development.
- Documents specifications and communicates client needs to developers. Modify documentation to reflect refinements during the development process.
- Maintain programming specification packages for each application to reflect the current operating parameters for each program. These specification packages will provide the operating guidelines for each program and will be used to ensure programs are operating as specified and approved.
- Lead change and improvement activities in compliance with change management procedures to ensure that changes migrate from development to testing to deployment to production, verify quality of the product via documented test plans and results, and act as the interface with the customer to ensure that developer modifications or corrections comply with customer requirements.
- Facilitate meetings, information exchanges, and other activities throughout development to resolve any cross functional issues. Ensure that all affected stakeholders are included in the process and kept informed.
- Other duties as assigned.

### *Key Projects to be worked on:*

1. Implementation of online tax returns (e-Tax)
2. Implementation of online registration system for FATCA

## **IT Network Manager**

### *Roles and Responsibilities:*

- Provide direction and task assignment for all work performed by staff members assigned to the Network Operations Center (NOC) group.
- Meet daily with the Data Center Manager to coordinate problems for resolution, critical work activities to be performed, upcoming schedules and deployments, etc.
- Manage and coordinate leave, training and other schedules, in concert with HR, for all staff assigned to the group. This is crucial to ensuring adequate system and network coverage and staff availability for NOC support activities.
- Coordinate with other IT work groups and clients regarding changes that may impact the infrastructure or systems supported by NOC.
- Review work products for timeliness and quality. Provide feedback to staff on an ad hoc basis and via recurring formal channels for employee evaluations.
- Hold recurring formal meetings (i.e., agendas, documented decisions, action items, status reporting) with staff to communicate upcoming work, changes within IRD, information from Information Communications Technology (ICT) Director staff meetings, other items of interest, and to receive progress reports from staff on assigned tasks. Recommend meetings be held at least weekly due to critical nature of NOC activities.
- Develop measures to report on progress related to efficient and timely completion of tax processing support activities. Use good judgment in escalating information or issues relating to tax processing support activities to the ICT Director and the Chairman to ensure they are well informed and engaged.
- Review staff training and experience and create training plans and priorities to enhance the knowledge, skills and abilities of the staff. Allow for a lifecycle approach where training on new versions of hardware or software are provided to support timely upgrades. Critical to avoiding dependence on obsolete and de-supported equipment and software.
- Manage implementation of the security program on servers and network components and oversee NOC support for yearly tests of business continuity plans and security policy implementation.
- Be available for calls, or onsite oversight and managerial support during non-core hours during emergencies, major systems replacements, upgrades, moves, etc.
- Provide written status reports on major activities and work progress, barriers, expected completion dates, assistance needs, etc. to ICT Director.
- Advocate for staff collectively and individually re HR or Accounting issues. Provide data for budget, budget, procurement, facilities and other items to the appropriate administrative officials and track for resolution.
- Additional duties as assigned by ICT Director.

### *Key Projects to be worked on:*

1. Implementation of Network Policies with respect to FATCA requirements
2. Planning for configuration of Network Infrastructure for the IRD tower
3. Implementation of systems for disaster recovery

#### 4. Implementation of infrastructure to support e-Tax

### **IT Applications Specialist**

#### **Roles and Responsibilities:**

- Install, optimize, troubleshoot and maintain software and hardware, controlling versions in use, future releases of application software and document the physical and virtual configuration of the system.
- Optimize the functionality of networks and systems using performance tuning tools and techniques.
- Verify systems backup and restoration. Diagnose and recover failed systems using systems diagnostic tools and fault identification techniques.
- Plan and coordinate the installation of new products or equipment, resolve installation problems, identify and mitigate security vulnerabilities and risks; and maintain server integrity and availability.
- Collaborate with DBA and clients to ensure backups are of adequate frequency, content, full backups vs. incremental backups, etc. including application executables, data files, database structures, etc. Document and maintain backup procedures, files, schedules, common error messages, common error resolution activities,
- Provide second level support for problems. Receive trouble tickets assigned by Help Desk Officers, resolve problems, document key information on how and when problem was resolved via paper or electronic trouble ticket system, close ticket and communicate with customer or Help Desk as appropriate.
- Support the Security Specialist in developing Security Policies for IRD servers and applications.
- Collaborate with Systems Administrators to resolve day-to-day problems and add enhancements. Differentiate between server or network sources of service outage.
- Collaborate with Network and Server Administrators to resolve day-to-day MS Exchange and Outlook problems. Document and reports problems, remediate problems, assists in troubleshooting problems that may not be directly caused by exchange but which impacts email.
- Assist with ongoing disaster recovery related activities, including updating the documentation of all servers/application configurations, security settings, and all servers backup and recovery.
- Evaluate New Products & Services. Evaluate, test and provide detailed reports and recommendations on new hardware and software applications, and services where necessary or requested by IT Manager.

- Risk Management activities including Windows OS and MS Exchange system updates and patches, corporate Virus Protection for email servers as well as Spam control to ensure integrity of the system.
- Establishment procedures and configure technology to deploy updates of malware software to client workstations. Develop measures and reports to identify systems that remain at risk to security threats because of update failures.
- Implement IRD Security Policies and report security violations to designated Security Review authorities.
- Comply with configuration and change management procedures when updating systems, software, or applications.
- Perform tasks that will routinely require work in evenings or on weekends for installations, preventive maintenance, upgrades, repairs, etc. This requirement may be mitigated by additional shifts, payment of overtime, alternative work schedules, etc. However, there must be sufficient staff available to complete the many tasks required outside normal duty hours on a frequent and routine basis.
- Application Systems Administrators may sometimes be required to travel to other remote server locations. Systems administrators located outside Trinidad House will also perform other IT support activities that would otherwise require an IT staff member to travel from Trinidad House to their location.
- Develop disaster recovery plans to restore IRD systems and service; and collaborate with other IT personnel to incorporate these plans into a comprehensive disaster recovery plan and/or business continuity plan.
- Provide support for LAN, LAN Services, and Email Services in collaboration with Network Specialists and DBAs.
- Additional duties as assigned by Operations Work Group Leader.

*Key Projects to be worked on:*

1. Daily maintenance of the email system for all IRD staff
2. Implementation of configuration specific to email and Network applications with respect to FATCA requirements
3. Planning for configuration of Network Infrastructure for the IRD tower

## Senior Database Administrator

### *Roles and Responsibilities:*

- Architects and manages the storage management environment including Storage Area Network (SAN) and backup software for Network Storage Manager.
- Collaborates with IT staff and clients to ensure all data, systems files, configurations, permission settings and software are backed up and verified on an established schedule.
- Participate and conduct testing at least yearly, but more often if needed, to confirm the ability to restore systems, files, databases, permissions and settings for all IRD systems.
- Provide guidance and mentoring, as approved by the Manager, to DBAs and Operators to assist them in completing their database and backup related duties.
- Propose and implement system enhancements (software and hardware updates) that will improve the performance and reliability of the systems and backups.
- Monitor capacity of SAN, hard drives, magnetic media, etc. to plan and procure replacements or upgrades timely.
- Manage the load configuration of Network Storage Manager and other backup software products. Develop any automated jobs or tools and provide written guidelines to operators or others in executing or troubleshooting those jobs.
- Move IRD toward the objective of a single storage management software solution as legacy systems are decommissioned, new systems are added and funding is available.
- Establish documentation formats to capture and report information relating to backups. Include schedules of incremental/full backups, media rotation if applicable, which data files, systems files, settings, permissions, etc. Include any other data necessary for planning and management of electronic storage.
- Create monitoring and measurement processes that verify backups successfully completed and that provide exception reports to the Manager.
- Create Computer Operator guidelines to direct Operators on jobs to run, common error messages, routine error resolution directions, escalation procedures for errors when necessary and reporting requirements.
- Review previous night backups and other storage jobs to verify acceptable job completion or to take corrective actions as necessary.
- Collaborate with configuration team on new programs or act as a member of the Special Projects staff to determine storage capacity requirements or changes resulting from programming changes, third party data requirements, etc.
- Collaborate with IT Security Specialist for Disaster Recovery planning. The IT Storage Administrator plays the key role in helping IRD recover from equipment failures or other emergencies.
- Work with other IT staff to architect and implement a viable backup and/or hot-site plan for the remote backup site.
- Coordinates equipment and facilities orders, installation, system planning, upgrading, monitoring, testing and servicing.
- Share 7 x 24 on-call duties. May be required to work some non-core hours and to travel to remote sites.

- Other duties as directed.

*Key Projects to be worked on:*

1. Daily maintenance of the Storage Area Network system which holds all of IRD's tax data.
2. Implementation of new storage area network solution purchased in fiscal 2016
3. Implementation of a new disaster recovery solution

## **Client Services Manager**

### **Roles and Responsibilities:**

- Implement a service delivery strategy for IRD
- Monitor and evaluate service desk operations
- Provide direction and task assignment for all work performed by staff members;
- Manage and coordinate leave, training and other schedules for all staff to ensure adequate Help Desk phone coverage and staff availability for computer deployment activities.
- Review Inventory measures to identify budget needs for replacing aging systems, warranty conversions to service contracts, etc.
- Review Inventory accuracy on a yearly basis. Report missing items through the Information Communications Technology (ICT) Director to the Chairman and in accordance with any Physical IT security policies.
- Review work products for timeliness and quality. Provide feedback to staff on an ad hoc basis and via recurring formal channels for employee evaluations.
- Hold recurring formal meetings (i.e., agendas, documented decisions, action items, status reporting) with staff to communicate upcoming work, changes within IRD, information from ICT Director staff meetings, other items of interest. Meetings provide a forum to receive progress reports from staff on assigned tasks. Recommend meetings be held no less than monthly.
- Provide written status reports on major activities and work progress, barriers, expected completion dates, assistance needs, etc. to ICT Director
- Additional duties as assigned by ICT Director

### *Key Projects to be worked on:*

1. Service desk operations
2. Implementation of configuration specific to client tools with respect to FATCA requirements
3. Planning for relocation to the IRD tower

**RESPONSES TO QUESTIONS OF THE JOINT SELECT COMMITTEE ON THE TAX INFORMATION EXCHANGE AGREEMENTS (TIEA) BILL, 2016**  
**(BILL)**  
**BY THE CENTRAL BANK OF TRINIDAD AND TOBAGO**  
**JANUARY 26, 2017**

Question	Comments
<p>1. <i>Does the Central Bank and the Board of Inland Revenue (BIR) have any formal or informal arrangements for exchange of information, between the two entities?</i></p>	<p>Currently, there are neither formal nor informal arrangements in place for the exchange of information between the Central Bank and the BIR.</p> <p>Clause 26 (a) of the Bill seeks to introduce provisions in the Insurance Act (IA) to treat with sharing of information between the two bodies. However, it should be noted that further amendments, specifically to section 8(2) of the Financial Institutions Act (FIA), would be required to allow the Central Bank to exchange information with the BIR in respect of entities regulated under the FIA.</p>
<p>2. <i>In a similar vein, does the Central Bank and the Securities and Exchange Commission (SEC) have arrangements for exchange of information between the two entities?</i></p>	<p>The Central Bank is permitted by law to share information with the SEC pursuant to the Insurance Act (IA) and the FIA<sup>1</sup>. The SEC is also permitted by law to share information with the Central Bank pursuant to the Securities Act (SA).<sup>2</sup></p> <p>Although not required for the exchange of information to be effected, the Central Bank has entered into a Memorandum of Understanding outlining protocols for the exchange of information with the SEC for purposes related to the administration of the FIA, IA and SA. .</p>

<sup>1</sup> See section 6A of the IA and section 8(2) of the FIA.

<sup>2</sup> See section 19(2) of the Securities Act



RESPONSES TO QUESTIONS OF THE JOINT SELECT COMMITTEE ON THE TAX INFORMATION EXCHANGE AGREEMENTS (TIEA) BILL, 2016  
 (BILL)  
 BY THE CENTRAL BANK OF TRINIDAD AND TOBAGO  
 JANUARY 26, 2017

Question	Comments
<p>3. <i>What information can the Central Bank ask a bank for under current laws?</i></p>	<p>The Central Bank requests both financial and non-financial information from a bank for the primary purpose of assessing the soundness and stability of the financial institution and by extension the financial system and for ensuring compliance with AML/CFT requirements.</p>
<p>4. <i>How is this likely to change with the passage of the Tax Information Exchange Agreements legislation?</i></p>	<p>Based on the provisions of the Bill, the Central Bank will be required to issue Guidelines to its regulated institutions in order to give effect to declared agreements. The Central Bank proposes that the Guidelines will require financial institutions to identify a Compliance Officer and establish a framework, that is, policies, procedures and systems to ensure compliance with its reporting obligations under the TIEA. The Guidelines will require the approval of the Minister. Under the Bill, the BIR and not the Central Bank, will be receiving information on Reportable Accounts.</p>
<p>5. <i>What will be the role of the Inspector of Banks in relation to an individual bank in Trinidad and Tobago?</i></p>	<p>The Inspector of Financial Institutions (Inspector) will be responsible for issuing Guidelines to banks and non-banks and insurance companies (regulated entities). The Inspector will also enforce compliance with the Guidelines. Where it is determined that a regulated entity does not comply with the Guidelines, the Central Bank may issue a compliance direction compelling a bank or insurer to take certain actions to strengthen its compliance framework. Non-compliance with a compliance direction will be enforceable through the High Court.</p>

RESPONSES TO QUESTIONS OF THE JOINT SELECT COMMITTEE ON THE TAX INFORMATION EXCHANGE AGREEMENTS (TIEA) BILL, 2016  
 (BILL)  
 BY THE CENTRAL BANK OF TRINIDAD AND TOBAGO  
 JANUARY 26, 2017

Question	Comments
<p>6. <i>In what ways can the Inspector enforce compliance by banks?</i></p>	<p>Generally, the Central Bank has a range of regulatory tools to enforce compliance with the FIA and IA. In the case of banks, these include compliance directions, administrative fines, and suspension, restriction or revocation of a licence depending on the magnitude of the issues. However, enforcement actions for non-compliance with Guidelines to be issued under the TIEA will be the issuance of compliance directions, enforcement of compliance directions in the High Court or other forms of injunctive relief.</p>
<p>7. <i>What is the anticipated role and responsibility of the Central Bank with the passage of the Tax Information Exchange Agreements legislation? Is the Central Bank comfortable with its anticipated role?</i></p>	<p>(See the response to no. 5 above)</p>

RESPONSES TO QUESTIONS OF THE JOINT SELECT COMMITTEE ON THE TAX INFORMATION EXCHANGE AGREEMENTS (TIEA) BILL, 2016  
 (BILL)  
 BY THE CENTRAL BANK OF TRINIDAD AND TOBAGO  
 JANUARY 26, 2017

Question	Comments
8. <i>What are the lawful terms and conditions, if any, under which the Board of Inland Revenue, the Central Bank, the Securities and Exchange Commission and an individual bank can collaborate to determine facts about an individual or corporate entity?</i>	Currently, there are no laws which enable collaboration among the four entities, i.e., Central Bank, SEC, BIR and individual banks.
9. <i>Is there an individual office within the Central Bank that holds insurance companies to account?</i>	Under the IA, the Inspector is given this role of regulating and bringing enforcement action against insurance companies.
10. <i>Are there any important differences between what this person/office does and what the Inspector does?</i>	The person is one and the same.
11. <i>What are the financial institutions impacted upon by the legislation?</i>	The institutions which are impacted by the Bill include banks, non-bank financial institutions, other deposit taking institutions, specified insurance companies, credit unions, broker-dealers, investment managers and trust entities.

RESPONSES TO QUESTIONS OF THE JOINT SELECT COMMITTEE ON THE TAX INFORMATION EXCHANGE AGREEMENTS (TIEA) BILL, 2016  
 (BILL)  
 BY THE CENTRAL BANK OF TRINIDAD AND TOBAGO  
 JANUARY 26, 2017

Question	Comments
12. <i>What is the relationship among the Central Bank, BIR and the United States of America Treasury Secretary?</i>	As noted previously, the Central Bank would be issuing guidelines to give effect to a declared agreement but will have no direct relationship with the United States of America Treasury Secretary.
13. <i>What is the Central Bank's understanding of the financial information which it is required of it to provide under the proposed legislation?</i>	Reporting financial institutions will be providing the required information (including financial and other information) directly to the BIR. The Central Bank through the Inspector will be assessing information relative to the policies, procedures and systems required to be implemented under its Guideline.
14. <i>Approximately, how many institutions and individuals will be impacted by this legislation?</i>	For the institutions under the Central Bank's purview, 28 banks, non-banks and financial holding companies and 34 insurance companies are required to be compliant with the TIEA.
15. <i>Who directly, in the Central Bank, will be dealing with the financial information and ensuring confidentiality of such?</i>	(See the response to no. 13 above)

**RESPONSES TO QUESTIONS OF THE JOINT SELECT COMMITTEE ON THE TAX INFORMATION EXCHANGE AGREEMENTS (TIEA) BILL, 2016**  
**(BILL)**  
**BY THE CENTRAL BANK OF TRINIDAD AND TOBAGO**  
**JANUARY 26, 2017**

<b>Question</b>	<b>Comments</b>
<i>16. How many financial institutions have already signed agreements with corresponding institutions in the USA and which are they?</i>	Trinidad and Tobago has adopted a Model 1 IGA. Consequently, the financial institutions are not required to sign individual agreements with the US IRS. They are required, however to register with the US IRS to obtain a US TIN No. As at December 26, 2016, 22 of the 28 banking institutions and financial holding companies and 28 of 34 insurance companies were registered.

**THE CO-OPERATIVE CREDIT UNION LEAGUE OF TRINIDAD  
AND TOBAGO LIMITED**

**RESPONSE TO**

**TAX INFORMATION EXCHANGE AGREEMENT BILL, 2016**

The Co-operative Credit Union League of Trinidad and Tobago is the National Umbrella Body for Credit Unions in the Country. We oversee 130 Credit Unions with a total asset base of TT\$13 Billion Dollars and 600,000 members. Our core functions are: Advocacy, Lobbying and Training and Development for Credit Unions.

Given the short notice, we are pleased to provide our response to the Tax Information Exchange Agreement Bill, 2016 as requested by the JSC in its letter of January 23, 2017.

**Background**

In its efforts to combat tax evasion, the U.S. Government enacted FATCA on March 18 2010 to help the U.S. Treasury identify U.S. residents and citizens who invest offshore. With this information the U.S. Government will be in a much better position to enhance and enforce compliance with U.S. tax obligations. It is to be noted that the U.S. has only indicated an intention to reciprocate.

The U.S. Foreign Account Tax Compliance Act (FATCA) legislation imposes extensive due diligence and reporting obligations which will increase operational costs to credit unions. These include:

- Registration with the IRS to continue banking relationships.
- Increased scrutiny for Member Due Diligence to determine if an individual is a U.S. person.
- Additional information required (eg: W9/W8 and TIN#) if a U.S. person is identified.
- Coding of these accounts for future reporting if necessary
- Automated reporting system costs not yet identified.

In reviewing the Bill at short notice, the Movement observed that there were no credit union sector specific questions that required our response. However, we submit the following concerns which we believe, if answered, will aid in the development of the Bill:

- We have seen no expressed requirement/process for a Credit Union to apply for a GIIN Number.
- There is no defined legal basis for Credit Unions to obtain a GIIN number in order to carry on business at Banks.
- The Bill makes no reference to the GIIN number, but the Commercial Banks are requesting Credit Unions to register and obtain a GIIN number.
- The current Bill repeals 1989 TIEA, but this Bill only addresses the USA and therefore prompts the question as to what happens to the other countries.
- Although the Bill makes the BIR the conduit for all information as it relates to individuals, the Banks as of 2016 have been asking Credit Unions to provide information on individuals sighting FATCA compliance and requirements of corresponding banking relations. This approach by the banks does not seem to have any basis in law.
- There is a concomitant increase in the cost of compliance re: AML / FIU / FATCA, as such, the Co-operative Credit Union Movement would like to see measures adopted to minimize those costs.
- We have not observed any expressed time period for responding to ad hoc requests for information from the Inland Revenue.
- We would like to know if there would be a program of education conducted by the Board of Inland Revenue for the Credit Union Movement in particular and the wider public in general.

#### **World Council of Credit Unions (WOCCU) Input**

We are aware that our WOCCU has been in discussions with the IRS with a view to exempting credit unions from the FATCA legislation.

#### **Conclusion**

The Co-operative Credit Union League estimates that persons affected by FATCA within the credit union movement will be under 1% of the total membership of 600,000 and the systemic risk is low. We are however, mindful of the increased financial burdens to these credit unions and trusts that Regulators will monitor such burdens based on the level of risk in organizations using a simplified method.

## **Comments by the Trinidad and Tobago Securities and Exchange Commission on the Tax Information Exchange Bill, 2016**

*These comments are based solely on the proposed consequential amendments to the Securities Act 2012 (“SA2012”).*

### **First submitted on September 8, 2016**

1. Does the fact that the Commission will now have the guidelines in relation to declared agreements make us the competent authority for ensuring compliance with the declared agreements similar to our role as a SA under POCA? If yes, does this need to be specified in the TIEA as with POCA? Further, would it be covered by section 6(i) of the SA2012?

6(i) “ensure compliance with the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or **any other written law that is administered or supervised by the Commission;**”

2. Consideration should be given to replacing the proposed amendment to section 7 with the following amendment –

146. (1) The Commission may, in consultation with the Minister, issue Guidelines on any matter it considers necessary to—

- (a) give effect to this Act;
- (b) enable the Commission to perform its functions;
- (c) aid compliance with **a declared agreement**, the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law which may be administered or supervised by the Commission which may be in force from time to time; and
- (d) regulate the market conduct of market actors.

3. Consideration should be given as to whether the following consequential amendments may also be necessary:

#### **(A) Information Sharing**



Would the provisions of section 14(2)(b)(iii) of the SA2012 allow the Commission so share information with the BIR for the purposes of declared agreements be sufficient? Would the BIR be considered “a regulatory agency in Trinidad and Tobago”? Consideration should be given to whether it is necessary to specifically include a reference to the BIR among the entities with whom the Commission can share confidential information. Suggested wording:

14(2) Notwithstanding subsection (1) or any other written law, the Commission or any duly authorised person or entity may disclose the information referred to in subsection (1)—

(a) pursuant to an order of the Court; or

(b) to—

(i) a Commissioner, or an employee of the Commission;

(ii) a representative of the government of Trinidad and Tobago duly authorised by the Minister;

(iii) a duly authorised representative of the Central Bank, the Financial Intelligence Unit, the **Board of Inland Revenue** or a regulatory agency in Trinidad and Tobago;

(iv) an expert hired or retained by the Commission; or

(v) a duly authorised representative of a securities or financial regulatory authority outside of Trinidad and Tobago,

in connection with the administration and enforcement of this Act, ~~or~~ similar legislation of any foreign jurisdiction, **a declared agreement, the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law which may be administered or supervised by the Commission which may be in force from time to time**; if the Commission is satisfied that the information will be treated as confidential by the person or agency to whom it is disclosed and used strictly for the purpose for which it is disclosed.

## **(B) Issuance of Warnings**

57. (1) The Commission may issue a warning to a registrant registered under section 51(1), (2) or (5) if—

(j) such registrant is prosecuted for breach of this Act, **the Tax Information Exchange Agreements Act**, the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law which may

be administered or supervised by the Commission which may be in force from time to time;

### **(C) Revocation of Registration**

58. (2) Where the Commission has suspended the registration of a registrant for a reason set out in section 57(1)(g), (j) or (k), the Commission may revoke the registration of such registrant if the registrant—

(a) has been convicted by a Court for an offence involving fraud or dishonesty, whether in Trinidad and Tobago or elsewhere;

(b) has been convicted by a Court for a contravention of **the Tax Information Exchange Agreements Act**, the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law which may be administered or supervised by the Commission which may be in force from time to time; or

(c) has breached this Act.

### **(D) Compliance Reviews**

89. (1) In the performance of the functions of the Commission under this Act, the chief executive officer or any duly authorised employee or agent of the Commission so authorised in writing by the chief executive officer, shall be permitted to review the books, records or documents of a registrant or self-regulatory organisation for the purpose of—

(a) determining whether the provisions of this Act, **a declared agreement**, the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combatting the financing of terrorism or any other written law that is administered or supervised by the Commission are being complied with; and

### **(D) Compliance Directions**

90. (1) Notwithstanding any other action or remedy available under this Act, if a compliance review conducted under section 89 or any other review or inspection reveals that a registrant or self-regulatory organisation—

c) is contravening or is about to contravene any of the provisions of this Act or Bye-laws or Guidelines made thereunder or **a declared agreement**, the Proceeds of Crime Act, any other written law in relation to the prevention of money

laundering and combating the financing of terrorism or any other written law that is administered or supervised by the Commission which may be in force from time to time; or

**First submitted on September 15, 2016**

1. **Cooperation with other agencies** - This would be similar to the proposed amendment to section 14 in respect of confidential information and would facilitate cooperation by the Commission with the Competent Authority.

*“19 1) The Commission may consult, co-operate with and provide information to the Central Bank of Trinidad and Tobago, the Financial Intelligence Unit, **the Competent Authority in respect of a declared agreement**, any other regulatory agency in Trinidad and Tobago or any other entity in Trinidad and Tobago in order to minimise duplication of effort and to maximise the protection of investors.”*

2. **Compliance Directions** – We note that our suggested amendment to section 90 of the Act ( Compliance Directions) was not included in the Proposed List of Amendments. Similar amendments were included to the FIA and Insurance Act. In the absence of such an amendment the Commission would be unable to take action for breach of the guidelines we are required to issue in respect of declared agreements.

Please note that section 90 of the SA2012 is almost identical to section 86 of the FIA.

Should the amendment not be included, please advise whether we should refer any such breaches to the Competent Authority for further action?

For ease of reference the amendment proposed by the TTSEC is below:

*“90. (1) Notwithstanding any other action or remedy available under this Act, if a compliance review conducted under section 89 or any other review or inspection reveals that a registrant or self-regulatory organisation—*

*(d) has breached any requirement or failed to comply with any measure imposed by the Commission in accordance with this Act or Bye-laws or Guidelines made thereunder,*

***(e) has breached any requirement or failed to comply with guidelines related to a declared agreement,***

**Submitted on January 27, 2017**

The following are some minor errors in the current version of the proposed amendments

**Clause 25(f)**

In section 90(1)

- (i) in paragraph (c) by deleting the words “; ~~and~~ **or**” and substituting the word “;”;
- (ii) in paragraph (d) by deleting the words “; **:**” and substituting the words “; ~~and~~ **or**”

**Clause 25 (g)**

Section 146

~~(iv)~~ **(i)** in **subparagraph (c) of** subsection (1) by inserting

**Trinidad and Tobago Securities and Exchange Commission ("The Commission") : Responses to questions posed by the Joint Select Committee of Parliament on the Tax Information Exchange Agreements Bill, 2016**

**Q17. Does the Securities and Exchange Commission and the Central Bank have any formal or informal arrangements for exchange of information between the two entities?**

Exchanges of information between the Commission and the Central Bank are permitted pursuant to section 6A of the Insurance Act, 8(2) of the Financial Institutions Act and section 19 of the Securities Act, 2012 ("the Act"). These exchanges are primarily effected through Memorandum of Understanding between the two parties which was executed in January 2014.

Section 19 of the Act provides as follows:

*19. (1) The Commission may consult, co-operate with and provide information to the Central Bank of Trinidad and Tobago, the Financial Intelligence Unit, any other regulatory agency in Trinidad and Tobago or any other entity in Trinidad and Tobago in order to minimise duplication of effort and to maximise the protection of investors.*

*(2) The Commission may co-operate with, provide information to and receive information from any of the following entities, whether in Trinidad and Tobago or elsewhere:*

*(a) other securities or financial regulatory authorities, exchanges, clearing agencies, self-regulatory bodies or organisations, law enforcement agencies and other government agencies or regulatory authorities; and*

*(b) any person, other than an employee of the Commission, who acts on behalf of, or provides services to the Commission.*

*(3) The Commission may enter into a memorandum of understanding with the Stock Exchange or any other agency referred to in subsection (1) in furtherance of the purposes of this Act or any matter under this Act.*

*(4) The Commission may enter into a memorandum of understanding with any agency of a foreign government, foreign securities regulator, other regulatory body which regulates the financial services industry or any international association of securities regulators in furtherance of the purposes of this Act or any matter under this Act.*

*(5) The Commission may co-operate and participate in the work of national, regional or international organisations dealing with the regulation of the securities industry.*

*(6) Any information provided and received by the Commission pursuant to this section shall be confidential and shall not be disclosed except in accordance with section 14.*

*(7) Where the Commission takes any enforcement action against an entity, senior officer or an employee of an entity regulated by the Central Bank of Trinidad and Tobago for failing to comply with this Act, the Commission shall notify the Inspector of the enforcement action so taken.*

**Q18. What are the lawful terms and conditions, if any, under which the Securities and Exchange Commission, the Board of Inland Revenue, the Central Bank and an individual bank can collaborate to determine facts about an individual?**

Section 14 of the Securities Act 2012 (“the Act”) allows the Commission to share confidential information with specified entities for specific purposes. Section 19 of the Act allows the Commission to co-operate with specified entities for specific purposes (see above). Section 151 of the Act allows the Commission to collaborate with individual banks to determine facts about an individual. The relevant provisions are provided below.

**14.** (1) *Subject to subsection (3) no person shall make use of or disclose any confidential information other than for the administration or enforcement of this Act.*

(2) *Notwithstanding subsection (1) or any other written law, the Commission or any duly authorised person or entity may disclose the information referred to in subsection (1)—*

*(a) pursuant to an order of the Court; or*

*(b) to—*

*(i) a Commissioner, or an employee of the Commission;*

*(ii) a representative of the government of Trinidad and Tobago duly authorised by the Minister;*

*(iii) a duly authorised representative of the Central Bank, the Financial Intelligence Unit or a regulatory agency in Trinidad and Tobago;*

*(iv) an expert hired or retained by the Commission; or*

*(v) a duly authorised representative of a securities or financial regulatory authority outside of Trinidad and Tobago, in connection with the administration and enforcement of this Act or similar legislation of any foreign jurisdiction if the Commission is satisfied that the information will be treated as confidential by the person or agency to whom it is disclosed*

**151.** (1) *Notwithstanding any other written law, if the Commission considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act or to assist in the administration of securities laws or the regulation and supervision of the securities industry in another jurisdiction it may, by written notice, served on any person, require the person—*

*(a) to supply to the Commission, within the time and in the manner specified in the notice, any book, record, document, information or class of information specified in the notice;*

*(b) to produce to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any book, record, document, information or class of information specified in the notice (within the time and in the manner specified in the notice);*

*(c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any book, record, document or class of documents specified in the notice (within the time and in the manner specified in the notice); or*

*(d) to appear before the Commission, or a specified person, at a time and place specified in the notice to provide information, either orally or in writing, and produce any book, record, document or class of documents specified in the notice.*

*(2) Information supplied in response to a notice under subsection (1)(a) shall be—*

*(a) given in writing; and*

*(b) signed in the manner specified in the notice.*

*(3) If a book, record or document is produced in response to a notice under subsection (1), the Commission, or the person to whom the book, record or document is produced may examine and make copies of the book, record or document or extracts thereof.*

*(4) The Commission may require a person to give, orally or in writing, information on oath or affirmation and may administer an oath or affirmation at any place.*

*(5) A person who provides information under this section may be represented by an attorney-at-law and may claim any privilege to which the person is entitled.*

*(6) Where a person who is required to attend or give information fails or refuses to attend or provide information, the Commission may make an application to the High Court to compel the person to do so.*

*(7) Proceedings under subsection 4 shall be held in camera.*

*(8) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.*



January 26, 2017

Professor Rose-Marie Belle-Antoine  
Dean  
Faculty of Law  
University of the West Indies  
St. Augustine

Dear Professor Belle-Antoine,

**Request for Written Submission on Tax Information Exchange Agreements Bill, 2016**

Reference is made to the above captioned matter.

The Tax Information Exchange Agreements Bill, 2016 was referred to a Joint Select Committee of Parliament for consideration and report by February 3, 2017.

The purpose of the Bill is to implement certain tax information exchange agreements entered into between Trinidad and Tobago and the United States of America. A copy of the Bill which incorporates the proposed amendments thus far is attached for your consideration.

I have been directed by the Committee to request a written submission from the Faculty of Law, UWI St. Augustine on the Tax Information Exchange Agreements Bill, 2016.

You are kindly asked to forward your comments on the Bill as well as any other supporting documents no later than **Monday January 30, 2017**.

Should you require further information in this regard, please feel free to contact the undersigned at 740-3986 or 624-7275 ext. 2250 or via email at [jscfatca@ttparliament.org](mailto:jscfatca@ttparliament.org).

Respectfully,

Keiba Jacob  
Secretary



## JSC Tax Information Exchange Agreements

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**From:** JSC Tax Information Exchange Agreements  
**Sent:** Wednesday, February 01, 2017 3:07 PM  
**To:** Rose-Marie B Antoine  
**Cc:** Angelique Massiah; Simone Yallery; Keiba Jacob  
**Subject:** RE: Request for Written Submission

Dear Professor Belle-Antoine,

Your email dated Thursday January 26, 2017 is hereby acknowledged.

The Committee agreed to issue a general call for submissions on the **Tax Information Exchange Agreements Bill, 2016** with a deadline of **Friday February 10, 2017**.

It is hoped that you will be able to provide comments by the revised deadline.

Should you require further information in this regard, please feel free to contact the Secretary to the Committee via telephone at 624-7275 ext. 2250 or via email at [jscfatca@ttparliament.org](mailto:jscfatca@ttparliament.org).

Yours respectfully,

Simone Yallery, Legal Officer I  
/f/Secretary to the Committee

*Parliament of the Republic of Trinidad & Tobago*

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## **JSC Tax Information Exchange Agreements**

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**From:** JSC Tax Information Exchange Agreements  
**Sent:** Wednesday, February 15, 2017 9:11 AM  
**To:** 'Rose-Marie B Antoine'  
**Cc:** Angelique Massiah; Simone Yallery  
**Subject:** RE: Request for Written Submission  
**Attachments:** Tax Information Exchange Agreement Bill 2016 14Feb17.pdf

Dear Professor Belle-Antoine,

I have been directed by the Chairman of the Committee to forward the version of the Bill that was appended to the Committee's report. The Chairman has requested that you review the attached revised version of the Bill to determine whether there are any amendments you wish to make to your submission.

Please feel free to contact me at 740-3986 if you need any clarification.

Regards

Keiba Jacob

**Keiba Jacob | Procedural Clerk | Financial Scrutiny Unit**  
**Parliament of the Republic of Trinidad & Tobago**  
**Port of Spain International Waterfront Centre**  
**1A Wrightson Road, Port of Spain, Trinidad**  
**Work: +1 (868) 624-7275 ext: 2250 | Fax: +1 (868) 625-4672**  
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January 25, 2017

Mr. Reginald Armour, S.C.  
President  
Law Association of Trinidad and Tobago  
2<sup>nd</sup> Floor, 95-97 Frederick Street,  
Port-of-Spain

Dear Mr. Armour,

**Request for Written Submission on Tax Information Exchange Agreements Bill, 2016**

Reference is made to the above captioned matter.

The Tax Information Exchange Agreements Bill, 2016 was referred to a Joint Select Committee of Parliament for consideration and report by February 3, 2017.

The purpose of the Bill is to implement certain tax information exchange agreements entered into between Trinidad and Tobago and the United States of America. A copy of the Bill which incorporates the proposed amendments thus far is attached for your consideration.

I have been directed by the Committee to request a written submission from the Law Association on the Tax Information Exchange Agreements Bill, 2016.

You are kindly asked to forward your comments on the Bill as well as any other supporting documents no later than **Monday January 30, 2017**.

Should you require further information in this regard, please feel free to contact the undersigned at 740-3986 or 624-7275 ext. 2250 or via email at [jscfatca@ttparliament.org](mailto:jscfatca@ttparliament.org).

Respectfully,

Keiba Jacob  
Secretary



## JSC Tax Information Exchange Agreements

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**From:** JSC Tax Information Exchange Agreements  
**Sent:** Wednesday, February 01, 2017 3:54 PM  
**To:** Elena Araujo  
**Cc:** Reginald Armour; Gerry Brooks; Dennis Gurley; Alyson Myers; Angelique Massiah; Keiba Jacob; Simone Yallery  
**Subject:** RE: Request for Written Submission on the Tax Information Exchange Agreements Bill

Dear Ms. Araujo,

Your email dated Tuesday January 31, 2017 is hereby acknowledged.

The Committee agreed to issue a general call for submissions on the **Tax Information Exchange Agreements Bill, 2016** with a deadline of **Friday February 10, 2017**.

It is hoped that you will be able to provide comments by the revised deadline.

Should you require further information in this regard, please feel free to contact the Secretary to the Committee via telephone at 624-7275 ext. 2250 or via email at [jscfatca@ttparliament.org](mailto:jscfatca@ttparliament.org).

Yours respectfully,

Simone Yallery, Legal Officer I  
/f/Secretary to the Committee

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**From:** Elena Araujo [mailto:secretarylawassociationtt@gmail.com]  
**Sent:** Tuesday, 31 January 2017 10:42 AM  
**To:** JSC Tax Information Exchange Agreements  
**Cc:** Reginald Armour; Gerry Brooks; Dennis Gurley; Alyson Myers  
**Subject:** Request for Written Submission on the Tax Information Exchange Agreements Bill

Dear Ms Jacob

Your letter dated 25th January 2017 to our President Mr Reginald Armour SC concerning the captioned (copy attached) was received at the Law Association of Trinidad and Tobago's offices on 30th January 2017, the date by which we were asked to provide written submissions.

We are writing to inquire whether the time for receiving the submissions of the LATT can be extended for one week to allow time for review of the Bill by our Association.

We look forward to hearing from you,

Regards

**ELENA ARAUJO**  
**SECRETARY**  
Law Association of Trinidad and Tobago (LATT)  
Email: [secretarylawassociationtt@gmail.com](mailto:secretarylawassociationtt@gmail.com)

LATT Office: 95-97, Frederick Street, Port-of-Spain, Trinidad  
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E-mail (#2): [admin@lawassociationtt.com](mailto:admin@lawassociationtt.com)  
Website: <http://www.lawassociationtt.com>

**Law Association  
of Trinidad and Tobago**  
established by the  
Legal Profession Act 1986



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Website:  
[www.lawassociationtt.com](http://www.lawassociationtt.com)

Centre for Arbitration and  
Dispute Resolution – CADR

Tel: 1-868-221-4944

Email:  
arbitration.facility.latt@gmail.com

Monday, February 20, 2017

The Secretary  
Joint Select Committee – The Tax Information  
Exchange Agreements Bill,  
Office of the Parliament  
Levels G-8, Tower D  
The Port of Spain International Waterfront Centre  
1A Wrightson Road  
Port of Spain

Dear Ms Jacob,

**RE: Comments on the Tax Information Exchange Agreements Bill, 2016  
("TIEA")**

We refer to the captioned TIEA Bill, which has been the subject of debate in Parliament and much public commentary.

In keeping with its mandate to protect and assist the public in Trinidad and Tobago in all matters relating to the law, the Law Association has met with persons and interest groups and has also sought informed advice from among its membership and other professional bodies.

Mr. Raphael Ajodhia, Attorney at Law, is a member of the Council's Legislative Review Committee. In that capacity, we have commissioned a written Opinion from him on the TIEA, with reference to specific questions on whether the provisions of same are inconsistent with the Constitution of the Republic of Trinidad and Tobago. We endorse the conclusions and reasoning process of Mr. Ajodhia's Opinion dated 19<sup>th</sup> February 2017, and adopt same as being the comments of the Law Association of Trinidad and Tobago, which we enclose for your respectful attention.

We trust that you will bring the contents of this letter and the Opinion to the attention of the Honourable Chairman of the Committee. We have also sent a letter in similar terms to the Honourable Attorney General with a copy of the said Opinion.

We remain available to discuss this matter further at the appropriate forum.

Yours faithfully

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Elena Araujo  
Secretary

**President**– Reginald Armour SC • **Vice President** – Gerry Brooks  
**Treasurer** – Dennis Gurley SC • **Honorary Secretary** – Elena Araujo

## **OPINION ON THE CONSITUTIONALITY OF THE TAX INFORMATION EXCHANGE AGREEMENTS BILL, 2016**

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1. In preparing this Opinion I have had regard to the following instructions and/or documentation:
  - a. Briefing Note on the Tax Information Exchange Agreements Bill, 2016 prepared by Mr. Darrell P. Allahar, Attorney-at-law, dated the 17<sup>th</sup> February, 2017
  - b. the Report of the Joint Select Committee on the Tax Information Exchange Agreements Bill, 2016 (with annexures) dated the 3<sup>rd</sup> February, 2017;
  - c. Advertisement in all three Daily Newspapers run by the Opposition dated 23<sup>rd</sup> September, 2016;
  - d. Bill Essentials on the Tax Information Exchange Agreements Bill, 2016 dated 7<sup>th</sup> September, 2016;
  - e. Model 1 International Governmental Agreement between the Government of the United States of America and the Government of Trinidad and Tobago signed on the 19<sup>th</sup> August, 2016
  - f. US Treasury Announcement 2016-27 released 29<sup>th</sup> July, 2016;
  - g. Further Amended Statement of Claim in Virginia Hills, Gwendolyn Louise Deegan and Kazia Highton v The Attorney General of Canada and The Minister of National Revenue filed the Federal Court of Vancouver, British Columbia on the 22<sup>nd</sup> June, 2016;
  - h. Instructions obtained by the Law Association of Trinidad and Tobago from PriceWaterhouseCoopers Trinidad (undated); and
  - i. Instructions obtained by the Law Association of Trinidad and Tobago from the Bankers Association of Trinidad and Tobago (undated).

### BACKGROUND FACTS

2. In 2010 the United States ("US") passed the Foreign Account Tax Compliance Act ("FATCA"). According the US Department of the Treasury<sup>1</sup>, the purpose of FATCA is to target non-compliance by US taxpayers using foreign accounts. The Department

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<sup>1</sup> <https://www.treasury.gov/resource-centre/tax-policy/treaties/Pages/FATCA.aspx>

further informs that “*FATCA requires foreign financial institutions (FFIs) to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. FFIs are encouraged to either directly register with the IRS to comply with the FATCA regulations (and FFI agreement, if applicable) or comply with the FATCA Intergovernmental Agreements (IGA) treated as in effect in their jurisdictions.*”

3. Trinidad and Tobago signed a Model 1 IGA on or about the 19<sup>th</sup> day of August, 2016, having previously reached an “agreement in substance” concerning same on or about the 5<sup>th</sup> day of December, 2014. However, the country has not as at the present date brought the agreement into force within its jurisdiction through ratification and subsequent incorporation into domestic law. According the US Department of the Treasury<sup>2</sup>, within the Caribbean region Anguilla, Antigua and Barbuda, Grenada and Guyana are the other countries which have not yet brought a signed Model 1 IGA into force within their respective jurisdictions. On the other hand, the Bahamas, Barbados, Bermuda, the British Virgin Islands, Jamaica, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines have all brought the IGA into force over the course of 2014 to 2016. Dominica has not at present signed an IGA, but is treated as having an “Agreement in Substance”.
4. The Model 1 IGA provides, broadly, for personal information of persons deemed to be US taxpayers within this jurisdiction to be shared by an FFI to a centralised “competent authority” which will then report annually to the US Inland Revenue Service (“IRS”).
5. In or around September, 2016 the Government of Trinidad and Tobago (“GoRTT”) introduced into the House of Representatives the Tax Information Exchange Agreements Bill, 2016 (“TIEA”) which sought to repeal the existing Tax Information Exchange Agreements Act, Chap. 76:51 and to facilitate the implementation of FATCA and the Model 1 IRA within the jurisdiction.
6. Pursuant to Section 13 (1) of the Constitution, the Bill expressly declares that it shall have effect even though it is inconsistent with Sections 4 and 5 of the Constitution. The Bill therefore requires a three-fifths majority to be duly passed in both Houses of Parliament, necessitating support from members of the Opposition. As at the present

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<sup>2</sup> *ibid*



date, however, the Opposition has withheld its support citing broad Constitutional concerns, including but not limited to breaches of the rule of law<sup>3</sup>.

7. The TEIA was referred to a Joint Select Committee ("JSC") by the House of Representatives on or about the 6<sup>th</sup> day of January, 2017 for review and amendment as necessary. The JSC produced its Report on or about the 3<sup>rd</sup> day of February, 2017, within which it annexed a "List of Recommended Amendments" and a new composite Consolidated Version of the TEIA Bill ("the TIEA Bill"). The JSC Report (with annexures) was adopted by the House of Representatives as an Interim Report on or about the 13<sup>th</sup> day of February, 2017 and the JSC was granted until the 23<sup>rd</sup> day of February, 2017 to complete its final report.
8. It should be noted the Model 1 IGA provides that non-compliance with FATCA obligations will result in a thirty (30%) withholding tax will be implemented on US source payments, which includes salaries, wages, dividends, rents *inter alia* which are derived from sources within the US. Non-compliance would also result in unquantifiable consequences such as the termination of correspondent banking relationships with US Banks, an increase to the cost of doing business in Trinidad and Tobago as a result of adverse trade relationship and the disruption of domestic banking services such a remittance or wire transfer services, *inter alia*<sup>4</sup>.
9. By virtue of Treasury Announcement 2016-27, the US Department of the Treasury announced that on January 1<sup>st</sup>, 2017 it will begin updating the IGA list to provide that certain jurisdictions that have not brought their IGA into force will no longer be treated as if they have an IGA in effect, unless they provide by the December 31<sup>st</sup>, 2016 a detailed explanation of why the jurisdiction has not yet brought the IGA into force and a step-by-step plan that the jurisdiction intends to bring the IGA into force, including expected dates for achieving each step. Removal from the IGA list means, according to the Announcement, that FFIs will no longer be able to rely on the IGA to be treated as complying with, and exempt from withholding under FATCA. The FFI will be required to enter into an FFI Agreement, unless it qualifies for an exemption, in order to be deemed compliant with FATCA obligations.

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<sup>3</sup> See full page ad published by the Opposition in all three Daily Newspapers on the 23<sup>rd</sup> September, 2016

<sup>4</sup> See page 2 of Instructions from Bankers Association of Trinidad and Tobago

10. Notwithstanding Announcement 2016-27 however, Trinidad and Tobago is still at present deemed as having a Model 1 IGA in place.

#### CONTROVERSIAL PROVISIONS OF THE AMENDED TIEA BILL

11. The controversy surrounding the passing of the TIEA Bill is encapsulated in its proposed Preamble, the relevant portion of which reads as follows:

*“And whereas the Act provides for the sharing of personal information of identifiable individuals without first obtaining consent for such sharing:*

*And whereas the sharing of personal information of identifiable individuals without first obtaining consent for such sharing amounts to a breach of that person’s right to his family and private life as guaranteed by section 4 of the Republican Constitution:*

*And whereas the Republican Constitution by section 5 provides that no law may abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement of any of the rights contained in section 4 of the Republican Constitution:*

*And whereas section 13 requires any Act which seeks to abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement may have effect even though inconsistent with the Constitution if the Bill relative to the Act expressly states that it is inconsistent with sections 4 and 5 of the Constitution and is passed by both Houses of Parliament with a vote of not less than three-fifths of all the members of Parliament:*

*And whereas the Act was passed in both Houses of Parliament with a simple majority and did not expressly state that it was inconsistent with sections 4 and 5 of the Constitution:*

*And whereas personal information in the possession of the Board of Inland Revenue has been shared with the Secretary of the Treasury under the 1989*

*Agreement TIEA without the consent of the person to whom the information relates:*

*And whereas it has become necessary to validate the actions of the Board of Inland Revenue in this regard:*

*And whereas the Inter-Governmental Agreement ("IGA") is a response to the enactment by the United States of America of an Act commonly known as "the Foreign Account Tax Compliance Act" (FATCA) which introduced a reporting regime for financial institutions with respect to certain accounts held by such financial institutions:*

*And whereas the Government of Trinidad and Tobago now intends to give effect to its obligations under the IGA:*

*And whereas the IGA provides for the sharing of personal information from an identifiable person without first obtaining consent which may amount to a breach of a person's right to his family and private life as guaranteed by section 4 of the Republican Constitution:*

*And whereas it is enacted inter alia by subsection (1) of section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall effect accordingly:"*

12. Section 2 of the TIEA Bill then goes on to state that *"This Act shall have effect even though it is inconsistent with sections 4 and 5 of the Constitution."*
13. The "personal information" to be shared which the Preamble refers is particularised under Section 9 (1) as follows:

*"sensitive personal information" means, subject to subsection 4-*

*(a) the name, address and USTIN of a specified United States Person that is an account holder;*

*(b) the name, address and UNTIN, if any, of a Non-US entity that after the application of the due diligence procedures set out in Schedule 4 is identified as having one or more controlling persons that is a Specified United States Person and the name, address and USTIN of each United States Person;*

*(c) the account number or functional equivalent in the absence of an account number;*

*(d) the name and identifying number of the reporting financial institution;*

*(e) the account balance or value, including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value as at the end of the relevant calendar year or the appropriate reporting period or, if the account was closed during that year, immediately before closure..."*

14. Section 9 (4) deals with the timing of the reporting obligations. The due diligence referred to as comprising Schedule 4 are those which formed Annex I to the IGA, being the process which an FFI must undertake in order to determine whether an account ought to be reported on or not. Perhaps most notable is that there is an account balance threshold which must be crossed for both New and Pre-existing Accounts (for example - \$50,000 USD for Individual Accounts).
15. Sections 12 and 13 of the TIEA Bill thereafter provide that the sensitive personal information shall be disclosed to the Secretary of the United States Treasury without the consent of the account holder.

#### LEGAL ISSUES TO BE DETERMINED

16. Having established the above, it is submitted that the legal issues to be determined are as follows:

- a. What is the effect in international law of the IGA which has been signed by Trinidad and Tobago but not brought into force?;
- b. What is the test to be applied under Section 13 of the Constitution to determine whether an Act of Parliament which abrogates, abridges or infringes upon the fundamental rights guaranteed by Sections 4 and 5 of the Constitution is reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual?;
- c. Is the TIEA Bill inconsistent with the provisions of Sections 4 and 5 of the Constitution?
- d. If so, is the TIEA Bill reasonably justifiable under Section 13 of the Constitution and therefore effectual notwithstanding its inconsistency?; and
- e. Is the TIEA Bill tantamount to Trinidad and Tobago forfeiting its sovereignty by facilitating extra-territorial enforcement of a foreign state's tax compliance regime?

#### ISSUE 1 – EFFECT OF IGA

17. The general principle of international law is that an instrument of international law cannot have effect in municipal laws unless it is incorporated by Parliament into domestic legislation. This principle is authoritatively espoused by Lord Millet in **Thomas and another v Baptiste and others** (1998) 54 WIR 387, wherein the Privy Council delivered a wide-ranging judgment dealing mainly with issues relating to due process and the death penalty. His Lordship stated at p.422 that:

*“ Their lordships recognise the constitutional importance of the principle that international conventions do not alter domestic law except to the extent that they are incorporated into domestic law by legislation. The making of a treaty, in Trinidad and Tobago as in England, is an act of the executive Government, not of the legislature. It follows that the terms of a treaty cannot effect any alteration to domestic law nor deprive the subject of existing legal rights unless and until enacted into domestic law by or under authority of the legislature.*

*When so enacted, the courts give effect to the domestic legislation, not to the terms of the treaty. The many authoritative statements to this effect are too well known to need citation."*

18. On the basis of the above authority the IGA does not, without more, bind Trinidad and Tobago to the enforcement of its terms. It is also noteworthy that the text of the document itself buttresses this conclusion. Article 10 (1) provides that:

*"This Agreement shall enter into force on the date of Trinidad and Tobago's written notification to the United States that Trinidad and Tobago has completed its necessary internal procedures for entry into force of this Agreement."*

19. The IGA is therefore not enforceable within the jurisdiction of Trinidad and Tobago unless the TIEA Bill is passed by Parliament.

#### ISSUE 2 – SECTION 13 TEST

20. The test to be applied by the Court in determining whether an Act of Parliament which is inconsistent with the provisions of Sections 4 and 5 of the Constitution is reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual is currently the subject of some uncertainty due to contradictory precedent emerging from the following decisions:

- a. **Morgan v The Attorney General of Trinidad and Tobago (1990) 28 WIR 232 (PC);**
- b. **Attorney General v Northern Construction Ltd Civil Appeal No. 100 of 2002 (CA);**
- c. **Suratt and others v The Attorney General of Trinidad and Tobago (2007) 71 WIR 391 (PC);**
- d. **The Public Service Board v Omar Maraj [2010] UKPC 29 (PC);** and
- e. **Barry Francis and Roger Hinds v The State CrA Nos. 5 & 6 of 2010 (CA).**

21. Prior to embarking on a discussion of the various tests which have emerged from the above referenced cases, it is worth noting that all have agreed that it falls to the Court/Judiciary to determine whether an Act of Parliament is inconsistent with Sections 4 and 5 of the Constitution, notwithstanding the view and presumed enactment of the legislation by Parliament. It is also common ground that this is a discretion which carries with a heavy responsibility, as it may entail disagreeing with a decision of the majority of the people's elected representatives.

22. In **Northern Construction**, Archie CJ adopted and applied a three-pronged approach to determining the question of infringement and/or reasonable justification from the earlier Privy Council decision of **De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing (1998) 53 WIR 131**, stating that:

*"in determining whether a statutory provision arbitrarily or excessively invades the enjoyment of a fundamental right, regard must be had to whether:*

- *The legislative objective is sufficiently important to justify limiting a fundamental right;*
- *The measures designed to meet the legislative objective are rationally connected to it; and*
- *The means used to impair the right or freedom are no more than is necessary to accomplish the objective."*

23. This test appeared to be replaced by the Privy Council in **Suratt**, when determining the question of whether the creation of an Equal Opportunities Tribunal by the Equal Opportunities Act, 2000 was inconsistent with the Constitution and therefore void. This argument was advanced upon the proposition that the Tribunal as created violated the doctrine of the separation of powers. In establishing the difficulty of the question the Board was called upon to determine, Baroness Hale stated at paragraph 45 that:

*"It is a strong thing indeed to rule that legislation passed by a democratic Parliament establishing a new type of judicial body to adjudicate upon a new body of law is unconstitutional. The constitutionality of a parliamentary enactment is presumed unless it is shown to be unconstitutional and the burden on a party seeking to prove invalidity is a heavy one."*

24. Her Ladyship then went on to hold that the tribunal as enacted by Parliament was not unconstitutional. In concluding the judgment, however, Baroness Hale established what has come to be known as the proportionality test to determine the question of reasonable justification of an inconsistent piece of legislation. At paragraph 58 she stated that:

*"It cannot be the case that every Act of Parliament which impinges in any way upon the rights protected in ss 4 and 5 of the Constitution is for that reason alone unconstitutional. Legislation frequently affects rights such as freedom of thought and expression and the enjoyment of property. These are both qualified rights which may be limited, either by general legislation or in the particular case, **provided that the limitation pursues a legitimate aim and is proportionate to it.** It is for Parliament in the first instance to strike the balance between individual rights and the general interest. The courts may on occasion have to decide whether Parliament has achieved the right balance. But there can be little doubt that the balance which Parliament has struck in the EOA is justifiable and consistent with the Constitution. Section 7 does impinge upon freedom of expression but arguably goes no further in doing so than the existing law; if it does go further, by including gender as well as racial or religious hatred, it is merely bringing the law into conformity with all modern human rights instruments, which include sex or gender among the prohibited grounds of discrimination. Sections 17 and 18 do impinge upon freedom of contract but in ways which are now so common in the common law world that it can hardly be argued that they are not proportionate to the legitimate aim which they pursue. Finally, adding to the role of the Judicial and Legal Service Commission in exactly the way contemplated by s 111 is not inconsistent with the Constitution."* (All emphasis supplied)

25. The proportionality test therefore contemplates a two-pronged approach, namely:
- a. Does the limitation of the fundamental right pursue a legitimate aim; and
  - b. If so, is that limitation proportionate to the aim.



26. Lady Hale reiterated the proportionality test in **Omar Maraj**, a case dealing, broadly with whether the Public Service Appeal Board had jurisdiction to hear the appeal of a teacher who has been summarily dismissed under Section 132 of the Constitution. In an *obiter* statement at paragraph 32 of her judgment, Her Ladyship stated that:
- “Legislation frequently has to draw distinctions between different classes of people. Such distinctions may well be justified. Some distinctions are easier to justify than other. But at the very least they must serve a legitimate aim and be rationally connected to that aim.”* (emphasis added)
27. Following these two Privy Council decisions, the local Court of Appeal was faced with a challenge to the constitutionality of the Dangerous Drugs Act in **Francis and Hinds**. The Act imposed a mandatory minimum penalty with no room for judicial discretion once an offender was found guilty of a scheduled offence. The Court convened an extraordinary five (5) member panel to hear the Appeal, which resulted in a unanimous decision to declare the Act unconstitutional, but a minority judgment written by Archie CJ and Jamadar JA disavowing the application of the proportionality test to the issue. The majority judgment was delivered by Beraux JA with Yorke Soo-Hon JA and Weekes JA concurring.
28. It is convenient to deal with the minority judgment first. In a ninety-four (94) page judgment the learned Judges undertook a detailed analysis of the history of the Constitution and the learning prior to the Privy Council decision in **Suratt** and **Omar Maraj** to arrive at the conclusion that the only threshold which Section 13 of the Constitution imports is that which it literally states, namely a test of reasonable justification. The test of reasonable justification is only to be applied after the Court undertakes a determination of whether the Act is inconsistent with the fundamental rights provisions. Proportionality, and the **De Freitas** test applied in **Northern Construction** are to be viewed as analytical tools to assist a Judge in making a determination as to whether the literal threshold of reasonable justification has been crossed when the Act is viewed against the constitutional values which a society with a proper respect for fundamental rights and freedoms recognises. The summary of the judgment can be found at paragraphs 125 and 126, which read:

*“It is clear that the process of analysis contemplated by section 13 involves three discrete but interrelated steps. First, the determination of inconsistency.*

*Second, the determination of reasonable justifiability. Third, the determination of the core inviolable and relevant standards of a democratic society against which the provisions challenged must ultimately be measured and the undertaking of that measurement. However, because section 13 requires the justifiability to be reasonable, proportionality 'tests' are an obvious tool that may be used to assist courts in determining section 13 challenges. Indeed, the proportionality analysis applied in **Northern Construction**, could also be used by Parliament as an initial filter, when it intends to pass legislation, which though inconsistent with the Constitution it seeks to render effective pursuant to section 13 of the Constitution. Having done this, Parliament ought also to go further and test the proposed legislation against the constitutional values that a society that has a proper respect for fundamental rights and freedoms recognises.*

*We therefore say, that the final standard of justification for limits on the sections 4 and 5 rights and freedoms, refers the Court in its inquiry back to the constitutional values entrenched in those very sections. This is because the standard set in section 13 for reasonable justification is 'a society that has a proper respect for the rights and freedoms of the individual'. Therefore, in any section 13 analysis, a court must be guided by the values and principles which are embodied in due regard for the rights and freedoms of the individual. Examples of these overarching constitutional values are also to be found in the Preamble to the Constitution. It is these and the other overarching constitutional values and principles (such as respect for the dignity of the human person, the rule of law and the separation of powers) that are the final standard against which limitations on and restrictions of the rights and freedoms must be shown not to be reasonable and demonstrably justified. This is the effect of the analysis that Bereaux, J.A. has undertaken in relation to section 13, the outcome of which we agree with."*

29. The majority judgment took a rather different view on the issue. It considered the proportionality test to be nothing more than a restatement of one of the limbs of the **Northern Construction** test, and found that it was applicable to the first question to be determined by the Court – namely whether the Act is inconsistent with sections 4 and 5 of the Constitution – and not to the considerations in section 13 (1). Rather, it

preferred the approach enumerated in the much earlier case of **Morgan**, wherein the Privy Council did not apply a formulaic test but rather considered whether the inconsistency in question was a feature of democratic societies and would therefore ordinarily be applied.

30. In dealing with the proportionality issue, Bereuax JA stated at paragraphs 51 to 52 that:

*"The proportionality test applies a two-step approach to the question of the constitutionality of an Act of Parliament:*

*(1) Does the policy of the legislation pursue a legitimate object?*

*(2) Does the limitation or restriction of the constitutional right bear a reasonable or rational relation to the object of the legislation.*

*The test was applied by Baroness Hale in Suratt (supra). Baroness Hale's formulation is nothing but a more recent expression of a long established principle. But it is also now one of three limbs of the test to be applied in considering whether an Act of Parliament is not reasonably justifiable under section 13(1) of the Constitution, pursuant to the decision of this Court in AG v. Northern Construction Ltd., Civil Appeal No. 100 of 2002. The result will be that any legislation found to be inconsistent with sections 4 and 5 of the Constitution, because its provisions are disproportionate, will most certainly not be reasonably justifiable under 13(1).*

*The question which naturally arises is why then, if the test applies to Acts of Parliament, whether or not they are passed with an enhanced majority, is there the necessity "of permitted limitations of and derogations from constitutionally protected rights and freedoms that are to be found in all our Constitutions ..."*

*...*

*Our conclusion is that the proportionality test is appropriate to the question of inconsistency with sections 4 and 5 of the Constitution and not to the section 13(1) considerations, although it may be used as a tool in construing the proviso in section 13(1)."*

31. In establishing the preference for the approach in **Morgan**, the learned Judge stated at paragraphs 99 to 102 that:

*"In Morgan, Lord Templeman equated the phrase "a society which has a proper regard for the rights and freedoms of the individual" with a "democratic society". We accept that. As an ideal for measuring what kind of society has a proper regard for the rights and freedoms of the individual, a democracy is the most appropriate. In deciding whether section 13(1) of the Constitution is breached we can compare our legislation with comparable legislation from other democracies.*

*It requires a dispassionate and detached approach by judges. Certainly there will be a local flavour to legislation which will require judges to bear in mind our own national and cultural peculiarities but ultimately, the assessment must be made against norms and accepted standards of civilised nations which subscribe to democratic principles, democratic systems of governance and the rule of law.*

*...Proportionality may be relevant to any consideration of legislation under section 13(1) of the Constitution and may be used as a tool in construing section 13(1). But it cannot be applied inflexibly. Moreover, there may be legislation which is disproportionate and thus inconsistent with sections 4 and (5) of the Constitution (thus failing the proportionality test) but which may still be effectual because democracies recognise that some disproportion in aims and policy of the Executive, may be required in the public interest. Democracies deliberately enact legislation which, as a matter of social policy, may be tailored to weaker groups in the society in a manner which may be grossly disproportionate to other groups but which may be necessary for the stability of the society. While such legislation may be inconsistent with the human rights provisions, their social object may be consistent with democratic norms and ideals and therefore reasonable justifiable.*

*It is for this reason that the Constitution permits the elected representatives, by a requisite majority, to override the provisions of sections 4 and 5. It is also for this reason that the courts when considering the proviso in section 13(1) of*

*the Constitution must be deferential to the views of the elected representatives in Parliament, recognising that there are limitations on and derogations from the fundamental rights, which are permitted by the Constitution.”*

32. The end result of the above authorities is that the state of the law on the test to be applied when determining a Section 13 (1) issue is currently in limbo. That being said, there are similarities in the authorities which may assist in determining the evidence to be led when dealing with such an issue.
33. Respectfully, therefore, it is my view that regardless of which test the Court ultimately employs, it must take the following considerations into account:
  - i. the inconsistency (or lack thereof) of the Act with the fundamental rights provisions;
  - ii. the aim and/or object of the Act;
  - iii. the measures prescribed by the Act as viewed against its stated aim and/or object;
  - iv. whether the aim and/or object of the Act could have been achieved without limiting fundamental rights;
  - v. the socio-political policy underpinning of the Act;
  - vi. the norms, values, commonalities and trends of democratic societies and international law when dealing with similar socio-political issues;
  - vii. whether the Act runs counter to the overarching values and principles which the Constitution itself embodies; and
  - viii. whether the Act is justified in the public interest.

### ISSUE 3 – INCONSISTENCY

#### i) Right of Respect for Private and Family Life

34. The proposed Preamble to TIEA Bill expressly recognises that the sharing of personal information without first obtaining consent of the individual in question constitutes a violation of this fundamental right.

35. The right itself has not been adjudicated upon extensively within this jurisdiction. In **CV2007-03288 Darren Baptiste v Police Service Commission and Commissioner of Police**, Moosai J (as he then was) was called upon to determine, *inter alia*, whether the disclosure pursuant to a request under the Freedom of Information Act ("FOIA") of the academic qualifications of two (2) third parties who were appointed to the position of Police Corporal ahead of the Claimant would constitute a breach of the third parties' fundamental rights guaranteed by Section 4 (c). The learned Judge appears from his *ratio* to have held that the release of the information was inconsistent with the fundamental right, but applying the proportionality test it was reasonably justifiable having regard to the object and purpose of the FOIA. At paragraphs 45 to 49, he stated:

*"...Undoubtedly the Constitution recognizes the right to privacy as a fundamental right. However fundamental rights are ordinarily not absolute and there may be limitations attending same. It is for the courts to decide in a principled and rational manner how the various fundamental rights listed in section 4 of the Constitution are to be applied in practice, how conflicts between them are to be resolved and what is the extent of the protection they afford..."*

*However not every Act of Parliament which infringes in any way upon the rights protected in sections 4 and 5 of the Constitution is for that reason alone unconstitutional. Limitation of a fundamental right is permissible provided that the limitation pursues a legitimate aim and is proportionate to it: Surratt and others v AG [2008] 1 AC 655...*

*The declared object section 3 of the FOIA is to extend the right of members of the public to access to information in the possession of public authorities. This clearly recognizes that there was an existing right in the public to access such information and what the FOIA sought to do was to extend such right. In those circumstances the question arising for determination would be whether the disclosure of the academic qualification certificates and diplomas of Benjamin and Jury breaches their private life constitutional rights. In Ashford Sankar I*

*dealt at pages 41-42 with the kind of balancing exercise undertaken by Parliament in enacting the FOIA...*

*The Australian Law Reform Commission has echoed similar sentiments in its Unfair Publication Defamation and Privacy Report (ALRC Report No. 11 Canberra 1979):*

*"The privacy claim is not an absolute one. We are individuals with individual personalities and needs, but we live in a community. Individuals interact; inevitably the interaction leads to the transmission of personal information. Both the individual and institutions, public and private, have a legitimate claim to receive at least on a restricted basis, a considerable amount of very personal information. Some matters are highly personal, raise issues of public concern. All members of the community have an interest to receive information on topics of public significance. The claim to privacy tends to conflict with the claim to public information. The dilemma has always been to strike a proper balance between these two interests."*

*More particularly with regard to section 30, Parliament has seen it fit to provide a qualified exemption, restricting disclosure of personal information, including personal information of third parties, where it would be unreasonable to do so. Moreover where third parties' interests are concerned, Parliament has stipulated (section 30 (3)) that where the public authority decides to grant access to the document, it shall, if practicable, notify the individual who is the subject of that information of the decision and of the right to apply to the High Court for judicial review of the decision. In my view this provides an acceptable and proportionate level of intrusion into the fundamental right to privacy in pursuance of the legitimate aim of the legislation."* (Emphasis added)

36. That the Constitutional fundamental right to respect for private and family life encompasses a right to be protected from the disclosure of personal information without consent has therefore been recognised by the High Court domestically.

Internationally, Halsbury's Laws of England<sup>5</sup> confirms that the international law recognises a right to privacy which ought not to be arbitrarily restricted, stating:

*"The right to be free from arbitrary interference with one's privacy is recognised in several of the major international conventions on human rights including the Universal Declaration of Human Rights, the European Convention on Human Rights<sup>2</sup> and the International Covenant on Civil and Political Rights. Other major regional human rights instruments also protect the right to respect for private life, and privacy is also expressly protected by the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities. There are also a number of EU measures relating to the use of personal information."*

37. It therefore cannot be legitimately argued, in my view, that the TIEA Bill is not inconsistent with Section 4 (c) of the Constitution. Indeed, the TIEA Bill arguably prescribes a more egregious level of intrusion than that of the FOIA as considered by Moosai J in **Darren Baptiste**, as there are no safeguards similar to those in section 30 (such as a standard of unreasonableness and a requirement of notification where practicable) which the learned Judge placed heavy reliance upon.
38. The question which therefore falls to be determined with regard to Section 4 (c) is whether the TIEA Bill's inconsistency with the fundamental right is reasonably justifiable as per Section 13 (1) of the Constitution (discussed below).

ii) Due Process and the Rule of Law

39. It is posited that the failure to notify and/or obtain the consent of the account holder prior to sharing his/her personal information is a breach of the right to due process which is guaranteed by Sections 4 and 5 of the Constitution, and the concept of the rule of law itself.

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<sup>5</sup>Halsbury's Laws of England/RIGHTS AND FREEDOMS (VOLUME 88A (2013))/4. THE FUNDAMENTAL RIGHTS AND FREEDOMS/(7) RIGHT TO RESPECT FOR PRIVATE LIFE/(i) Domestic and International Context/319. Right to respect for private life under International Law



40. In **Steve Ferguson v The Attorney General of Trinidad and Tobago [2016] UKPC 2**, the Privy Council reviewed the concept of due process and the rule of law in order to determine an argument raised by the Appellants that due process dictated that an accrued right to be discharged could only be removed through judicial proceedings and not by subsequent legislation. The Board first reviewed what the concept is understood to mean at paragraphs 17 to 18, as follows:

*"Like other provisions of sections 4 and 5 protecting fundamental human rights and freedoms, the right to due process may be overridden only under the procedure provided for by section 13. This allows for the enactment of legislation which is expressly inconsistent with sections 4 or 5, provided that it has been passed by a majority of three fifths of all the members of each house of Parliament, and that it is "reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual". The Amending Act was expressed to have effect even though inconsistent with sections 4 and 5 of the Constitution: section 4. It was also passed with the requisite three fifths majority in each house.*

*What is comprised in due process has never been exhaustively defined. But it has always been taken to include the resolution of justiciable issues by courts of law without interference by the executive or the legislature. The classic statement of the principle is that of Lord Millett, giving the advice of the Board in *Thomas v Baptiste* [2000] 2 AC 1, 21-24...Lord Millett said, at pp 21H-22A, 23D-E, 24C:*

*"The due process clauses in the Fifth and Fourteenth Amendments underpin the doctrine of the separation of powers in the United States and serve as a cornerstone of the constitutional protection afforded to its citizens. Transplanted to the Constitution of Trinidad and Tobago, the due process clause excludes legislative as well as executive interference with the judicial process. ... The right for which [the Appellants] contend is not the particular right to petition the commission or even to complete the particular process which they initiated when they lodged their petitions. It is the general right*

accorded to all litigants not to have the outcome of any pending appellate or other legal process pre-empted by executive action. This general right is not created by the Convention; it is accorded by the common law and affirmed by section 4(a) of the Constitution. ... [T]he right to be allowed to complete a current appellate or other legal process without having it rendered nugatory by executive action before it is completed is part of the fundamental concept of due process."  
(emphasis added)

41. The Board then explained why the argument advanced by the Appellants failed at paragraph 35, stating:

*"...But the appellants also say that a conviction in the current criminal proceedings would imperil their liberty and property, and that the due process clause of the Constitution means that an accrued right not to be tried and to a discharge and a verdict of not guilty cannot be removed by legislation. It can be removed only by judicial proceedings. The Board readily accepts that there may be vested rights relating to the conduct of criminal proceedings which could not be withdrawn by legislation consistently with section 4(a). As applied to the Amending Act, however, the argument fails, because it is not in reality the distinct point which it professes to be. The right to be acquitted and discharged without trial and irrespective of innocence or guilt is not as such a right protected by section 4(a) or any other provision of the Constitution. The loss of that right did not deprive the appellants of their liberty or property. It merely exposed them to a criminal trial in which they might or might not be found to have committed serious criminal offences. The fairness of that trial continues to be protected by the Constitution. If at the end of the process the appellants are convicted and sentenced, any adverse effect on their liberty and property will arise from a judicial proceeding. It will have occurred by due process of law."*

42. Similarly, the reporting of the personal information under the TIEA Bill without notification and/or consent does not challenge the due process of law. The reporting, without more, is not an allegation that an offence of tax evasion has been committed and there is therefore no threat at that stage to the account holder's liberty and/or

property. There is consequently no entitlement at that stage to: (a) the exclusion of the executive or legislative process; and (b) an appeal to the rules of natural justice, particularly a right to make representations as to why the information ought not to be shared. Rather, just as in **Ferguson**, the reporting of the personal information may at its highest expose the account holder to a criminal trial – the fairness of which will be protected by the Constitution and the rule of law.

43. There is therefore, in my respectful view, nothing to suggest that the TIEA Bill is inconsistent with the due process of law guaranteed by Sections 4 and 5 of the Constitution.

iii) Equality before the Law and Equality of Treatment

44. The issue also arises as to whether the singling out of “US Persons” as opposed to all other citizens/residents in the TIEA Bill as being the account holders for whom personal information will be shared amounts to a breach of that person’s fundamental rights under Section 4 (b) (equality before the law) and Section 4 (d) (equality of treatment), thus rendering the Bill discriminatory and inconsistent with Sections 4 and 5 of the Constitution.

45. In **Annissa Webster v The Attorney General of Trinidad and Tobago [2015] UKPC 10**, the Board reviewed the approach of the Courts within this jurisdiction to both Sections 4 (b) and (d) of the Constitution. As it regards 4 (b), the Lady Hale stated at paragraph 21 of the judgment as follows:

*“So what of the law in Trinidad and Tobago? There is a full and helpful exposition of the approach to section 4(b) in the judgment of Jamadar J (as he then was) at first instance in the “Trinity Cross” case, Sanatan Dharma Maha Sabha of Trinidad and Tobago Inc v Attorney General of Trinidad and Tobago, HCA Application No 2065/2004, at pp 50-58. The burden is on the complainant to show both “likeness” and differential treatment, but once this is done, “the burden shifts to the State to show reasonableness, objective purposefulness, justification, accommodation, etc.” (p 57). But “Courts will not readily allow laws to stand, which have the effect of discriminating on the basis of the stated*

*personal characteristics” of race, origin, colour, religion or sex. These are in a special category because such discrimination “undermines the dignity of persons, severely fractures peace and erodes freedom” (p 55). Jamadar J regarded the approach to section 4(b) as relatively settled and clear.”*

46. Regarding 4 (d), Her Ladyship stated at paragraph 24 that:

*“The current approach to section 4(d) of the Constitution of Trinidad and Tobago may therefore be summarised as follows:*

*(1) The situations must be comparable, analogous, or broadly similar, but need not be identical. Any differences between them must be material to the difference in treatment.*

*(2) Once such broad comparability is shown, it is for the public authority to explain and justify the difference in treatment.*

*(3) To be justified, the difference in treatment must have a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.*

*(4) Weighty reasons will be required to justify differences in treatment based upon the personal characteristics mentioned at the outset of section 4: race, origin, colour, religion or sex.*

*(5) It is not necessary to prove mala fides on the part of the public authority in question (unless of course this is specifically alleged).”*

47. The Board therefore confirmed that the first stage in determining whether these fundamental rights have been breached is an exercise of comparison, that is to say, that the persons alleging the breach have the burden of showing that they have been treated unequally to persons in similar (but not necessarily identical) circumstances. Once this threshold has been crossed, the burden then shifts to the public authority to justify the differential treatment.

48. It is my view that there is not sufficient ‘likeness’ between “US Persons” as defined in the TIEA Bill and all other citizens/residents of Trinidad and Tobago to ground a breach of Sections 4 (b) and (d) of the Constitution. A “United States Person” is defined by the Section 9 (1) as “*a citizen of the United States of America or resident individual, a partnership or corporation organised in the United States of America or under the laws*

*of the United States of America...".* The very fact of a different and/or dual citizenship renders these persons in a different class than all other citizens/residents of Trinidad and Tobago and consequently exposes them to different obligations whilst also entitling them to benefits which non-citizens of the US would not receive. One such obligation is that which is imposed by FATCA, and this is an obligation which applies equally to all US citizens across the globe. In short, therefore, there is no differential treatment for US citizens in Trinidad and Tobago as opposed to US citizens generally, which is where the genuine comparator would lie.

49. It is therefore my respectful conclusion that the TIEA Bill is not inconsistent with Sections 4 and 5 of the Constitution.

#### ISSUE 4 – REASONABLE JUSTIFICATION

50. At paragraph 33 above, I provided a listing of the evidence which I am of the view a Court will take into account when determining whether an Act which is inconsistent with the provisions of Section 4 and 5 of the Constitution will be reasonably justifiable in a society which has a proper respect for the fundamental rights and freedoms of the individual – regardless of which test the Court were to implement in making its determination.

51. I have already examined the first factor, inconsistency, and arrived at the conclusion that the TIEA is inconsistent with the fundamental right to respect for private and family life. Each of the other factors listed therein will now be addressed in turn.

- i) The aim and/or object of the TIEA Bill –

*The stated object of the Bill is "An Act to repeal the Tax Information Exchange Agreements Act and replace it with a Tax Information Exchange Agreements (United States of America) Act which would make provision for the implementation of agreements between Trinidad and Tobago and the United States of America providing for the exchange of information for the purposes of taxation, the validation of the sharing of personal information held by the Board of Inland Revenue or financial institutions and for related purposes."*

Broadly, the TIEA Bill is designed to bring into domestic effect the provisions of the IGA signed between Trinidad and Tobago and the US, which in turn furthers the aim and/or object of FATCA which is to curb tax evasion.

It cannot be argued that tax evasion has not developed as a legitimate concern for economies throughout the world. The preponderance of 'tax haven' countries has resulted in a drain of State capital which could, if collected, be funnelled through to development projects for the benefit of the general citizenry. Equally, it is further a legitimate aim for a State to give domestic force to an international agreement which it has already attached its signature thereto, within which it gave an undertaking to bring the agreement into effect.

It is therefore concluded that the TIEA Bill serves a legitimate aim and/or object, notwithstanding its inconsistency with Sections 4 and 5 of the Constitution.

- ii) The measures prescribed by the Act as viewed against its stated aim and/or object –

The inconsistent measure provided for in the TIEA Bill is the reporting of sensitive personal information without the consent of the account holder. If one accepts that the aim and/or object of the TIEA Bill is, in a general and broad sense, to assist in the combating against tax evasion – then this measure makes perfect rational and proportionate sense.

The only way to determine whether: (a) taxes ought to be paid; (b) taxes are being paid; and (c) the amount of the taxes which are due, is to have reference to the details of the account in question including the account balance or cash value equivalent. Equally, the only plausible way to pursue a person who may have been guilty of tax evasion is to have reference to his/her personal details.

The question of whether the forfeiture of consent is legitimately required is again an exercise of common sense. It goes without saying that if an account holder is guilty of tax evasion, he/she will not willingly sanction the release of

his/her sensitive personal information to the authority which will then be in a position to press charges for the said tax evasion.

It is therefore advised that the inconsistent measures prescribed by the TIEA Bill are rationally connected and proportionate to the aim and/or object of the Bill.

- iii) Whether the aim and/or object of the Act could have been achieved without limiting fundamental rights –

The only method by which the right to private and family life could not be limited by the TIEA Bill is to allow for notification and/or consent of the account holder prior to reporting, which would frustrate the aim and/or object of the Bill as explained above.

There does not appear to be, in my view, any other method by which the purpose of the TIEA Bill could be achieved other than to limit the Section 4 (c) fundamental right.

- iv) the socio-political policy underpinning of the Act –

This factor is not as relevant as the others considered herein, as to my mind the TIEA Bill is not underpinned by any foundational socio-political policy other than its stated aim and/or object, to prevent tax evasion.

That being said, it must be borne in mind that there is a significant socio-political advantage to maintaining good economic ties with the US, as a failure to do so will redound to the detriment of the country on both a macro and micro economic level. The maintenance of good trade relationships with the US is critical to the Trinidad and Tobago economy, especially in light of the current economic downturn.

The socio-economic policy which underpins the passing of TIEA Bill is therefore also in favour of allowing for the restriction of the fundamental right.

- v) the norms, values, commonalities and trends of democratic societies and international law when dealing with similar socio-political issues –

This is probably the strongest factor in favour of passing the TIEA Bill notwithstanding its inconsistency with the fundamental right to respect for privacy. It has already been established<sup>6</sup> that the right to privacy is a feature of international conventions, including the European Convention on Human Rights (ECHR). Yet European Union countries, including France, Italy, Hungary and Germany for example are all listed<sup>7</sup> as having a Model 1 IGA in force. Similarly, countries such as Jamaica and Canada which also enshrine a Constitutional right to private life also have a Model 1 IGA in force.

There is therefore a strong international trend in democratic societies towards the enactment of domestic legislation which will bring a signed IGA into effect and, consequently, the limitation of the right to privacy of an individual in favour of the reporting of personal information in order to legitimise the object and purpose of the IGA.

- vi) whether the Act runs counter to the overarching values and principles which the Constitution itself embodies –

The TIEA Bill does not violate the fundamental concepts of the rule of law, separation of powers or respect for the dignity of the human person. The latter two (2) are issues which do not arise, and the former has been dealt with in terms of due process<sup>8</sup>.

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<sup>6</sup> See paragraph 36 above

<sup>7</sup> *Ibid*, n.1

<sup>8</sup> See paragraphs 39 to 43 above



- vii) whether the Act is justified in the public interest –

This factor again strongly supports the passing of the TIEA Bill notwithstanding its inconsistency with Section 4 (c) of the Constitution. A failure to adopt the TIEA Bill would result in direct adverse consequences on the operations of the banking sector in this country, both on a macro and micro level. These consequences would include an increase to the cost of doing business, the termination of correspondent banking relationships with US banks and the disruption of domestic banking services to the public. The imposition of a thirty (30%) withholding tax which will be implemented for non-compliance will also have an effect on the revenue generating potential of the financial sector.

It has already been established that the TIEA Bill cannot be effectual without the limitation of the fundamental right. In light of the consequences attendant on not passing the Bill, it is clear that the TIEA Bill is justifiable in the public interest notwithstanding said limitation.

52. On the basis of my conclusions herein, I am of the firm view that the TIEA Bill is reasonably justifiable in a democratic society which has a proper respect for the rights and freedoms of the individual.

#### ISSUE 5 – SOVEREIGNTY

53. The question as to whether the Constitution imbues within it an unwritten principle that the State will not forfeit its sovereignty to a foreign state is novel. It does not appear to have arisen in a Constitutional context before and is perhaps best addressed by reference to international law principles concerning state sovereignty.
54. Article 3 of the 1933 Montevideo Convention on Rights and Duties of States, which is generally accepted as the international agreement which established the criteria for statehood, provided that:

*“The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and*

*consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.*

*The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law."*

55. The sovereignty of a State to the exclusion of all others is therefore paramount to its very existence as a statehood. That said, once a State is established, it is free to exercise its sovereignty to reduce its independence as it sees fit, through international agreements and domestic legislation incorporating same. In **Customs Regime between Germany and Austria [1931] PCIJ Ser A/B no 41**, Judge Anzilotti stated at paragraphs 57 to 58 that:

*"...the restrictions upon a State's liberty, whether arising out of ordinary international law or contractual arrangements, do not in the least affect its independence. As long as those restrictions do not place the State under the legal authority of another State, the former remains an independent State however extensive and burdensome those obligations may be."*

56. Alina Kaczorowska in Public International Law, 4<sup>th</sup> edition, gives the following example at page 188:

*"Member States of the EU have attributed to the EU exclusive competences in some areas, e.g. the Common Commercial Policy, the Common Agricultural Policy and monetary policy...with the consequence that they are prevented from acting unilaterally or collectively in these areas, irrespective of whether the EU has already acted. Notwithstanding this, Member States of the EU are independent and sovereign States enjoying full international personality."*

57. In international law, therefore, a State is entitled as an exercise of sovereignty to voluntarily restrict its own independence through an international agreement. I see no

reason for a Court to hold differently on the basis of a Constitutional argument, especially in light of the fact that it a principle of not "forfeiting sovereignty" is not to be found anywhere throughout the language of the Constitution. Fundamental concepts such as the rule of law and separation of powers have been grounded in the Preamble and structure of Constitution by judicial authority. Respectfully, it would seem to be a stretch to develop jurisprudence based on an "unwritten principle" of the Constitution, and possibly a breach of the separation of powers doctrine as the Judiciary would possibly be interfering with the Executive's legitimate exercise of its functions.

And I so advise.

/s/ Raphael Ajodhia

19/02/17



February 1, 2017

Mr. Ian Chinapoo  
Executive Director  
Unit Trust Corporation of Trinidad and Tobago  
UTC Financial Centre,  
82 Independence Square,  
**Port-of-Spain**

Dear Mr. Chinapoo,

**Request for Written Submission on Tax Information Exchange Agreements Bill, 2016**

Reference is made to the above captioned matter.

The Tax Information Exchange Agreements Bill, 2016 ("the Bill") was referred to a Joint Select Committee of Parliament for consideration and report by February 3, 2017.

The purpose of the Bill is to implement certain tax information exchange agreements entered into between Trinidad and Tobago and the United States of America. A copy of the Bill which incorporates the proposed amendments thus far is attached for your consideration.

I have been directed by the Committee to request a written submission from the Unit Trust Corporation on the Bill.

You are kindly asked to forward your comments on the Bill as well as any other supporting documents no later than **Friday February 10, 2017**.

Should you require further information in this regard, please feel free to contact the undersigned at **740-3986** or **624-7275 ext. 2250** or via email at [jscfatca@tparliament.org](mailto:jscfatca@tparliament.org).

Respectfully,

Keiba Jacob  
**Secretary**



**REF : UTC.CA - 10/17**

February 10<sup>th</sup> 2017

Ms. Keiba Jacob  
Secretary  
Parliament of the Republic of Trinidad and Tobago  
Levels G – 9, Tower D  
The Port of Spain Internal Waterfront Centre  
1A Wrightson Road  
Port of Spain

Dear Ms. Jacob,

**Request for Written Submission on Tax Information Exchange Agreements Bill, 2016**

We refer to the captioned matter, your letter to us dated February 1<sup>st</sup> 2017 and your e-mail to us on February 7<sup>th</sup> 2017 to which you attached a copy of the Bill mentioned above.

Further to the comments which we would have provided to the Central Bank of Trinidad and Tobago upon reviewing the initial draft of the Bill, we have set out in the enclosed Appendix our comments on the copy of the Bill you sent us.

We thank you for the opportunity to have been of assistance to the Joint Select Committee. If you require any further comments from us regarding the Bill, please do not hesitate to contact the undersigned.

Yours respectfully,

A handwritten signature in black ink, appearing to read 'Dawn Seepersad'.

**DAWN SEEPERSAD  
GENERAL COUNSEL AND CORPORATE SECRETARY**

## APPENDIX

Section	Comments
s. 7 (2), pg 8: Exchange of Information	Delete Board wherever it appears and insert "competent authority."
Schedule 4; s. (b) pg 15: Sensitive Personal Information.	Replace UNTIN with USTIN wherever it appears.
s. 31, pg 35: Validation of actions of the Competent Authority	There needs to be a definition of "Board" since it is being used interchangeably with "competent authority" and the "Board of Inland Revenue."
Definitions: <ul style="list-style-type: none"> <li>• Article 3: 1(a) 11, pg 37</li> <li>• Article 1: f(2), pg 42</li> </ul>	The term "competent authority" means:- "in the case of the Republic of Trinidad and Tobago, the Minister to whom the responsibility for Finance is assigned or his authorised representative."  The above is inconsistent with the definition outlined in Part 11, Schedule 1, pg 7.
General	<ul style="list-style-type: none"> <li>• Although the UTC Act was not specifically mentioned with respect to a disclosure provision, section 8, pg 9 has in place a "catch all" provision to allow for the disclosure of information under this revised version of the TIEA.</li> <li>• There seems to be adequate provisions for investment advisors, investment managers and collective investment schemes.</li> </ul>



February 1, 2017

Mr. James Camacho  
President  
Association of Trinidad and Tobago Insurance Companies  
ANSA Centre,  
8 Stanmore Avenue,  
**Port of Spain**

Dear Mr. Camacho,

**Request for Written Submission on Tax Information Exchange Agreements Bill, 2016**

Reference is made to the above captioned matter.

The Tax Information Exchange Agreements Bill, 2016 (“the Bill”) was referred to a Joint Select Committee of Parliament for consideration and report by February 3, 2017.


The purpose of the Bill is to implement certain tax information exchange agreements entered into between Trinidad and Tobago and the United States of America. A copy of the Bill which incorporates the proposed amendments thus far is attached for your consideration.

I have been directed by the Committee to request a written submission from the Association on the Bill.

You are kindly asked to forward your comments on the Bill as well as any other supporting documents no later than **Friday February 10, 2017**.

Should you require further information in this regard, please feel free to contact the undersigned at **740-3986** or **624-7275 ext. 2250** or via email at [jscfatca@tparliament.org](mailto:jscfatca@tparliament.org).

Respectfully,

  
Keiba Jacob  
**Secretary**





(46)  
**ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES**

8 Stanmore Avenue, Port of Spain, P.O. Box 208, Port of Spain, Trinidad, W.I.

Phone: 1 (868) 624-2817, 1 (868) 625-2940, 1 (868) 624-9905 Fax: 1 (868) 625-5132, E-mail: [mail@attic.org.tt](mailto:mail@attic.org.tt)

February 10, 2017

Ms. Keiba Jacob  
Secretary,  
JSC – Tax Information Exchange Agreements.  
Levels G-9 Tower D,  
The P.O.S International Waterfront Centre,  
1A Wrightson Road, P.O.S

Dear Ms. Jacob,

**Request for written Submission on the Tax Information Exchange Agreements Bill, 2016**

Thank you for the opportunity to comment on the Tax Information Exchange Agreement Bill 2016. ATTIC is in agreement with the provisions of the Tax Information Agreement Bill as amended, however, we are concerned that the Insurance Companies which will have to observe the reporting requirements demanded by the Bill when enacted are not yet fully apprised of what will be required by the Board of Inland Revenue.

With just a short period of time left between the passage of the legislation and its eventual enactment, it is our opinion that preparation should have been advanced to the point whereby Financial Institutions would have been advised on the reporting process so procedures could be put in place and fully tested.

There are many minor changes. We attach a “marked up” copy of the Bill

Yours Sincerely  
**Association of Trinidad and Tobago Insurance Companies.**

James Camacho  
President



**TAX INFORMATION EXCHANGE AGREEMENT ACT 2016  
ARRANGEMENT OF CLAUSES**

*Name of  
Act*

Clause

**PART I  
PRELIMINARY**



1. Short title
2. **Commencement**
3. ~~2.~~ Act inconsistent with Constitution
4. Interpretation

**PART II  
~~TAX INFORMATION EXCHANGE AGREEMENTS~~**

- ~~5. Minister to authorize a person to act as a Competent Authority~~
- ~~6. Declaration of agreements~~
- ~~7. Implementation of agreements~~
- ~~8. Powers of the Minister~~
- ~~9. Disclosure under this Act~~

**PART III  
1989 TIEA**

- ~~5. 9.~~ Interpretation of certain words and phrases ~~under Part II~~
- ~~6. 10.~~ Taxes covered by this Part
- ~~7. 11.~~ Exchange of information
- ~~8.~~ Disclosure under this Part

**PART IV-III  
2016 IGA**

- ~~9. 13.~~ Interpretation of certain words and phrases in ~~this Part IV~~
- ~~10. 14.~~ Processing of sensitive personal information
- ~~11. 15.~~ Receipt of information by the Competent Authority
- ~~12. 16.~~ Disclosure of personal information to the United States Treasury
- ~~13. 17.~~ Financial Institutions to forward sensitive personal information
- ~~14. 18.~~ Reporting Financial Institution to characterize payments
- ~~15. 19.~~ Reported currency required
- ~~16. 20.~~ USTIN information not required in certain circumstances
- ~~17. 21.~~ Timeline to forward sensitive information

*R*

A BILL

AN ACT to repeal the Tax Information Exchange Agreements Act and replace it with a new Tax Information Exchange Agreements (**United States of America**) Act which would make provision for the implementation of agreements between Trinidad and Tobago and other States **the United States of America** providing for the exchange of information for the purposes of taxation, to validate the validation of the sharing of personal information held by the Board of Inland Revenue or be financial institutions and for related purposes

Preamble

~~And whereas~~ **Whereas** Trinidad and Tobago entered into a Tax Information Exchange Agreement with the United States of America on 11<sup>th</sup> January, 1989 ("the 1989 TIEA") ~~on the basis of which an Order was made by the President declaring that agreement to be a declared agreement:~~

~~WHEREAS~~ **And whereas** the Tax Information Exchange Agreements Act ("the Act") was enacted in 1989 ~~to all~~ for the implementation of agreements between Trinidad and Tobago and other States providing for the exchange of information for purposes of taxation **including the 1989 TIEA:**

~~And whereas~~ Trinidad and Tobago entered into a Tax Information Exchange Agreement with the United States of America on 11<sup>th</sup> January, 1989 ("the 1989 TIEA") ~~on the basis of which an Order was made by the President declaring that agreement to be a declared agreement:~~

And whereas the Act provides for the sharing of personal information of identifiable individuals without first obtaining their consent for such sharing:

And whereas the sharing of personal information of identifiable individuals without first obtaining their consent for such sharing amounts to a breach of that person's right to his family and private life as guaranteed by section 4 of the Republican Constitution:

And whereas the Republican Constitution by section 5 provides that no law may abrogate, abridge or infringe ~~in~~ or authorize the abrogation, abridgement or infringement of any of the rights contained in section 4 of the Republican Constitution:

And whereas section 13 requires any Act which seeks to abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement may have effect even though inconsistent with the

*not defined*  
*of the Republican Constitution*

~~States of America to improve international tax compliance and to implement FATCA:~~

~~And whereas Trinidad and Tobago may wish to enter into similar agreements with other States:~~

~~And whereas the implementation of these agreements may affect the right to family and private life of individuals in Trinidad and Tobago guaranteed by section 4 of the Constitution:~~

And whereas it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even through inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the vote of not less than three-fifths of all members of that House:

And whereas it is necessary and expedient that the provisions of the Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

## PART I

### PRELIMINARY

Short title

1. This Act may be cited as the Tax Information Exchange Agreements (United States of America) Act, 2016.

Commencement

2. This Act comes into operation on such date as is fixed by the President by Proclamation.

Act inconsistent with Constitution

3. ~~2.~~ This Act shall have effect even though it is inconsistent with sections 4 and 5 of the Constitution.

Interpretation

4. ~~3(1)~~ In this Act, unless the context otherwise requires –

~~“competent authority” in relation to a tax information~~



~~relating to taxation of a kind specified in the agreement;~~

~~“the Board” means the Board of Inland Revenue established by section 3 of the Income Tax Act.~~

~~(2) An agreement is not precluded from being a tax information exchange agreement for the purposes of this Act by reason that it—~~

Chap. 75:01

- ~~(a) includes provision for matters necessary for, or incidental to, the matters referred to in subsection (1);~~
- ~~(b) provides for a Contracting State to obtain and transmit to the other Contracting State any information that it considers may assist that other State to administer or enforce a law referred to in subsection (1); or~~
- ~~(c) provides for the implementation of programmes or measures to facilitate or improve the administration and enforcement of the laws referred to in subsection (1).~~

Minister to authorize a person to act

~~4. The Minister may authorize any person to act as the competent authority for Trinidad and Tobago for the purpose of any tax information exchange agreement.~~

## PART II

### TAX INFORMATION EXCHANGE AGREEMENTS

Declaration of agreements

~~5. The President may, by Order, declare a tax information exchange agreement specified in the Order to be a declared agreement for the purposes of this Act.~~

Implementation of agreements

~~6. (1) The Minister or any person authorized by him shall ensure that effect is given to every declared agreement.~~

~~(2) Where the Minister authorizes any person under subsection (1) he may give general directions to such person as to the performance of his functions under this Act, and such person shall comply with any directions given.~~

PART II H

1989 TIEA

Interpretation of certain words and phrases in Part II H

Schedule 1

Chap. 79:09

5. 9. For the purposes of this Part –

“1989 TIEA” means the Tax Information Exchange Agreement entered into on 11<sup>th</sup> January, 1989 between the Government of the Republic of Trinidad and Tobago and the Government of the United States of America and which is more specifically set out in Schedule 1;

“Competent Authority” means the Board of Inland Revenue as the authorized representative of the Minister;

“Financial Institution” has the meaning assigned to it by section 2 of the Financial Institutions Act;

~~“national” means—~~

- ~~(a) any individual possessing the nationality in Trinidad and Tobago; or~~
- ~~(b) any legal person, partnership or association deriving its status as such from the laws in force in Trinidad and Tobago; and~~

“Secretary to the Treasury” means the Secretary of the Treasury or the delegate of the United States Treasury Department; and

“tax” means any tax referred to in section 6 10.

Taxes covered by Part  
An is

6. 10. (1) ~~The~~ **This Part applies to the** following taxes imposed by, or on behalf of the United States of America; ~~apply to this Part –~~

- (a) Federal Income taxes;
- (b) Federal taxes on self-employment income;
- (c) Federal taxes on transfers to avoid income tax;
- (d) Federal estate and gift taxes; and
- (e) Federal excise taxes.

(2) ~~The~~ <sup>is</sup> Part applies to any identical or substantially similar tax **to the taxes** referred to in subsection (1) **and which are** imposed after

manner that the Secretary to the Treasury requested the information to be provided.

(6) Where the Secretary to the Treasury requests under this section ~~is made for~~ information in the form of a deposition of a witness, authenticated copies of unedited original documents, including books, papers, statements, records, accounts and writings, and other tangible property, the Board shall provide the information to the same extent as it can be provided under the ~~taxation~~ laws of Trinidad and Tobago.

(7) Nothing in ~~the this~~ section ~~requires~~ **authorizes** the Board to—

- (a) carry out administrative measures which conflict with the laws and administrative practices of Trinidad and Tobago;
- ~~(b) supply particular items of information which are not obtainable under the laws or in the normal course of the administration of Trinidad and Tobago; or~~
- (b) supply particular information which is not obtainable under the laws of Trinidad and Tobago; or**
- (c) supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process.

Disclosure  
under this Part

Chap. 75:01  
Chap. 22:04

8. ~~(1)~~<sup>2</sup>. **Nothing in —**

- (a) section 4 of the Income Tax Act;**
- (b) sections 6, 30, 31, 38, 40, 41, 46 and 69 of the Data Protection Act; or**
- (c) any other law of like effect,**

**prevents the disclosure of information by the competent authority or a financial institution, where that disclosure is in accordance with, and for the purpose of giving effect to this Part or the 1989 TIEA.**

(2) Where information has been obtained or received under this Part or the 1989 TIEA, a person who uses or discloses the information other than for the purposes for which it was



reinsurance contract between two insurance companies, that has a cash value greater ~~that~~ than fifty thousand dollars;

“cash value” means the greater of -

- (a) the amount that the policy holder is entitled to receive upon surrender or termination of the contract, determined without reduction for any surrender charge or policy loan; and
- (b) the amount the policy holder can borrow under or with regard to the contract,

but does not include an amount payable under an ~~insurance contract~~ as -

- (c) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss ~~incurred~~ upon the occurrence of the event ~~ensured~~ against;
- (d) a refund to the policy holder of a previously paid premium under an insurance contract, other than a life-insurance contract, due to policy cancellation or termination, decrease in risk exposure during the effective period of the insurance contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
- (e) a policyholder dividend based upon the underwriting experience of the contract or group involved;

~~“Competent Authority” means the Board of Inland Revenue as the authorized representative of the Minister;~~

**“competent authority” means the Board of Inland Revenue;**

“controlling person” means an individual who exercises control over an entity and in the case of -

- (a) a trust, means the settlor, the trustees, the protector, if any, the beneficiaries or class of beneficiaries and any other individual exercising ultimate effective control over

- market, in the Ffinancial Institution;
- (b) in the case of a Ffinancial Institution other than a Ffinancial Institution described in paragraph (a), any equity or debt interest in the Ffinancial Institution, other than interests that are regularly traded on an established securities market if –
    - (i) the value or the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to US Source Withholdable Payments; and
    - (ii) the class of interests was established with a purpose of avoiding reporting in accordance with the IGA;
  - (c) any cash value insurance contract and any Aannuity Ccontract issued or maintained by a Ffinancial Institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded from the definition of Ffinancial Aaccount under **Schedule 2 3**;

Schedule 32

“Ffinancial Institution” means a custodial institution, a depository institution, an investment entity or a specified insurance company;

“IGA” means the Inter-Governmental Agreement signed between the Government of Trinidad and Tobago and the Government of the United States of America to improve international tax compliance and provide for the implementation of the Foreign Accounts Tax Compliance Act of the United States of America and set out specifically in Schedule 2;

“Insurance Ccontract” means a contract, other than an annuity contract, under which the insurer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability or property risk;



“Reporting Financial Institution” means any Trinidad and Tobago Financial Institution that is not a Non-Reporting Financial Institution;

“sensitive personal information” means, **subject to subsection 4-**

- (a) the name, address and USTIN of a specified United States Person that is an account holder;
- (b) the name, address and UNTIN, if any, of a Non-US Entity that are after the application of the due diligence procedures set out in Schedule 4 is identified as having one or more controlling persons that is a Specified United States Person and the name, address and USTIN of each United States Person;
- (c) the account number or functional equivalent in the absence of an account number;
- (d) the name and identifying number of the Reporting Financial Institution;
- (e) the account balance or value, including, in the case of a Cash Value Insurance Contract or Annuity Contract, the cash value or surrender value as at the end of the relevant calendar year or the appropriate reporting period or, if the account was closed during that year, immediately before closure;
- (f) in the case of a custodial account-
  - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account, or with respect to the account, during the calendar year or other appropriate accounting period; and
  - (ii) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period to which the Reporting Financial Institution acted as a custodian, broker, nominee or otherwise as an agent for the account holder;
- (g) in the case of a Depository Account, the total

- (f) any bank as defined in section 581 of the United States Internal Revenue Code;
- (g) any real estate investment trust as defined in section 856 of the United States Internal Revenue Code;
- (h) any regulated investment company as defined by section 851 of the United States Internal Revenue Code or any entity registered with the United States Securities and Exchange Commission under the Investment Company Act, 1940 of the United States of America, 15USC80a-64;
- (i) any common trust fund as defined in section 584(a) of the United States Internal Revenue Code;
- (j) any trust that is exempt from tax under section 664(c) of the United States Internal Revenue Code or that is described in section 4947(a)(1) of the United States Internal Revenue Code;
- (k) a dealer in securities, commodities or derivative financial instruments including national principal contracts, futures, forwards and options, that is registered as such under the laws of the United States of America or any State of the United States of America;
- (l) a broker as defined in section 6045(c) of the United States Internal Revenue Code; or
- (m) any tax-exempt trust under a plan that is described in section 403(b) or section 457(g) of the United States Internal Revenue Code;

“United States person” means a citizen of the United States of America or resident individual, a partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof, a trust if-

- (a) a court within the United States of America would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust; and
- (b) one or more United States person has the

~~F~~financial ~~A~~ccount if the holder of the interest, other than a ~~F~~financial ~~I~~nstitution acting as an intermediary, is registered on the books of such ~~F~~financial ~~I~~nstitution after July 1, 2014.

(4) For the purposes of this Part, **the definition of “sensitive personal information”** in respect of sensitive personal information to be obtained ~~and~~ or exchanged –

- (a) for **the year 2014**, ~~it shall be that is the information~~ described in paragraphs (a) to (d) of the definition of “sensitive personal information” set out in subsection (1);
- (b) for **the year 2015**, ~~it shall be that is the information~~ described in the definition of “sensitive personal information” set out in subsection (1) ~~which~~, except for gross proceeds described in subparagraph ~~(e)~~ **(f)** (ii) of that definition; and
- (c) for **the year 2016** and subsequent years **the information** shall be that described in the definition of “sensitive personal information”.

Processing of sensitive personal information

**10.14** Notwithstanding sections 6, 38 and 40 of the Data Protection Act, a ~~F~~financial ~~I~~nstitution may, for the purpose of the IGA, process sensitive personal information collected by it in the normal course of business ~~in relation to an~~ **where** the account holder of a ~~R~~reportable ~~A~~ccount is a United States Person.

Receipt of information by the Competent Authority

**11.15**(1) Notwithstanding sections 6, 30 and 31 of the Data Protection Act, the ~~E~~competent ~~A~~uthority shall for the purposes of the IGA, receive **from a financial institution**, sensitive personal information on a United States Person ~~in the possession~~ in respect of ~~R~~reportable ~~A~~ccounts.

(2) Where the ~~E~~competent ~~A~~uthority receives sensitive personal information under subsection (1) in respect of ~~R~~reportable ~~A~~ccount <sup>5</sup> it shall keep such information confidential and unless the



USTIN  
information not  
required in  
certain  
circumstances

16. 20. (1) Notwithstanding section 45-12 with respect to a Reportable Account that is maintained by a Reporting Financial Institution, it is not necessary for a Reporting Financial Institution to obtain and exchange the USTIN of an account holder if such information is not in the records of the Reporting Financial Institution.

(2) Where a USTIN of an account holder is not in the records of a Reporting Financial Institution in which the Reportable Account of the account holder is held, the Reporting Financial Institution shall, where the date of birth of the account holder information is in its records, include it in the information to be exchanged.

Timeline for  
forwarding  
information

17. 21 A Reporting Financial Institution shall forward sensitive personal information on an account holder in respect of a Reportable Account to the Competent Authority within nine months after the end of the calendar year to which the sensitive personal information relates, for onward transmission by the Competent Authority to the Secretary of the United States Treasury in accordance with section 45-12.

Competent  
Authority and US  
Treasury  
Memoranda of  
Understanding

18. 22. The Competent Authority shall enter into a ~~Memorandum of Understanding~~ **an Agreement** with the Secretary of the United States Treasury –

- (a) for the establishment procedures for the automatic exchange of sensitive personal information under section 45-12;
- (b) to set out rules and procedure as may be necessary for the collaboration on compliance with, and enforcement of matters arising under this Act; and
- (c) for the establishment, as necessary, of procedures for

Schedule 2

~~IGA or its annexes in Schedule 2, amend the IGA or its annexes contained in Schedule 2.~~

Chap. 75:01  
amended

23. The Income Tax Act is amended by -

- (a) deleting section 117(6); and
- (b) inserting after section 117 the following new section:

“Tax  
Information  
Exchange  
Agreements

117A. The Board shall  
have the power to gather -

- (a) any financial information and other information; and
  - (b) any supporting documentation in respect of paragraphs (a) or (b),
- for ~~or~~ the purposes of the Tax Information Exchange Agreements (United States of America) Act, 2016 and other enactments for a similar purpose.”.

Chap 79:02

*amended*

24. The Central Bank Act is amended-

- (a) in section 2 by inserting after the definition of “corporation” the following definition:

~~“~~“declared agreement” means the 1989 TIEA as defined in section 5 of the Tax Information Exchange Agreements (United States of America) Act, 2016 and the 2016 IGA as defined in section 9 of the Tax Information Exchange Agreement (United States of America) Act, 2016;

- (b) in section 36-

- (a) in paragraph (bb) by deleting the word “and”;
- (b) in paragraph (cc) by deleting the word “.”

(2B) The information referred to in subsection (2) may be utilized by the Central Bank as required to give effect to its powers under the Tax Information Exchange Agreements

*Name of Act*

~~Act.~~; and

(ii) in subsection (5) by deleting the words “subsection (2), the Central Bank may enter into a Memorandum of Understanding with” and substituting the words “subsections (2A and (2B), the Central Bank may enter into a Memorandum of Understanding with the Board of Inland Revenue,”;

(bc) in section 10, by –

(i) renumbering section 10 as section 10 (1);

(ii) in subsection (1) as renumbered by -

(A) deleting the words “; and” at the end of paragraph (c) and substituting the word “;”

(iiB) deleting the word “.” at the end of paragraph (d) and substituting the words “; and”

~~and~~

(Ciii) inserting at the end of paragraph (d), the following new paragraph –

“(e) to give effect to a declared agreement.”; and

(iii) by inserting after subsection (1) as renumbered the following new subsection:

“(2) Guidelines made under subsection (1)(e) shall be subject to the approval of the Minister.”;



in section 9 of the Tax Information Exchange Agreement (United States of America) Act, 2016;”;

(b) section 7, by inserting after paragraph (j) the following new paragraph:

“(ja) formulate, prepare and publish, guidelines in respect of declared agreements;”;

(c) section 14(2)-

(i) subparagraph (b) (iii), by inserting after the words “Intelligence Unit”, the words “the Competent Authority in respect of a declared agreement,”; and

(ii) by deleting the words “or similar legislation of a foreign jurisdiction” and substituting the words “similar legislation of a foreign jurisdiction or a declared agreement”:

(d) in section 19(1), by inserting after the words “Unit,” the words “the competent authority in respect of a declared agreement”;

(e) in section 89(1) (a), by inserting after the words “this Act,” the words “a declared agreement,”; and

(f) in section 90(1)-

(i) in paragraph (c) by deleting the words “;and” and substituting the word “;”;

(ii) in paragraph (d) by deleting the words “;” and substituting the words “; and”;

(iii) by inserting after paragraph (d) the following new paragraph:

“(e) has breached any requirement or failed to comply with guidelines relating to a declared agreement,”;

(g) section 146-

(i) in subsection (1) by inserting after the words “compliance with”, the words “a declared agreement”; and

(ii) by inserting after subsection (2) the following

of America

- (c) in section 65 by inserting after subsection (1) the following new subsection:

“ (2) Notwithstanding any other action or remedy available under this Act, if the Board of Inland Revenue indicates to <sup>the</sup> an Inspector, that a registrant or an officer, other employee or agent of the registrant has breached any requirement or failed to comply with guidelines related to a declared agreement the Inspector may direct the ~~the~~ registrant or an officer, other employee or agent of the registrant to –

- (a) give effect or comply with a declared agreement; or
- (b) perform such acts as in the opinion of the Inspector are necessary to remedy the situation.”;

- (d) by inserting after section 214 the following new section:

Central bank to issue guidelines for declared agreements

~~“(4)–215(1)~~ The Central Bank may issue guidelines on any matter it considers necessary to give effect to a declared agreement.

(~~5~~2) Where guidelines are issued under subsection (~~4~~1), a declared agreement shall have the meaning assigned to it under section 3 of the Tax Information



MISCELLANEOUS

Minister to  
amend

28. The Minister may by Order, where the parties modify

- (a) the 1989 TIEA in Schedule 1; or
- (b) the IGA or its annexes in Schedule 2,

amend the 1989 TIEA or the IGA or its annexes contained in Schedule 1 or Schedule 2 respectively.

Immunity from  
suit

29. The competent authority or any person acting under its authority or direction who discloses confidential information in compliance with this Act shall not be taken as having committed an offence under the provisions of any written law relating to confidentiality by reason only of that disclosure.

Validation of  
actions of the  
Competent  
Authority

30. All acts or things purportedly done in good faith by the Board pursuant to the former Act prior to the coming into operation of this Act, shall be deemed to have been lawfully and validly done, to the extent it would have been lawfully and validly done if the Board had the power to so do under the former Act.

Chap. 76:51  
repealed

31. The former Act is repealed.

**Responses  
were not  
received  
from the following:**



January 26, 2017

Mr. Gabriel Faria  
Chief Executive Officer  
Trinidad & Tobago Chamber of Industry & Commerce  
Columbus Circle  
Westmoorings,  
Port-of-Spain

Dear Mr. Faria,

**Request for Written Submission on Tax Information Exchange Agreements Bill, 2016**

Reference is made to the above captioned matter.

The Tax Information Exchange Agreements Bill, 2016 was referred to a Joint Select Committee of Parliament for consideration and report by February 3, 2017.

The purpose of the Bill is to implement certain tax information exchange agreements entered into between Trinidad and Tobago and the United States of America. A copy of the Bill which incorporates the proposed amendments thus far is attached for your consideration.

I have been directed by the Committee to request a written submission from the Trinidad and Tobago Chamber of Industry and Commerce on the Tax Information Exchange Agreements Bill, 2016.

You are kindly asked to forward your comments on the Bill as well as any other supporting documents no later than **Monday January 30, 2017**.

Should you require further information in this regard, please feel free to contact the undersigned at 740-3986 or 624-7275 ext. 2250 or via email at [jscfatca@ttparliament.org](mailto:jscfatca@ttparliament.org).

Respectfully,

Keiba Jacob  
Secretary



February 1, 2017

Mr. Gregory N. Hill  
Managing Director  
ANSA Merchant Bank Limited  
ANSA Centre,  
11A Maraval Road,  
**Port of Spain**

Dear Mr. Hill,

**Request for Written Submission on Tax Information Exchange Agreements Bill, 2016**

Reference is made to the above captioned matter.

The Tax Information Exchange Agreements Bill, 2016 (“the Bill”) was referred to a Joint Select Committee of Parliament for consideration and report by February 3, 2017.

The purpose of the Bill is to implement certain tax information exchange agreements entered into between Trinidad and Tobago and the United States of America. A copy of the Bill which incorporates the proposed amendments thus far is attached for your consideration.

I have been directed by the Committee to request a written submission from ANSA Merchant Bank Limited on the Bill.

You are kindly asked to forward your comments on the Bill as well as any other supporting documents no later than **Friday February 10, 2017**.

Should you require further information in this regard, please feel free to contact the undersigned at **740-3986** or **624-7275 ext. 2250** or via email at [jscfatca@ttparliament.org](mailto:jscfatca@ttparliament.org).

Respectfully,

Keiba Jacob  
**Secretary**

# Minority Report



**MINORITY REPORT OF THE JOINT SELECT COMMITTEE ON THE TAX  
INFORMATION EXCHANGE AGREEMENT BILL 2016.**

23<sup>rd</sup> February 2017.

The Secretary to the Joint Select Committee,  
Tax Information Exchange Agreements Bill,  
Parliament of Trinidad and Tobago,  
Tower D International Waterfront,  
1A Wrightson Road,  
Port-of-Spain.

Dear Ms. Jacob,

**Re: Minority Report of the Joint Select Committee on the Tax  
Information Exchange Agreement Bill.**

Yesterday afternoon members of the Joint Select Committee on the Tax Information Exchange Agreement Bill were provided with a copy of the Committee's Report together with all attachments. I indicated my agreement with the contents of the Committee's Report save and except the decision of the Committee not to include the amendment suggested in my letter of the 14<sup>th</sup> February 2017 at iii (b). **A copy of my letter is attached as "Appendix 1.**

The purpose of the amendment is to provide the account holder whose information is being disclosed by a reporting financial institution with notice that his information is being/has been provided. This matter was addressed at the 6<sup>th</sup> meeting of the Committee at page 49-53 of the verbatim notes.

Members of the Committee were provided on the 22<sup>nd</sup> February 2017 with a document titled "Responses to Proposed Amendments suggested by the Opposition under cover of Senators Ramdeen's letter dated the 15<sup>th</sup> February 2017. **A copy of this document is attached as "Appendix 2"**

By this document it was recommended that this amendment not be included in the Bill. The decision not to recommend the inclusion of the amendment was based upon the opinion of the Treasury Solicitor and the Opinion presented as that of the Law Association.

There is precedent for providing a reportable person with notice that their information has been provided in the United Kingdom. By statutory instrument No. 878 of 2015 of the United Kingdom (**A copy of which it hereto annexed as Appendix 3)** it is provided by regulation 10 as follows:-

**Notification to individual reportable persons**

10.—(1) A reporting financial institution must notify each individual reportable person or individual specified U.S. person that information relating

to that person which is required to be reported under regulation 6 will be reported to HMRC and may be transferred to the government of another territory in accordance with a relevant agreement.

(2) The notification must be made by 31st January in the calendar year following the first year in which the account held by the individual is a reportable account maintained by the reporting financial institution.

The existence of this regulation, which is part of the operationalization of the FATCA regime administered by Her Majesty's Treasury negates any argument that the giving of notice to an account holder whose information is being exchanged would be against the policy of the FATCA legislation. The existence of this regulation which came into force on the 15<sup>th</sup> April 2015 provides sufficient basis for the inclusion of such a clause in our legislation.

It is noteworthy that Trinidad and Tobago is listed in Schedule 1 of the Regulations as one of the participating jurisdictions with the government of the United Kingdom and Northern Island with respect to the Multilateral Competent Authority Agreement on the Automatic Exchange of financial Information signed on the 29<sup>th</sup> October 2014. This is a sufficient foundation to include a similar clause in our legislation.

In the circumstances I propose that the Bill do include a new clause in the following terms:-

(1) A reporting financial institution must notify each individual reportable person or individual specified U.S. person that information relating to that person which is required to be reported under this Act and will be transferred to the Secretary of the Treasury of the United States of America.

(2) The notification must be made by 31st January in the calendar year following the first year in which the account held by the individual is a reportable account maintained by the reporting financial institution.

Dated this 23<sup>rd</sup> day of February 2017.  
Respectfully Submitted.

sgd  
Dr. Tim Gopeesingh MP

sgd  
Senator Gerald Ramdeen

# APPENDIX

1



## Senator Gerald Ramdeen

14<sup>th</sup> February 2017.

The Secretary to the Joint Select Committee,  
Tax Information Exchange Agreements Bill,  
Parliament of Trinidad and Tobago,  
Tower D International Waterfront,  
1A Wrightson Road,  
Port-of-Spain.

Dear Ms. Jacob,

**Re: 6<sup>th</sup> Meeting of the Joint Select Committee on the Tax Information Exchange Agreements Bill.**

At a sitting of the House of Representative on the 13<sup>th</sup> February 2017 it was decided that the Report of the Committee laid by the Chairman of the Committee on the 3<sup>rd</sup> February 2017 be treated as an interim report and that the Committee continue its work and report to the House of Representatives on the 23<sup>rd</sup> February 2017.

Towards advancing the work of the Committee and in an effort to meet the deadline set by the House of Representatives for the Committee to report back to the House, I respectfully propose the following:

(i) In a report dated 13<sup>th</sup> February 2017 (which was circulated to HOR members on that said day), the Opposition Members identified a number of items that were required to be completed by the Committee before a final report could be submitted<sup>1</sup>. A copy of that report is attached hereto as **Appendix 1**. I propose that the said outstanding issues contained in that report be considered and finalized by the Committee.

(ii) **That the members of the Committee be provided with, and thereafter consider the following:**

- (1) A copy of the correspondence **from** Ms. Carla Carter to the United States Treasury or any department thereof referred to in the email from Elena S. Virgadamo to Carla Carter dated the 27<sup>th</sup> September 2016 at 3:10pm, a copy of which is hereto attached;
- (2) A copy of all correspondence from GORTT, The Ministry of the Attorney General and the Ministry of Finance to the United States Secretary to the Treasury or any other department of State of the United States of America on the issue of the implementation of

<sup>1</sup> Minority report of the Opposition dated the 13<sup>th</sup> February 2017 page 2-7 items (i)-(ix).

the Foreign Account Tax Compliance Act (hereinafter referred to as "FATCA");

- (3) A copy of any/all documentation from the United States Treasury or any other department of State of the United States of America which discloses and or identifies a deadline date or dates for Trinidad and Tobago FATCA compliance;
- (4) A copy of **ALL** the correspondence that has been received by the Secretary to the Committee in response to the request for public comments<sup>2</sup> which decision was taken at the fifth meeting of the Committee<sup>3</sup>;
- (5) A copy of the correspondence written by the Committee<sup>4</sup> to each of the following:-
  - (a) Ansa Merchant Bank Limited
  - (b) Unit Trust Corporation of Trinidad and Tobago; and
  - (c) Association of Trinidad and Tobago Insurance Companies.

**and** the responses received by the Committee from these entities, if any;
- (6) With respect to the requests for additional time to make submissions by the Law Association and the Dean of the Faculty of Law, University of the West Indies<sup>5</sup> that the members of the Committee be informed if the extension of time was granted by the Committee **and** be provided with a copy of the correspondence informing these bodies of same;  

Further, if submissions were received by the Committee from either of these entities that the members of the Committee be provided with copies of the responses to the Committee;
- (7) A copy of the advice of the Chief Parliamentary Counsel with respect to the issue of whether the existence of a double taxation treaty between the United States of America and The Republic of Trinidad and Tobago in any way **affects** the operationalization of the Tax Information Exchange Agreement Bill in its present form.

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<sup>2</sup> The public advertisements inviting comments were placed in the Newsday newspaper on the 2<sup>nd</sup> February 2017, the Express newspaper on Sunday the 5<sup>th</sup> February 2017 and in the Trinidad Guardian on Tuesday the 7<sup>th</sup> February 2017. In addition there was a request for public comments posted in the parliament website.

<sup>3</sup> Page 82 of the Verbatim Notes of the Fifth meeting of the Committee held on the 1<sup>st</sup> February 2017

<sup>4</sup> Item 5.4 of the unconfirmed minutes of the 5<sup>th</sup> Meeting of the Committee.

<sup>5</sup> Item 5.1 of the unconfirmed minutes of the 5<sup>th</sup> Meeting of the Committee

This issue was raised at page 75 of the verbatim notes of the 5<sup>th</sup> meeting of the Committee dated the 1<sup>st</sup> February 2017

- (8) The information from the BIR with respect to the exchange of information between the BIR and the United States of America since 1989 to present, viz., the matters for validation referred to in the 2016 TIEA Bill, from 1989 to date;

At the 4<sup>th</sup> Meeting of the Committee the Chairman of the Board of Inland Revenue was asked to provide the Committee with the number of times that the Board of Inland Revenue had provided private financial information to the United States under the 1989 Tax Exchange Information Agreement<sup>6</sup>. The deadline for the provision of this information was originally 10<sup>th</sup> February 2017 but this was shortened to the 2<sup>nd</sup> February 2017 by the Chairman<sup>7</sup>;

- (9) A copy of the communication plan expected to be used by the Ministry of Finance upon passage of the Bill;
- (10) A list of the existing practices used by the BIR for the exchange of tax information used with the United States for which an undertaking was given to the Committee at the third meeting of the Committee by the Chairman<sup>8</sup>;
- (11) A copy of any correspondence containing the submissions from the Credit Union Society, if any submissions were so made;
- (12) A copy of all of the correspondence received by the Office of the Attorney General from ALL stakeholders<sup>9</sup>;
- (13) A copy of the plan referred to by the Minister of Finance in the HOR on the 13<sup>th</sup> February 2017 as having been submitted by GORTT to the United States Treasury Department. This plan was part of the correspondence passing between the Ministry of Finance and the United States Treasury which was agreed to be disclosed by the Minister of Finance at previous meetings of the Committee;
- (14) A copy of the advice of the Treasury Solicitor referred to by the Attorney General in the HOR on 13<sup>th</sup> February 2017.

<sup>6</sup> Page 19 of the Verbatim notes of the 4<sup>th</sup> Meeting held on the 27<sup>th</sup> January 2017.

<sup>7</sup> Page 8 and 9 of the verbatim notes of the 5<sup>th</sup> Meeting held on the 1<sup>st</sup> February 2017.

<sup>8</sup> Paragraph 6.2 of the unconfirmed Minutes of the 3<sup>rd</sup> meeting of the Committee held on the 20<sup>th</sup> January 2017.

<sup>9</sup> Page 64 and 65 of the verbatim notes of the 3<sup>rd</sup> Meeting held on the 20<sup>th</sup> January 2017. See also paragraph 4.6 of the unconfirmed Minutes of the 3<sup>rd</sup> meeting.

At the fifth meeting of the Committee an issue arose as to the effect the present legislation would have on section 117 of the Income Tax Act having regard to certain amendments that were proposed to be made to the present Bill before the Committee. In the debate in the House of Representatives on the 13<sup>th</sup> February 2017 the Hansard would confirm that the Attorney General indicated that the Treasury Solicitor had advised that the legislation not be changed from the position that is reflected in the Bill in its present form<sup>10</sup>. This conflicts with what the Committee was told at the 5<sup>th</sup> meeting of the Committee.

**(iii) That the following proposed amendments be included for consideration by the Committee:-**

(a) That clause 29 of the Bill be amended by inserting after the word "respectively" the following words "*which order shall be subject to the affirmative resolution of Parliament*".

(b) That the Bill be amended to include a new clause 17 (3) in the following terms,

*"Before a reporting financial institution forwards sensitive personal information on an account holder in respect of a reportable account to the Competent Authority the reporting financial institution shall give 28 days notice to the account holder that their sensitive personal information is being forwarded to the competent authority pursuant the provisions of this Act".*

(c) That clause 18 of the Bill be amended to read "18 (1)" and that a new sub-clause 18 (2) now be inserted into the Bill to read as follows "*Any Agreement entered into between the Competent Authority and the Secretary of the United States Treasury under subsection 1 shall be laid in Parliament*".

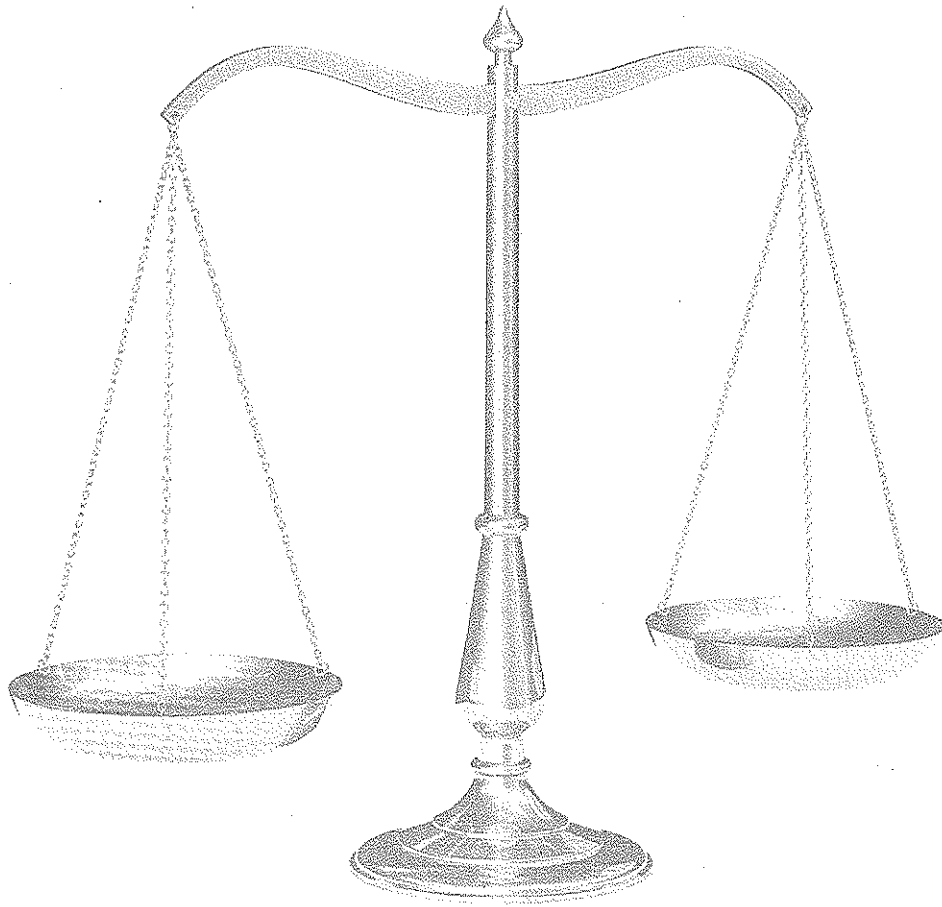
(d) A new clause 35 be added in the following terms:-

*"The Minister shall cause to be laid in Parliament an annual report on the operations of the Competent Authority within one month after the date for the automatic transmission of information under the provisions of this Act or if Parliament is not then in session, within one month after the commencement of the next session".*

I would be grateful if this correspondence would be brought to the attention of the Chairman forthwith.

Yours Respectfully,

*Jared Sanders*



# APPENDIX

## 1

## Minority Report on the Tax Information Exchange Agreements Bill

In accordance with Standing Orders 110(2) and 100(2) of the House of Representatives and the Senate a Joint Select Committee was established to consider and report on the Tax Information Exchange Agreements Bill 2016.

The Committee commenced meetings on the 13<sup>th</sup> January 2017. Five meetings were held the last being on the 1<sup>st</sup> February 2017. On the 3<sup>rd</sup> February 2017 the Chairman of the Committee laid in the House of Representatives a Report, which stated, *inter alia*, at paragraph 3.1, that "*the Committee wishes to report that it has completed its mandate...*" This Report was not signed, by any of the Opposition members appointed to the Committee.

This Minority report is being submitted at this time because no opportunity was afforded to any member to submit a Minority Report prior to the laying of the Report by the Chairman in the HOR on 3<sup>rd</sup> February 2017. However, all of the Opposition members expressed the view that the work of the Committee was incomplete **before** the Report was laid in the House of Representatives. This fact is made clear in the chronology of events (annexed hereto as **Appendix A**) which transpired after the last sitting of the Committee and up to the laying of the Report by the Chairman.

Appendix B contains the scanned copies of all the email correspondences between the members of the Opposition and the Committee. It is the request of the Opposition members that this report as well as Appendix A and B be laid before Parliament and/or brought to the attention of Parliamentarians.

Further, it should be noted that of the five sets of Minutes of Committee meetings, two were never confirmed by the Committee (viz., Minutes of the third and fifth meetings of the Committee) prior to the Report being laid in the House of Representatives. Attached to this Report as Appendix C are the Verbatim Notes of the meetings of the Committee which accurately reflects what happened before the Committee.

### The need for a subsequent meeting after the 1<sup>st</sup> February 2017.

The last meeting of the Committee, which was its fifth meeting, was held on the 1<sup>st</sup> February 2016. At the conclusion of this meeting it was clear that the work of the Committee was not complete and there was need for another meeting.

This was made clear by the Attorney General who stated<sup>1</sup>,

"Mr. Chairman, I just wanted to also add that I think we need one more meeting because we have some issues that need to be resolved. And importantly, is the work of this Committee apart from the report that will go, is the work of this

<sup>1</sup> Page 78 of the Verbatim notes of the 5<sup>th</sup> Meeting held on the 1<sup>st</sup> February 2017.

Committee going to be”

The fact that another meeting was needed was frontally addressed by Dr. Tewarie in his email of the 3<sup>rd</sup> February 2017 where he went so far as to indicate his availability for a further meeting and suggested dates that he was available.

Dr. Gopeesingh also indicated that he was not in agreement with the report in the form in which it was being proposed to be laid and that a further meeting was required by his email at 8:50 on the 3<sup>rd</sup> February 2017.

The report does not accurately report what transpired in the Committee.

Under the heading on page 5, “witnesses” the Report of the Committee identifies the different parties who were summoned to give evidence before the Committee. The Report does not identify that there were a number of undertakings that were given to the Committee to produce documentation that up to the time of the laying of the report had not been produced to the Committee.

Further, under the heading on page 5, “written submissions” the list of persons from whom written submissions were requested is incomplete. Two of the parties listed requested additional time to present their submissions and this is not reported. Three parties that were specifically written to by the Committee on the 1<sup>st</sup> February 2017, only two days before the Report was laid by the Chairman, requesting submissions and this was omitted from the Report.

The Report also omits to indicate that the time for members of the public to make submissions to the Committee had not yet expired before the Report was laid.

The work of the Committee was not complete at the time of the laying of the report in Parliament and remains incomplete to date.

The Report of the Committee that was laid in the HOR stated:

*“In accordance with Standing Orders 114(1) and 104(1) of the House of Representatives and the Senate, respectively, the Committee wishes to report that it **has completed its mandate** within the required deadline”<sup>2</sup>.*

This was factually incorrect at the time of the laying of the report. At the end of the fifth meeting of the Committee there were a number of outstanding issues that were to be addressed before the report could be made final and the mandate of the Committee complete. These were as follows:-

- (1) The public advertisement inviting public comment on the Bill was only placed in the newspapers on the 2<sup>nd</sup> February 2017<sup>3</sup>. These public

<sup>2</sup> Paragraph 3.1 of the Report of the Committee dated February 3<sup>rd</sup> 2017

<sup>3</sup> The public advertisements inviting comments were placed in the Newsday newspaper on the 2<sup>nd</sup> February 2017, the Express newspaper on Sunday the 5<sup>th</sup> February 2017 and in the Trinidad Guardian on Tuesday the 7<sup>th</sup> February 2017.



advertisements indicated that the deadline for the submission of the comments and views would be the Friday the 10<sup>th</sup> February 2017. It is noteworthy that the public advertisements did not in fact give the public the 10 days time period that was suggested by the Chairman at the fifth meeting of the Committee. The ad that was placed in the Trinidad Express only allowed those readers, who wished to make comments, a period of five days to express their views. In the case of the Trinidad Guardian those readers were only allowed a period of three days to give their comments to the Committee. These truncated time periods were not in accordance with the views expressed by the Chairman and the Committee. Up to the time of the laying of the report the Members of the Committee were not made aware if there had been submissions by members of the public. If there were submissions these submissions were not considered by the Committee.

- (ii) At item 5.4 of the minutes of the 5<sup>th</sup> Meeting of the Committee the Chairman advised the secretary to request written responses from,
- (a) Ansa Merchant Bank Limited,
  - (b) Unit Trust Corporation of Trinidad and Tobago, and
  - (c) Association of Trinidad and Tobago Insurance Companies.

The issues with respect to the receipt of these responses before any report was laid in Parliament was raised by Dr. Tewarie at the 5<sup>th</sup> Meeting of the Committee<sup>4</sup> but up to the time of the laying of the Report the members were not made aware of the written responses from these entities if there were any.

- (iii) At item 5.1 of the minutes of the 5<sup>th</sup> Meeting of the Committee the Secretary to the Committee informed the Committee that the Law Association of Trinidad and Tobago and the Dean of the Faculty of Law, University of the West Indies, had requested more time to make submissions to the Committee after having been invited so to do by the Committee. There was no indication at any time whether the extension of time requested would be granted by the Committee to these two important and independent institutions who would have a meaningful contribution to make on the passage of this important piece of legislation. It was critical to receive the views of these two bodies. Up to the date of the laying of the report the members of the Committee were not informed if any submissions were received from these two bodies or even if they were written to and informed that their submissions could be submitted up to the time allowed to the public.

- (iv) It was only at the fifth meeting of the Committee that the Committee was informed that there existed a double taxation treaty between this country and the United States of America. At the Second meeting of the

<sup>4</sup> Page 81 of the Verbatim notes of the 5<sup>th</sup> Meeting held on the 1<sup>st</sup> February 2017.

Committee the Attorney General informed the Committee in unequivocal terms that Trinidad and Tobago does not have a double taxation treaty with the United States of America<sup>5</sup> and this was a fundamental basis for the passage of this legislation. Having discovered the existence of a double taxation treaty the Chief Parliamentary Counsel department was mandated by the Chairman of the Committee to make sure that there was no conflict between the intended legislation and the treaty<sup>6</sup>. Up to the time of the laying of the report members of the Committee were not informed of the views from the Chief Parliamentary Counsel department on this issue. This is a very important issue that must be clarified as it would affect a wide cross section of persons and the provision of their personal information.

(v) At the 4<sup>th</sup> Meeting of the Committee the Chairman of the Board of Inland Revenue was asked to provide the Committee with the number of times that the Board of Inland Revenue had provided private financial information to the United States under the 1989 Tax Exchange Information Agreement. The purpose of requesting this information was to make Parliament aware of the acts that it was being asked to validate. The Board of Inland Revenue was given until Friday the 10<sup>th</sup> February 2017 to provide this information<sup>7</sup>. Up to the time of the laying of the report in the Parliament this very crucial information was not provided despite the Chairman shortening the deadline for the provision of the information<sup>8</sup>. In those circumstances Parliament was being asked to validate acts of the Board of Inland Revenue in a vacuum. It is to be noted that despite the failure to provide this information the validation clause remains in the legislation.

(vi) At the fifth meeting of the Committee an issue arose as to the effect the present legislation would have on section 617 of the Income Tax Act having regard to certain amendments that were proposed to be made<sup>9</sup>. The Attorney General indicated to the Committee that he was originally informed by the Treasury Solicitor to delete sub-clause 6 and replace it with a 7 but only on the morning of the meeting, 1<sup>st</sup> February 2017, he received a further request that "we keep 6 and attenuate 7"<sup>10</sup>. The Attorney General indicated that further work needed to be done on this issue when he said,

*"I am putting it in very simplistic terms. So what we will do, we will*

<sup>5</sup> Page 18 and 22-23 of the Verbatim notes of the 2<sup>nd</sup> Meeting held on the 17<sup>th</sup> January 2017.

<sup>6</sup> Page 75 of the Verbatim notes of the 5<sup>th</sup> Meeting held on the 1<sup>st</sup> February 2017.

<sup>7</sup> Page 18 and 19 of the Verbatim notes of the 4<sup>th</sup> Meeting held on the 27<sup>th</sup> January 2017.

<sup>8</sup> Page 8 and 9 of the Verbatim notes of the 5<sup>th</sup> Meeting held on the 1<sup>st</sup> February 2017.

<sup>9</sup> Page 71 of the Verbatim notes of the 5<sup>th</sup> Meeting held on the 1<sup>st</sup> February 2017.

<sup>10</sup> Page 71 of the Verbatim notes of the 5<sup>th</sup> Meeting held on the 1<sup>st</sup> February 2017.

*go back and look at 6 to make sure we are not giving away anything at all".*

The Chairman himself acknowledged that this needed to be done<sup>11</sup>. Up to the time of the laying of the report the Committee had not been informed whether this task had been done or completed by the Office of the Attorney General or Chief Parliamentary Counsel Department and the Bill remained the same with the proposed amendments to the Income Tax Act.

- (vii) At the third meeting of the Committee the Attorney General and the Chairman indicated to the Committee that all of the correspondence between the Attorney General and the stakeholders would be disclosed to the members of the Committee<sup>12</sup>. To date and up to the time of the laying of the report, the Attorney General has not disclosed the communication between himself and the relevant stakeholders.
- (viii) At the third meeting of the Committee the Chairman gave an undertaking<sup>13</sup> to submit to members:
- (i) The communication plan expected to be used by the Ministry of Finance upon passage of the Bill, as well as,
  - (ii) The existing practices used by the BIR for the exchange of tax information used with the United States.

Up to the time of the laying of the report this information had not been provided to the Committee by the Chairman.

- (ix) At the Fourth meeting held on the 27<sup>th</sup> January 2017 Mr. Joseph Remy of the Credit Union Society indicated that his membership wished to make submissions that would be delivered to the Committee by Tuesday 31<sup>st</sup> January 2017<sup>14</sup>. Up to the time of the laying of the report this submission has not been seen by the members and the members were not told if submissions were received or not.

#### Conclusion.

From the preceding it is clear that the mandate of the Committee was not complete. It was also clear that there were a number of outstanding issues that were to be addressed before the work of the Committee could be said to be truly complete. These matters were brought to the attention of the Chairman of the Committee after members had been asked to agree to the contents of the draft Report and before same was laid in the HOR.

<sup>11</sup> Page 71 of the Verbatim notes of the 5<sup>th</sup> Meeting held on the 1<sup>st</sup> February 2017.

<sup>12</sup> Page 64 and 65 of the Verbatim notes of the 3<sup>rd</sup> Meeting held on the 20<sup>th</sup> January 2017. See also paragraph 4.6 of the Minutes of the 3<sup>rd</sup> meeting.

<sup>13</sup> Paragraph 6.2 of the Minutes of the 3<sup>rd</sup> meeting held on the 20<sup>th</sup> January 2017.

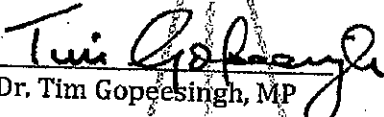
<sup>14</sup> Page 75 and 76 of the Verbatim notes of the 4<sup>th</sup> Meeting held on the 25<sup>th</sup> January 2017.

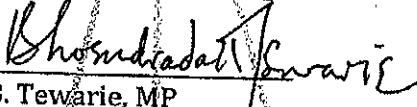
In these circumstances it cannot be correct to state in the Report that the work of the Committee is complete. To submit a report before the views of the public are received and considered is improper and sends the message to the public that their views are irrelevant to the Committee and the invitation to submit their views was merely to satisfy the need for public participation and nothing more.

This legislation is important, far reaching and has the potential to affect the entire financial system. The need to ensure that all persons who are potentially to be affected by the passage of this legislation and those who may have expert views on issues that touch and concern this legislation cannot be overstated. No material provided to the Committee or its members evidenced that there was a February 28<sup>th</sup> deadline for the passage of this legislation.

In these circumstances the public good and the discharge of our parliamentary responsibility to the people of this country required that the issues identified herein be addressed in a satisfactory manner before any report is laid in the House of Representatives.

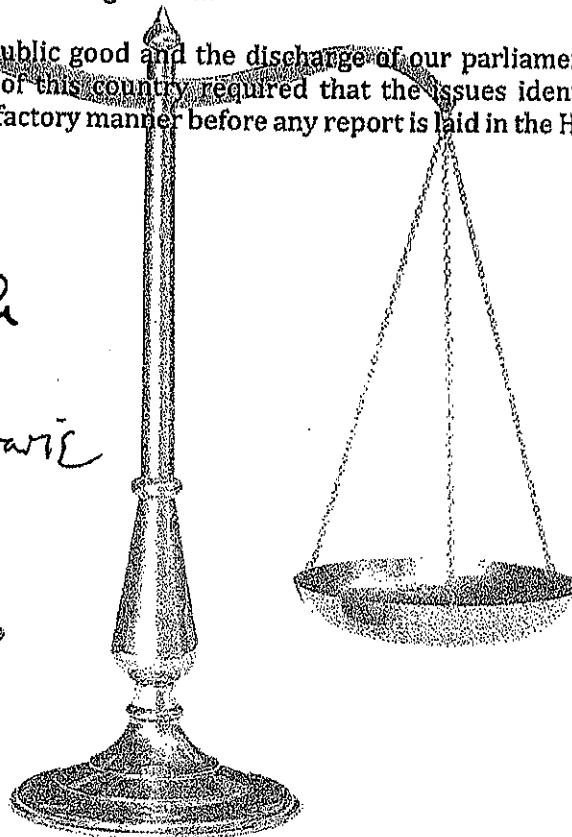
Respectfully Submitted,

  
Dr. Tim Gopeesingh, MP

  
Dr. B. Tewarie, MP

  
Senator Gerald Ramdeen

13<sup>th</sup> February 2017



## Email from U.S. Department of the Treasury to Ministry of Finance

-----Original Message-----

From: Elena S. Virgadamo

Sent: Tuesday, September 27, 2016 3:10 PM

To: Carla Carter

Cc: Maurice Suite

Subject: RE: Trinidad and Tobago/United States of America IGA

Dear Carla,

I apologize for my delay in responding. As you saw, I was on official travel for the past two weeks and have been catching up on my emails.

I want to clarify the current status of the US-Trinidad and Tobago IGA. First, there cannot be an obligation to obtain and exchange the information required under the IGA until the IGA is in force and the notifications under Art. 3(8) of the IGA have been exchanged. On the date of the later of those Art. 3(8) notifications, the obligation to obtain and exchange information under Art. 2 takes effect.

Second, <sup>①</sup>Announcement 2016-27, which Treasury and the IRS issued on July 29th and I sent you on August 1st, references previous Treasury and IRS announcements and notices that provide that a jurisdiction that has signed an IGA with the United States will continue to be treated as if it has an IGA in effect so long as the jurisdiction continues to demonstrate firm resolve to bring the IGA into force. Trinidad and Tobago currently has this status and is treated as if it has an IGA in effect.

<sup>②</sup>A previous Treasury and IRS notice (Notice 2016-55) had required that in addition to the jurisdiction demonstrating firm resolve to bring the IGA into force, in order for FFIs to continue to be treated as complying with, and not subject to withholding under, FATCA, any information that would have been reportable under the IGA on September 30, 2015 (i.e., 2014 information), would need to be exchanged by September 30, 2016, together with any information that would be reportable under the IGA on September 30, 2016 (i.e., 2015 information). Announcement 2016-27 clarifies that Treasury does not intend to find FFIs to be in significant non-compliance with the IGA as long as any information for prior years is exchanged before the next September 30th after the obligation under the IGA to exchange information has taken effect (i.e., if the

obligation under the US-Trinidad and Tobago IGA takes effect by February 1, 2017 as per your letter, then Trinidad and Tobago FFIs will not be in significant non-compliance with the IGA as long as the information is exchanged by September 30, 2017). This is consistent with Art. 3(5) of the IGA. Therefore, the extension requested in your letter is not necessary, as the IGA and the Treasury and IRS public announcement already provide for this.

In addition, Announcement 2016-27 provides that on Jan. 1, 2017, Treasury will begin updating the IGA list on the Treasury website to provide that certain jurisdictions that have not brought their IGA into force will no longer be treated as if they have an IGA in effect. Each jurisdiction with an IGA that is not yet in force and that wishes to continue to be treated as having an IGA in effect must provide to Treasury by December 31, 2016, a detailed explanation of why the jurisdiction has not yet brought the IGA into force and a step-by-step plan that the jurisdiction intends to follow in order to bring the IGA into force. Your letter suffices for this requested explanation and plan. After Jan. 1, 2017, Treasury intends to evaluate all the explanations and plans received and to communicate to jurisdictions whether the explanation and plan demonstrate that the jurisdiction continues to demonstrate firm resolve to bring its IGA into force. If it is determined that a jurisdiction is not demonstrating firm resolve to bring its IGA into force, the jurisdiction's name will be removed from the Treasury website. Treasury will reach out to the jurisdiction before taking this step. To provide notice to FFIs, a jurisdiction will not cease to be treated as having an IGA in effect until at least 60 days after the jurisdiction's status on the Treasury website is changed.

I hope that this clarifies the status of the US-Trinidad and Tobago IGA. I appreciate that you have sent the step-by-step plan for implementation of the IGA well in advance of December 31, 2016. It is helpful as we continue to monitor the progress on entry into force of the IGA. I would appreciate if you can keep me updated as the work progresses.

If you would like to discuss this further, please let me know.

Best regards,  
Elena S. Virgadamo  
Office of the International Tax Counsel  
U.S. Department of the Treasury

# APPENDIX

2

**Responses to Proposed amendments suggested by the Opposition under cover of Senator Ramdeen’s document dated 15<sup>th</sup> February, 2017**

<b>Senator Ramdeen’s proposal</b>	<b>JSC decision</b>	<b>Chairman’s views</b>	<b>Text of proposed amendment</b>
<p>(a) Clause 29- To make the order of the Minister under clause 29 subject to affirmative resolution of Parliament.</p>	<p>At the meeting of the Joint Select Committee on Friday 17<sup>th</sup> February, 2017, it was agreed that the Order should be made subject to “negative” resolution of Parliament.</p>	<p>NA</p>	<p>A. Renumber clause 29 as 29(1);            B. Insert after clause 29(1) the following new subclause:             “ (2) An Order under subsection (1) shall be subject to negative resolution of Parliament.”.</p>
<p>(b) Amend Bill to include new clause 17(3) as follows:            “ Before a reporting financial institution forwards sensitive personal information on an account holder in respect of a reportable account to the competent authority, the reporting financial institution shall give 28 days’ notice to the account holder that their sensitive personal information is being</p>	<p>At the meeting of the Joint Select Committee on Friday 17<sup>th</sup> February, 2017, it was agreed that there would be a consideration of the proposal</p>	<p><b>The Treasury Solicitor</b> has informed that-</p> <ul style="list-style-type: none"> <li>(a) the proposal by the Opposition would-               <ul style="list-style-type: none"> <li>(i) have the effect of introducing a step prior to the automatic exchange of information such that there is a positive obligation in the FFI to specifically inform persons subject to disclosure under the IGA of the intended disclosure;</li> <li>(ii) allow for legal argument as to the adequacy of Notice;</li> </ul> </li> <li>(b) the IGA contemplates automatic disclosure without consent.</li> <li>(c) The Bill specifically provides for the elimination of consent to facilitate the obligations.</li> </ul>	<p>No amendment proposed</p>



<p>forwarded to the competent authority pursuant to the provisions of this Act.”.</p>		<p>(d) The effect of seeking consent runs contrary to the grain of the IGA.</p> <p><b>The Trinidad and Tobago Law Association</b> has opined in its written publication to the Committee dated 20<sup>th</sup> February, 2017 under the hand of Mr. Raphael Adjodhia, at page 25 that:</p> <p><i>“The preponderance of tax haven countries has resulted in a drain of state capital which can if collected be funnelled to development projects for the benefit of the general citizenry... If one accepts that the aim and or object of the TIEA Bill is in a general and broad sense is to assist in combating against tax evasion-then this measure makes perfect rational and proportionate sense.”</i></p> <p><i>“The only way to determine whether:</i></p> <ul style="list-style-type: none"> <li><i>(a) taxes ought to be paid;</i></li> <li><i>(b) taxes are being paid; and</i></li> <li><i>(c) the amount of taxes which are due,</i></li> </ul> <p><i>is to have reference to the details of the account in question, including the account balance or cash value equivalence. Equally, the only plausible way to pursue a person who may have been guilty of tax evasion is to have reference to his or her personal details.</i></p> <p><i>The question of whether the forfeiture of consent is legitimately required is again an exercise of common sense.</i></p>	
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		<p><i>It goes without saying that if an account holder is guilty of tax evasion, he or she would not willingly sanction the release of his or her sensitive information to the Authority which would then be in a position to press charges for the said tax evasion.</i></p> <p><i>The only method by which the right to private and family life could not be limited by the TIEA Bill is to allow for notification and or consent of the account holder prior to reporting, which would frustrate the aim and or object of the Bill as explained. There does not appear to be in my view any other method by which the purpose of the TIEA Bill could be achieved other than to limit the section 4(c) fundamental rights.”</i></p> <p>Having regard to the concerns expressed by the Treasury Solicitor and the opinion of the Law Association, it is not recommended that this provision be accepted for inclusion in the TIEA Bill.</p>	
<p>(c) Clause 18 of the Bill be amended to include a new subclause (2) which would require Competent Authority Agreements to be laid in Parliament</p>	<p>At the meeting of the Joint Select Committee on Friday 17<sup>th</sup> February, 2017, it was agreed that there would be a consideration of the proposal</p>	<p>Clause 8 of the Competent Authority Agreement already provides for the publication of the Arrangement by each Contracting State within 30 days from the last date of signature of the Arrangement. Therefore it will be made publicly available under this Clause.</p> <p>In the circumstances we see no need for it to be laid in Parliament as the effect of doing so will be the same as provided for</p>	<p>“(2) Where an Agreement under subsection (1) provides for its publication, it shall be laid in Parliament within two months after the date of signature of the Agreement by both parties.”.</p>

		under Clause 8, that is to make it publicly available.”.	
<p>(d) Inclusion of a new clause 35 as follows:</p> <p>“The Minister shall cause to be laid in Parliament an annual report on the operations of the competent authority within one month after the date for the automatic transmission of information under the provisions of this Act or of Parliament is not then in session, within one month after the commencement of the next session.”</p>	<p>At the meeting of the Joint Select Committee on Friday 17<sup>th</sup> February, 2017, the proposed amendment was accepted with a different time frame of three months instead of one month after the date of the automatic transmission of the information.</p>	NA	<p>“31. The Minister shall cause to be laid in Parliament an annual report on the operations of the competent authority within three months after the date for the automatic transmission of information under the provisions of this Act or, if Parliament is not in session, within one month after the commencement of the next session.”.</p>

# APPENDIX

## 3

**2015 No. 878**

**TAXES**

**The International Tax Compliance Regulations 2015**

<i>Made</i>	- - - -	<i>24th March 2015</i>
<i>Laid before the House of Commons</i>		<i>25th March 2015</i>
<i>Coming into force</i>	- -	<i>15th April 2015</i>

The Treasury make these Regulations in exercise of the powers conferred by section 136 of the Finance Act 2002(a) and section 222(1), (2) and (3) of the Finance Act 2013(b):

*Introductory*

**Citation, commencement, effect and interpretation**

**1.**—(1) These Regulations may be cited as the International Tax Compliance Regulations 2015 and come into force on 15th April 2015.

(2) These Regulations have effect for and in connection with the implementation of obligations arising under the agreements and arrangements listed in paragraph (3) and apply separately in relation to each of those agreements or arrangements except where the context otherwise requires.

(3) The agreements and arrangements are—

- (a) Council Directive 2011/16/EU(c) (“the DAC”),
- (b) the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information signed by the Government of the United Kingdom of Great Britain and Northern Ireland on 29th October 2014 in relation to agreements with the participating jurisdictions listed in the table in Schedule 1 to improve international tax compliance based on the standard for automatic exchange of financial account information developed by the Organisation for Economic Co-Operation and Development (“the CRS”)(d),
- (c) the agreement reached between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America to improve international tax compliance and to implement FATCA, signed on 12th September 2012(e) (“the FATCA agreement”).

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(a) 2002 c. 23.

(b) 2013 c. 29.

(c) OJ No L 64, 11.3.2011, p1, relevantly amended by Council Directive 2014/107/EU, OJ No L 359, 16.12.2014, p1.

(d) The standard for automatic exchange of financial account information developed by the Organisation for Economic Co-Operation and Development (“the OECD”) is available on the OECD website at <http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm>. The OECD Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information is available on OECD website at <http://www.oecd.org/ctp/exchange-of-tax-information/multilateral-competent-authority-agreement.pdf>.

(e) That agreement, as signed on that date, is contained in a Command Paper published by the Stationery Office Ltd with the title “Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA” (Cm

(4) These Regulations have effect from—

- (a) 1st January 2016 in relation to the DAC and the CRS, and
- (b) 15th April 2015 in relation to the FATCA agreement.

(5) In these Regulations, a reference to “relevant agreement” means such agreement or arrangement referred to in paragraph (3) as the context requires, as that agreement or arrangement has effect from time to time.

(6) Any expression which is defined in a relevant agreement but not in section 222 or 235 of FA 2013 or in these Regulations has the same meaning in these Regulations as in the relevant agreement.

### **Meaning of “reportable account”**

2.—(1) In these Regulations, a “reportable account” means—

- (a) an account which is a reportable account within the meaning of the relevant agreement,
- (b) in relation to a reporting financial institution under the DAC or the CRS, an account that is a pre-existing entity account with an account balance or value that does not exceed US\$250,000 as of 31st December 2015, and
- (c) in relation to a reporting financial institution under the FATCA agreement, an account meeting the description at paragraph II.A, III.A or IV.A of Annex I of the agreement.

(2) But—

- (a) in relation to a reporting financial institution under the DAC or the CRS, an account listed as an excluded account in Schedule 2 is not a reportable account,
- (b) in relation to a reporting financial institution under the FATCA agreement, an account is not a reportable account if—
  - (i) the account holder is deceased or is a personal representative (within the meaning of section 989 of ITA 2007),
  - (ii) the account is held to comply with an order or judgment made or given in legal proceedings, or
  - (iii) the funds held in the account are held solely as security for the performance of a party’s obligation under a contract for the disposal of an estate or interest in land or of tangible moveable property, and
- (c) an account within paragraph (1)(b) or (c) is not a reportable account in relation to a reporting financial institution for a calendar year if there is an election by the institution which has effect for that year to treat all such accounts, or a clearly identified group of such accounts, as not being reportable accounts.

(3) An election under paragraph (2)(c) must be made for each calendar year for which the election is to have effect in the return required by regulation 6 for that year.

(4) The reporting financial institution must apply the account balance aggregation and currency rules in the relevant agreement for the purposes of determining whether an account maintained by the institution is within paragraph (1)(b) or (c).

(5) The account balance aggregation and currency rules are—

- (a) in Section VII.C of Annex I to the DAC,
- (b) in Section VII.C of the CRS, and
- (c) in paragraph VI.C of Annex I to the FATCA agreement.

(6) In applying the account balance aggregation and currency rules for the purposes of a relevant agreement and these Regulations, an account balance that has a negative value is treated as having a nil value.

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8445, 2012); the Command Paper is available on the Official Documents website at <http://www.official-documents.gov.uk/document/cm84/8445/8445.pdf>.

(7) In determining the balance or value of an account denominated in a currency other than US dollars for the purposes of a relevant agreement and for the purposes of paragraph (1)(b) or (c), the institution must translate the relevant dollar threshold amounts into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.

(8) For the purposes of a relevant agreement and these Regulations, an account held by an individual as a partner of a partnership is treated as an entity account and is not treated as an individual account.

### *Obligations in relation to financial accounts*

#### **Due diligence requirements**

**3.**—(1) A reporting financial institution must establish and maintain arrangements that are designed to identify reportable accounts.

(2) Such arrangements must—

- (a) identify the territory in which an account holder or a controlling person is resident for income tax or corporation tax purposes or for the purposes of any tax imposed by the law of that territory that is of a similar character to either of those taxes,
- (b) apply the due diligence procedures set out in the relevant agreement,
- (c) secure that the information obtained in accordance with this regulation, or a record of the steps taken to comply with this regulation, in relation to any financial account is kept for a period of six years beginning with the end of the year in which the arrangements applied to the financial accounts.

(3) The due diligence procedures are—

- (a) in relation to a reporting financial institution under the DAC, set out in Annexes I and II to the DAC,
- (b) in relation a reporting financial institution under to the CRS, set out in Sections 2 to 7 of the CRS,
- (c) in relation to a reporting financial institution under the FATCA agreement, set out in Annex I to that agreement.

(4) A reporting financial institution under the CRS must also apply the rules in Annex II of the DAC treating references to “Member State” in that Annex as references to “Participating Jurisdiction”.

(5) In applying the due diligence procedures, accounts within regulation 2(1)(b) and (c) in respect of which no election under regulation 2(2)(c) has been made are treated as new accounts or pre-existing accounts as the case may be.

#### **Modification of due diligence requirements: the DAC and the CRS**

**4.** A reporting financial institution under the DAC and the CRS may—

- (a) apply the due diligence procedures for new accounts to pre-existing accounts, and
- (b) apply the due diligence procedures for high value accounts to low value accounts.

#### **Modifications of due diligence requirements: FATCA agreement**

**5.**—(1) A reporting financial institution under the FATCA agreement may modify the due diligence requirements as follows.

(2) In the case of an account within paragraph II.B or II.C of Annex I to the FATCA agreement, the due diligence requirements do not include the requirement to carry out the electronic search described in paragraph II.B (1) of that Annex if—

- (a) the institution has established that the account holder is a specified U.S. person from documentary evidence mentioned in paragraph VI.D of Annex I of the agreement, and
- (b) it has done so in order to meet its obligations under a Qualifying Intermediary agreement as mentioned in that paragraph.

(3) In the case of an account with paragraph II.D or II.E of Annex I to the FATCA agreement, the due diligence requirements do not include the requirement to carry out the electronic searches described in paragraph II.B (1) or II.D (1) of that Annex or the requirement to carry out the paper record search described in paragraph II.D (2) of that Annex if—

- (a) the institution has established the account holder is a specified U.S. person from documentary evidence mentioned in paragraph VI.D of that Annex, and
- (b) it has done so in order to meet its obligations under a Qualifying Intermediary agreement as mentioned in that paragraph.

(4) The reporting financial institution may rely on evidence that a person is a specified U.S. person obtained in relation to another financial account if the due diligence procedures in the relevant U.S. Treasury Regulations would allow such reliance.

(5) For the purposes of this regulation references to the documentary evidence set out in paragraph VI.D of Annex I of the FATCA agreement are to be treated as if the words “other than a Form W-8 or W-9” were omitted.

### **Reporting obligation**

**6.—**(1) A reporting financial institution must, in respect of the first reporting year and every following calendar year, make a return setting out the information required to be reported under the relevant agreement in relation to every reportable account that is maintained by the institution at any time during the calendar year in question.

(2) The first reporting year is—

- (a) the calendar year 2014 in relation to an account identified as a reportable account for the purposes of the FATCA agreement,
- (b) the calendar year 2016 in relation to an account identified as a reportable account for the purposes of the DAC or the CRS.

(3) The information required to be reported is—

- (a) in relation to an account identified as a reportable account for the purposes of the DAC, set out in Section I of the Annex I to the DAC,
- (b) in relation to an account identified as a reportable account for the purposes of the CRS, set out in Section I of the CRS,
- (c) in relation to an account identified as a reportable account for the purposes of the FATCA agreement, set out in Article 2(2) of that agreement.

(4) The return must be submitted electronically in accordance with regulation 7 on or before 31st May of the year following the calendar year to which the return relates.

(5) For the purposes of the information required to be reported under the relevant agreement—

- (a) interest includes any amount that is chargeable as interest under Part 4 of ITTOIA 2005(a),
- (b) references to the balance or value of an account include a nil balance or value, and
- (c) references to paying an amount include crediting an amount.

### **Electronic return system**

**7.—**(1) The return must be made electronically using an electronic return system.

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(a) 2005 c. 5.



(2) The form and manner of an electronic return system is specified in specific or general directions given by the Commissioners for Her Majesty's Revenue and Customs.

(3) A return which is made otherwise than in accordance with paragraphs (1) and (2) is treated as not having been made.

(4) An electronic return system must incorporate an electronic validation process.

(5) Unless the contrary is proved—

(a) the use of an electronic return system is presumed to have resulted in the making of the return only if this has been successfully recorded as such by the relevant electronic validation process,

(b) the time of making the return is presumed to be the time recorded as such by the relevant electronic validation process, and

(c) the person delivering the return is presumed to be the person identified as such by any relevant feature of the electronic return system.

(6) A return made behalf of a reporting financial institution is taken to have been made by that institution, unless the institution proves that the return was made without the institution's authority.

### **Modifications of reporting requirements: FATCA**

**8.—**(1) In relation to an account identified as a reportable account for the purposes of the FATCA agreement, the information required to be reported is modified as follows.

(2) In the case of all reportable accounts for the calendar year 2014, the information required to be reported is provided in Article 3(3)(a)(1) of the FATCA agreement.

(3) In the case of custodial accounts for the calendar year 2015, the information required to be reported is provided in Article 3(3)(a)(2) of the FATCA agreement.

(4) In the case of pre-existing accounts—

(a) for calendar years before 2017—

(i) there is no requirement to include a U.S. federal taxpayer identifying number if the reporting financial institution does not hold that number, but

(ii) if the account holder is an individual whose date of birth the institution does hold, the institution must include the account holder's date of birth instead, and

(b) for the calendar year 2017 and subsequent years, if a reporting financial institution does not hold a U.S. federal taxpayer identifying number that it is required to report, the institution must obtain that number from the account holder.

### **Additional due diligence and reporting obligations in relation to payments to a non-participating financial institution: FATCA**

**9.—**(1) In relation to a reporting financial institution under the FATCA agreement, the due diligence requirements and the information required to be reported are modified as follows in relation to payments to a non-participating financial institution.

(2) A reporting financial institution must establish and maintain arrangements that are designed to identify payments made by the institution to a non-participating financial institution in the calendar year 2015 or 2016,

(3) "Payment" here does not include consideration given by the reporting financial institution for the provision of goods or services to it.

(4) A reporting financial institution must apply the due diligence procedures set out in paragraph IV.D (3) of Annex I of the FATCA agreement to identify whether a financial institution is a non-participating financial institution.

(5) In respect of any case in the calendar years 2015 and 2016 when a reporting financial institution is within the terms of sub-paragraph 1(e) of Article 4 of the FATCA agreement, the

institution must make a disclosure of information in accordance with the requirements of that sub-paragraph.

(6) A reporting financial institution must in respect of each of the calendar years 2015 and 2016 prepare a return setting out the information set out in Article 4(1)(b) of the FATCA agreement.

(7) The return must be submitted electronically in accordance with regulation 7 on or before 31st May of the year following the calendar year to which the return relates.

(8) For the purposes of this regulation, “non-participating financial institution” includes anyone who is treated as a non-participating financial institution as a result of sub-paragraph 5(a) of Article 4 of the FATCA agreement.

#### **Notification to individual reportable persons**

**10.**—(1) A reporting financial institution must notify each individual reportable person or individual specified U.S. person that information relating to that person which is required to be reported under regulation 6 will be reported to HMRC and may be transferred to the government of another territory in accordance with a relevant agreement.

(2) The notification must be made by 31st January in the calendar year following the first year in which the account held by the individual is a reportable account maintained by the reporting financial institution.

#### **Non-resident reporting financial institution’s UK representative**

**11.**—(1) If a reporting financial institution is not resident in the United Kingdom, the obligations of the institution under these Regulations are to be treated as if they were also the obligations of any UK representative of the institution.

(2) “UK representative” has the same meaning as it has in—

- (a) Chapter 6 of Part 22 of CTA 2010, in relation to a reporting financial institution that is within the charge to corporation tax, and
- (b) Chapter 2C of Part 14 of ITA 2007, in relation to any other reporting financial institution.

(3) For the purposes of this regulation—

- (a) a reporting financial institution which is a partnership is resident in the United Kingdom if the control and management of the business of the partnership as a reporting financial institution takes place there, and
- (b) a reporting financial institution which is not a partnership is resident in the United Kingdom if it is resident in the United Kingdom for corporation tax or income tax purposes.

#### **Use of service providers**

**12.** A reporting financial institution may use a service provider to undertake the due diligence requirements under regulations 3 to 5 and the reporting obligations under regulations 6 and 9, but in such cases those obligations continue to be the obligations of the institution.

#### *Penalties for breach of obligations*

#### **Penalties for failure to comply with Regulations**

**13.** A person is liable to a penalty of £300 if the person fails to comply with any obligation under these Regulations.

#### **Daily default penalty**

**14.** If—

- (a) a penalty under regulation 13 is assessed, and
- (b) the failure in question continues after the person has been notified of the assessment,

the person is liable to a further penalty, for each subsequent day on which the failure continues, of an amount not exceeding £60 for each such day.

#### **Penalties for inaccurate information**

**15.**—(1) A person is liable to a penalty not exceeding £3,000 if—

- (a) in complying with an obligation under regulation 6 the person provides inaccurate information, and
- (b) condition A, B or C is met.

(2) Condition A is that the inaccuracy is—

- (a) due to a failure to comply with the due diligence requirements in regulation 3 (as modified by regulations 4 or 5 where those regulations apply), or
- (b) deliberate on the part of the person.

(3) Condition B is that the person knows of the inaccuracy at the time the information is provided but does not inform HMRC at that time.

(4) Condition C is that the person—

- (a) discovers the inaccuracy some time later, and
- (b) fails to take reasonable steps to inform HMRC.

#### **FATCA agreement penalty: non-participating financial institutions**

**16.**—(1) In relation to payments that are required to be identified under regulation 9(2), a person is liable to—

- (a) a penalty of £300 for each failure to report a payment, and
- (b) a penalty of £300 for each failure to set out a payment accurately in a report made under regulation 9.

(2) But in relation to a calendar year, a person's liability for penalties under this regulation is subject to a limit of £3000.

#### **Matters to be disregarded in relation to liability to penalties**

**17.**—(1) Liability to a penalty under regulation 13, 14 or 16 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of this regulation neither of the following is a reasonable excuse—

- (a) that there is an insufficiency of funds to do something,
- (b) that a person relies upon another person to do something.

(3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

#### **Assessment of penalties**

**18.**—(1) If a person becomes liable to a penalty under any of regulations 13 to 16, an officer of Revenue and Customs may assess the penalty.

(2) If an officer does so, the officer must notify the person.

(3) An assessment of a penalty under regulation 13, 14 or 16(1)(a) must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

- (4) An assessment of a penalty under regulation 15 or 16(1)(b) must be made—
- (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs, and
  - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

### **Right to appeal against penalty**

- 19.** A person may appeal against a penalty assessment—
- (a) on the grounds that liability to a penalty under any of regulations 13 to 16 does not arise, or
  - (b) as to the amount of such a penalty.

### **Procedure on appeal against penalty**

- 20.**—(1) Notice of an appeal under regulation 19 must be given—
- (a) in writing,
  - (b) before the end of the period of 30 days beginning with the date on which notification under regulation 18 was given,
  - (c) to HMRC.
- (2) It must state the grounds of appeal.
- (3) On an appeal under regulation 19(a) that is notified to the tribunal, the tribunal may confirm or cancel the assessment.
- (4) On an appeal under regulation 19(b) that is notified to the tribunal, the tribunal may—
- (a) confirm the assessment, or
  - (b) substitute another assessment that the officer of Revenue and Customs had power to make.
- (5) Subject to this regulation and regulation 22, the provisions of Part 5 of TMA 1970(a) relating to appeals have effect in relation to appeals under regulation 19 as they have effect in relation to an appeal against an assessment to income tax.

### **Increased daily default penalty**

- 21.**—(1) This paragraph applies if—
- (a) a penalty under regulation 14 is assessed under regulation 18,
  - (b) the failure in respect of which that assessment is made continues for more than 30 days beginning with the date on which notification of that assessment is given, and
  - (c) the person has been told that an application may be made under this paragraph for an increased daily penalty to be imposed.
- (2) If this regulation applies, an officer of Revenue and Customs may make an application to the tribunal for an increased daily penalty to be imposed on the person.
- (3) If the tribunal decides that an increased daily penalty should be imposed then for each applicable day on which the failure continues—
- (a) the person is not liable to a penalty under regulation 14 in respect of the failure, and

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(a) 1970 c. 9. The Taxes Management Act 1970 was relevantly amended by sections 45(1) and 67(2) of the Finance (No. 2) Act 1975 (c. 45); section 68 of the Finance Act 1982 (c. 39); section 156(2) and (4) of the Finance Act 1989 (c. 26); section 199 of and paragraphs 18(1) and (2) of Schedule 19 to the Finance Act 1994 (c. 9); paragraph 28 of Schedule 19 to the Finance Act 1998 (c. 36); section 88 of and paragraph 31 of Schedule 29 to the Finance Act 2001 (c. 9); paragraph 21 of Schedule 1 to the Constitutional Reform Act 2005 (c. 4); paragraph 257(a) and (b) of Schedule 1 to and Part 1 of Schedule 3 to the Income Tax Act 2007 (c. 3); section 119(12)(a) of the Finance Act 2008 (c. 9); paragraph 31 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8); S.I. 1994/1813 and 2009/56.

- (b) the person is liable instead to a penalty under this regulation of an amount determined by the tribunal.
- (4) The tribunal may not determine an amount exceeding £1000 for each applicable day.
- (5) If a person becomes liable to a penalty under this regulation, HMRC must notify the person.
- (6) The notification must specify the day from which the increased penalty is to apply.
- (7) That day and any subsequent day is an “applicable day” for the purposes of this regulation.

**Enforcement of penalties**

**22.**—(1) A penalty under these Regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).

- (2) That date is—
  - (a) the date on which the assessment under regulation 18 or notification under regulation 21(5) is given in respect of the penalty, or
  - (b) if a notice of appeal under regulation 20 is given, the date on which the appeal is finally determined or withdrawn.

(3) A penalty under these Regulations may be enforced as if it were income tax charged in an assessment and due and payable.

*Supplementary*

**Anti-avoidance**

- 23.** If—
- (a) a person enters into any arrangements, and
  - (b) the main purpose, or one of the main purposes, of the person in entering into the arrangements is to avoid any obligation under these Regulations,

these Regulations are to have effect as if the arrangements had not been entered into.

**Definitions**

- 24.**—(1) In these Regulations—
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,
  - “the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal,
  - “US Treasury Regulations” mean the US Regulations Relating to Information Reporting by Foreign Financial Institutions and Other Foreign Entities<sup>(a)</sup>.

(2) The following table lists the places where expressions that apply for the purposes of these Regulations are defined or otherwise explained—

Expression	Regulations	The DAC	The CRS	The FATCA agreement
account holder		Section VIII(E)(1) of Annex I	Section VIII(E)(1) of the CRS	Article 1(1)(ee)
annuity contract		Section VIII(C)(6) of Annex I	Section VIII(C)(6) of the CRS	

(a) The Regulations can be found on the US Department of the Treasury website at <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>.

CRS	regulation 1(3)(b)			
cash value insurance contract		Section VIII(C)(7) of Annex I	Section VIII(C)(7) of the CRS	
the Commissioners	regulation 24(1)			
controlling person		Section VIII(D)(5) of Annex I	Section VIII(D)(6) of the CRS	Article 1(1)(mm)
custodial account		Section VIII(A)(3) of Annex I	Section VIII(A)(3) of the CRS	Article 1(1)(u)
the DAC	regulations 1(3)(a)			
entity		Section VIII(E)(3) of Annex I	Section VIII(E)(3) of the CRS	Article 1(1)(hh)
excluded accounts	Schedule 2	Section VIII(C)(17) of Annex I	Section VIII(C)(17) of the CRS	
the FATCA agreement	regulation 1(3)(c)			
financial account		Section VIII(C) of Annex I	Section VIII(C) of the CRS	Article 1(1)(s)
financial institution		Section VIII(A)(3) of Annex I	Section VIII(A)(3) of the CRS	Article 1(1)(g)
new account		Section VIII(C)(10) of Annex I	Section VIII(C)(10) of the CRS	
non-participating financial institution				Article 1(1)(r)
participating jurisdiction	Schedule 1	Section VIII(D)(4) of Annex I	Section VIII(D)(5) of the CRS	
pre-existing account		Section VIII(C)(9) of Annex I	Section VIII(C)(9) of the CRS	
pre-existing entity account	regulation 2(3)	Section VIII(C)(13) of Annex I	Section VIII(C)(13) of the CRS	Section IV of Annex I
reportable account	regulation 2	Section VIII(D)(1) of Annex I	Section VIII(D)(1) of the CRS	Article 1(1)(bb)
reporting financial institution		Section VIII(A)(1) of Annex I	Section VIII(A)(1) of the CRS	Article 1(1)(n)
reportable person	regulation 10(3)	Section VIII(D)(2) of the Annex	Section VIII(A)(1) of the CRS	
relevant agreement	Regulation 1(5)			
specified U.S.				Article 1(1)(gg)

person				
the tribunal	regulation 24(1)			
U.S. reportable account				Article 1(1)(dd) and paragraph I.B of Annex I
U.S. Treasury Regulations	regulation 24(1)			

### Revocation

**25.** The International Tax Compliance (United States of America) Regulations 2014(a) are revoked.

*Alun Cairns*  
*David Evennett*

24th March 2015

Two of the Lords Commissioners of Her Majesty's Treasury

## SCHEDULE 1

Regulation 1(3)(b)

### Participating jurisdictions

The participating jurisdictions for the purposes of the CRS are set out in the following list.

Albania  
Andorra  
Anguilla  
Antigua and Barbuda  
Argentina  
Aruba  
Austria  
Australia  
The Bahamas  
Barbados  
Belgium  
Belize  
Bermuda  
Brazil  
British Virgin Islands  
Brunei Darussalam  
Bulgaria  
Canada  
Cayman Islands  
Chile  
China  
Colombia  
Costa Rica

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(a) S.I. 2014/1506.

Croatia  
Curacao  
Cyprus  
Czech Republic  
Denmark  
Dominica  
Estonia  
Faroe Islands  
Finland  
France  
Germany  
Gibraltar  
Greece  
Greenland  
Grenada  
Guernsey  
Hong Kong (China)  
Hungary  
Iceland  
India  
Indonesia  
Ireland  
Isle of Man  
Israel  
Italy  
Japan  
Jersey  
Korea  
Latvia  
Liechtenstein  
Lithuania  
Luxembourg  
Macao (China)  
Malaysia  
Malta  
Marshall Islands  
Mauritius  
Mexico  
Monaco  
Montserrat  
Netherlands  
New Zealand  
Niue  
Norway  
Poland  
Portugal  
Qatar  
Romania  
Russian Federation  
Saint Kitts and Nevis  
Saint Lucia  
Saint Vincent and the Grenadines  
Samoa



San Marino  
Saudi Arabia  
Seychelles  
Singapore  
Sint Maarten  
Slovak Republic  
Slovenia  
South Africa  
Spain  
Sweden  
Switzerland  
Trinidad and Tobago  
Turkey  
Turks and Caicos Islands  
United Arab Emirates  
Uruguay

## SCHEDULE 2

Regulation 2(2)(a)

### Excluded accounts

For the purposes of the DAC and the CRS the following are excluded accounts.

#### **Certain Retirement Accounts or Products**

1. Pension schemes registered with HMRC under Part 4 of FA 2004(a).
2. Non-registered pension arrangements where the annual contributions are limited to £50,000 and funds contributed cannot be accessed before the age of 55 except in circumstances of serious ill health.
3. Immediate needs annuities within section 725 ITTOIA 2005(b).

#### **Certain Tax-favoured Accounts and Products**

4. An account within the meaning of the Individual Savings Account Regulations 1998(c).
5. A child trust fund within the meaning of the Child Trust Funds Act 2004(d).
6. Premium Bonds issued by the UK National Savings and Investments.
7. Children's Bonds issued by the UK National Savings and Investments.
8. Fixed Interest Savings Certificates issued by UK National Savings and Investments.
9. Index Linked Savings Certificates issued by UK National Savings and Investments.
10. Tax Exempt Savings Plans issued by a friendly society within the meaning of the Friendly Societies Act 1992(e).
11. A share incentive plan approved by HMRC under Schedule 2 to ITEPA 2003(f).

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(a) 2004 c. 12.

(b) 2005 c. 5.

(c) S.I. 1998/1870, relevantly amended by S.I. 2002/1974, 2007/2119, 2008/704, 2009/1994, 2010/2957, 2011/782 and 2011/1780.

(d) 2004 c. 6.

(e) 1992 c. 40.

(f) 2003 c. 1.

12. A SAYE option scheme approved by HMRC under Schedule 3 to ITEPA 2003.

13. A CSOP scheme approved by HMRC under Schedule 4 to ITEPA 2003.

14. A venture capital trust approved for the purposes of Part 6 of ITA 2007(a) by the Commissioners.

15.—(1) A dormant account (other than an annuity contract) with a balance that does not exceed US\$1,000.

(2) An account is a dormant account if—

- (a) the account holder has not initiated a transaction with regard to the account or any other account held by the account holder with the reporting financial institution in the previous three years,
- (b) the account holder has not communicated with the reporting financial institution regarding the account or any other account held by the account holder with the reporting financial institution in the previous six years,
- (c) the account is treated as a dormant account under the reporting financial institutions normal operating procedures, and
- (d) in the case of a cash value insurance contract, the reporting financial institution has not communicated with the account holder regarding the account or any other account held by the account holder with the reporting financial institution in the previous six years.

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made to give effect to the agreements and arrangements reached between the Government of the United Kingdom and other jurisdictions to improve international tax compliance. The agreements and arrangements are-

- Council Directive 2011/16/EU (“the DAC”);
- the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information signed by the Government of the United Kingdom of Great Britain and Northern Ireland on 29th October 2014, this implements the Common Reporting Standard developed by the Organisation for Economic Co-Operation and Development which has been agreed by the jurisdictions listed in Schedule 1 (“the CRS”);
- the agreement reached between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America to improve international tax compliance and to implement FATCA, signed on 12th September 2012 (“the FATCA agreement”).

Regulation 1 provides for citation, commencement, effect and interpretation. It identifies and defines the above agreements and arrangements and provides that a reference to one of the agreements or arrangements (“relevant agreement”) is a reference to how the agreement takes effect from time to time.

Regulation 2 defines “reportable account” and makes provision for a reporting financial institution to elect for a calendar year to treat certain accounts as if they were not reportable accounts.

Regulation 3 requires reporting financial institutions to establish and maintain arrangements to identify reportable accounts and the tax residence of holders of accounts and to apply the appropriate due diligence requirements.

Regulations 4 and 5 modify the due diligence requirements in specified cases.

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(a) 2007 c. 3.

Regulation 6 requires reporting financial institutions to make an electronic return in respect of every calendar year from a year specified in that regulation.

Regulation 7 sets out provisions in relation to the electronic return and makes provision as to the form and manner of the return to be specified in specific or general directions given by the Commissioners for Her Majesty's Revenue and Customs.

Regulations 8 and 9 modify the reporting and due diligence requirements in relation to certain cases in respect of the FATCA agreement.

Regulation 10 imposes a notification obligation.

Regulation 11 is concerned with the position of reporting financial institutions that are not resident in the United Kingdom, in such a case the obligations of an institution are to be treated as if they were also the obligations of its UK representative.

Regulation 12 permits the use of service providers to undertake the identification and reporting obligations in regulations 6 and 7.

Regulations 13 to 22 make provision for penalties for breach of obligations under these Regulations.

Regulation 23 is an anti-avoidance provision.

Regulation 24 contains definitions.

Regulation 25 revokes the International Tax Compliance (United States of America) Regulations 2014 (S.I. 2014/1506) as these Regulations replace those Regulations.

Schedule 1 sets out the participation jurisdictions in relation to the CRS.

Schedule 2 sets out excluded accounts for the purposes of the DAC and the CRS.

A transposition note which sets out how the main elements of the DAC are transposed into UK law is annexed to the Explanatory Memorandum covering this instrument.

A Tax Information and Impact Note covering this instrument was published on 18th March 2015 and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

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