PARLIAMENT

REPUBLIC OF TRINIDAD AND TOBAGO

SECOND SESSION OF THE ELEVENTH PARLIAMENT (2016/2017)

THIRD INTERIM REPORT
OF
THE JOINT SELECT COMMITTEE
APPOINTED TO CONSIDER AND REPORT ON THE INSURANCE BILL, 2016

Ordered to be printed

TOGETHER WITH THE MINUTES OF PROCEEDINGS

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MANDATE

1. Pursuant to resolutions of the House of Representatives on Friday February 3, 2017 and of the Senate on Tuesday February 7, 2017, a Joint Select Committee was established:
   "to consider and report on a Bill entitled the Insurance Act, 2016 and…to report on or before March 17th, 2017."

INTERIM REPORTS

2. The Committee's First Interim Report was adopted in the House of Representatives on Wednesday March 15, 2017 and in the Senate on Tuesday March 21, 2017. Your Committee requested and was granted a six (6) week extension to April 28, 2017 complete its work.

3. The Committee's Second Interim Report was adopted in Senate and House of Representatives on Tuesday May 2, 2017 and Friday May 5, 2017, respectively. Your Committee requested and was granted a four (4) week extension to complete its work. This extension will expire on June 2, 2017.

MEMBERSHIP OF THE COMMITTEE

4. The Members of the Committee are as follows:
   - **Mr. Colm Imbert, MP**
   - **Mr. Faris Al-Rawi, MP**
   - **Mr. Fitzgerald Hinds, MP**
   - **Ms. Marlene McDonald, MP**
   - **Mr. David Lee, MP**
   - **Dr. Surujrattan Rambachan, MP**
   - **Mr. Stephen Creese**
   - **Mr. Wayne Sturge**
   - **Dr. Lester Henry**
   - **Mr. Daniel Dookie**
   - **Mr. Clarence Rambharat**
   - **Ms. Jennifer Raffoul**

SECRETARIAT AND TECHNICAL SUPPORT

5. Ms. Chantal La Roche, Legal Officer II, was assigned as Secretary to the Committee and Ms. Simone Yallery, Legal Officer I, as Assistant Secretary.

MEETINGS

6. Since the presentation of its Second Interim Report, the Committee has held one (1) meeting on Wednesday May 24, 2017.

7. The Minutes of the meeting are attached at **Appendix I**.

WORK TO DATE

8. At its Sixth Meeting held on May 24, 2017, your Committee examined the Central Bank of Trinidad and Tobago (Central Bank).

9. Representatives of Central Bank gave a brief presentation and also addressed concerns raised by the Insurance Brokers Association of Trinidad and Tobago (IBATT) and the Association of Trinidad and Tobago Insurance Companies (ATTIC) during previous meetings. The Committee also received a written submission from Central Bank.

REPORT

10. The Committee wishes to report that the review of the written submissions on the Bill is still in progress. The Committee determined that further feedback is required from IBATT and ATTIC who were previously examined.

11. However, due to time constraints, the Committee requires additional time to complete this exercise, commence a clause by clause analysis of the Bill and compile proposed amendments. As such, the Committee is unable to submit its final report by the deadline of June 2, 2017.

RECOMMENDATION

12. Your Committee humbly requests a further period of four (4) weeks to complete its work and to submit a final report to Parliament by **June 30, 2017.**

13. During the period of extension, the Committee proposes to receive additional feedback from all stakeholders and to continue the exercise of assessing submissions received.

14. The Committee also proposes to commence a clause by clause examination of the Bill with the assistance of the Chief Parliamentary Counsel's Department of the Ministry of the Attorney General and Legal Affairs.

Respectfully submitted,

Sgd.
Mr. Colm Imbert, MP
Chairman
June 2, 2017

APPENDIX I

JOINT SELECT COMMITTEE ON THE INSURANCE BILL, 2016

MINUTES OF THE SIXTH MEETING HELD IN THE ARNOLD THOMASOS MEETING ROOM (WEST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON MAY 24TH, 2017 at 10:30 a.m.

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Chairman
Mr. Faris Al-Rawi, MP	-	Vice Chairman
Mr. David Lee, MP	-	Member
Mr. Clarence Rambharat	-	Member
Dr. Lester Henry	-	Member
Mr. Daniel Dookie	-	Member
Ms. Jennifer Raffoul	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Simone Yallery	-	Assistant Secretary

ABSENT/EXCUSED

Ms. Marlene McDonald, MP	-	Member
Dr. Surujrattan Rambachan, MP	-	Member
Mr. Fitzgerald Hinds, MP	-	Member
Mr. Wayne Sturge	-	Member
Mr. Stephen Creese	-	Member

COMMENCEMENT

1.1 The meeting was called to order by the Chairman at 10:33 a.m.

ANNOUNCEMENTS

2.1 The Chairman advised that the following Members asked to be excused the day's meeting:

a) Ms. Marlene McDonald (conflicting engagement).
b) Mr. Fitzgerald Hinds (conflicting engagement).

CONFIRMATION OF MINUTES

3.1 There being no corrections, the Minutes were confirmed on a motion moved by Mr. David Lee and seconded by Mr. Daniel Dookie.

MATTERS ARISING FROM MINUTES

4.1 The Chairman brought the following matters to the attention of Members:

Per Item 3.1 (b)

a) A response was received from the Director of Public Prosecutions dated April 20, 2017 in which he advised of his inability to accede to the Committee's request to obtain the recommendations on the insurance industry contained in the Colman Commission of Enquiry Report into CLF/CLICO.

Per Items 4.1 – 4.4

b) The Association of Trinidad and Tobago Insurance Companies (ATTIC) submitted the following documents as requested by the Committee:
   - Strict Liability Offences in the Insurance Bill: ATTIC's Objections in Principle and in Comparative Perspective;
   - Strict Liability Offences in the Insurance Bill and the Impact of Clause 254 (8); and
   - "Note on Strict Liability in the Insurance Bill – Edward Fitzgerald QC CBE and Joseph Middleton".

DISCUSSIONS WITH THE CENTRAL BANK OF TRINIDAD AND TOBAGO

5.1 The Chairman advised Members that the Central Bank of Trinidad and Tobago submitted comments on the Insurance Bill, 2016 ("the Bill") which were circulated to Members.

(Meeting suspended)

Representatives of Central Bank of Trinidad and Tobago (CBTT) were invited to join the meeting at this time

5.2 The meeting resumed and the Chairman welcomed the representatives of the CBTT and asked them to introduce themselves.

5.3 Representing CBTT were:

▪ Mrs. Michelle Chong Tai - Bell	Inspector of Financial Institutions, Financial Institutions Supervision Department
▪ Mrs. Michelle Francis-Pantor	Deputy Inspector Banks, Non- Banks and Payment Systems Oversight, Financial Institutions Supervision Department
▪ Ms. Alana Mykoo	FISD Officer, Financial Institutions Supervision Department
▪ Mr. Rene Singh	Legal Counsel II, Legal, Contract and Corporate Secretariat Services
▪ Ms. Deborah Boynes	Senior Legal Counsel, Legal, Contract and Corporate Secretariat Services

5.4 The following officials from the Chief Parliamentary Counsel's Department and the Office of the Attorney General and Legal Affairs were present to assist the Committee:

Chief Parliamentary Counsel's Department

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Ms. Megan Doyle	Parliamentary Counsel I

Office of the Attorney General and Legal Affairs

Ms. Vyana Sharma	Legal Counsel

5.5 Mrs. Chong Tai – Bell made opening remarks and opined that the Bill seeks to rectify deficiencies in the legislative regime for the insurance industry and ensure compliance with the globally accepted framework for effective supervision of the insurance sector.

5.6 Issues discussed included:

- The 80/20 rule which requires that insurance companies should invest no less than 80 per cent in Trinidad and Tobago assets and no more than 20 per cent in foreign assets;
- The severity of fines and penalties in the Bill;
- The definitions of "self-insurance", "privately administered pension fund plans" and "annuity"
- Clause 19 of the Bill on the non-application of Part III of the Bill to privately administered pension fund plan, an association of underwriters, an intermediary or an insurance consultant;
- The protection of consumers and market conduct;
- Capital adequacy and the limit on mutual funds and Collective Investment Schemes; and
- The treatment of Lloyd's as an underwriting association versus a separate entity.

5.7 CBTT's comments on submissions made by ATTIC, IBATT and Lloyd's are at **Appendix I** to these Minutes.

5.8 At the end of the presentation, the Chairman thanked the representatives of CBTT for their attendance and excused them from the meeting.

OTHER BUSINESS

6.1 The Committee requested that Central Bank provide written clarification on which offences in the Bill should be treated indictably, which offences should be treated summarily and the rationale for each recommendation.

ADJOURNMENT

7.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Friday June 9, 2017 at 10:00 a.m.

7.2 The adjournment was taken at 11:32 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

May 24, 2017

Appendix I
CBTT's Comments and Feedback

APPENDIX I

THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC

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Ref.	Provision	ATTIC's Recommendation	ATTIC's Rationale	Central Bank's (Central Bank/Bank) comments
Cl. 254 , 255	254 (5): Reverse Burden of Proof, creating strict liability for offences that carry large fines and/or long sentences of imprisonment	• Align Insurance Bill with Canadian and UK legislation and the International Association of Insurance Supervisors— all utilise strict liability in rare cases and in cases that the penalty is imprisonment, requires there to be personal culpability and knowledge	• UK and Canadian legislation and the International Association of Insurance Supervisors support this position • Penalties should involve personal culpability	**Background** The Canadian Insurance Companies Act states inter. alia.: **"1023.** Every person who, without reasonable cause, contravenes any provision of this Act or the regulations is guilty of an offence. **1028.** If an entity commits an offence under this Act, any officer, director or agent of the entity who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and liable on summary conviction or on conviction on indictment to the punishment provided under paragraph 1027(1)(a) for the offence, whether or not the entity has been prosecuted or convicted." The Constitution of the Republic of Trinidad and Tobago specifically states that laws which place a burden on the accused to prove certain facts are not invalid (section 5(2)(f)(i) of the Constitution). The Courts in Canada have expressly opined that a shift of the evidential burden to an accused, in a regulatory environment, does not offend that person's Charter Rights. **R v Wholesale Travel Group Inc.** [1991] 3 SCR 154 wherein the court said *"The*

		• Amend wording of 254 (5) We recommend that 254 (5) be amended as follows: *(a) A failure by any person to comply with a requirement, direction or prohibition under this Act or the Regulations shall not be an offence unless it is proved that the person acted without reasonable excuse. (b) An officer, director or agent of an insurer shall not be guilty*		*reasons for ascribing a different content to the presumption of innocence in the regulatory context are persuasive and compelling. As with the mens rea issue,* ***if regulatory mechanisms are to operate effectively, the Crown cannot be required to disprove due diligence beyond a reasonable doubt****. Such a requirement would make it virtually impossible for the Crown to prove regulatory offences and would effectively prevent governments from seeking to implement public policy through regulatory means… The means of proof of reasonable care* ***will be peculiarly within the knowledge and ability of the regulated accused****. Only the accused will be in a position to bring forward evidence relevant to the question of due diligence."* **Central Bank's views:** The Central Bank wholeheartedly concurs with the position espoused by the Canadian Court cited above. The Bank **does not support** ATTIC's proposed amendment to Clause 254(5) as it shifts the evidential burden much further than the Canadian legislation and in so doing would undermine the very purposes of the legislation. **However the Bank would not object to an approach akin to Section 1028 of the Canadian Insurance Act.**

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		of an offence unless it is shown that he personally directed, authorized, assented to, acquiesced in or participated in the commission of the offence. • Replace references of "summary conviction" to "conviction on indictment' • Align with Constitution and amend FIA 2008 accordingly.		The Central Bank **does not agree** that all offences should be indictable offences akin to murder, manslaughter and money laundering. However the Central Bank would recommend an approach akin to the Section 1028 of the Canadian Insurance Act where offences are created as hybrid offences. As stated above, it is incorrect to state that the burden on the accused to prove certain facts in certain circumstances is unconstitutional. ATTIC's suggestion to amend the Financial Institutions Act, 2008 (FIA) recognizes that the Insurance Bill sought to harmonize the treatment of comparable offences under the FIA. Clause 254(5) is similarly worded to Section 117(3) of the FIA.
All offences in the Bill		255 (4) (a) & (b) - Liability for substantial penalties should be on the basis of some personal responsibility beyond the mere status of an individual as a director. To do otherwise is to proceed by way of strict liability in an area of criminal		• Clause 255 applies to financial fraud **actually perpetrated** by either a director, officer or sales representative • The presumption of the offence under 254 (8) does not apply in this case. **Recommendation:** Delete 255 4(b) as it is redundant and has led to

		liability where the severity of the penalties make such an approach wholly unjust.		ATTIC's misconception that an entity can perpetrate a financial fraud and that directors of such entities may be automatically presumed to have also committed the fraud. The Bank also clarifies that for other offences, under Clause 254(8), a director or officer would not be liable simply by virtue of his office, but due to his acquiescence, consent, connivance or neglect. As such, some fault is required on the part of the officer or director and Clause 254(8), therefore, does not impose strict liability.
Cl. 68	68(1) Composition of audit committee 68 (5) Independent Director	• Reduce the number of independent directors to one. • Limit term of Director to eight (8) years • Director connectivity be addressed.	• No definition of independence in the Bill • Limited available and willing talent pool • Provision may not strengthen corporate governance	The Bill contains provisions relating to meaning of an independent director in 68(5)(c). The provisions relating to the independence of the audit committee are: a. Consistent with the FIA b. In keeping with Insurance Core Principle 7.3 of the International Association of Insurance Supervisors on the structure and Governance of the Board which states: " 7.3.8 Besides policies on conflicts of interests, the insurer should ensure objectivity in decision making by establishing clear and objective independence criteria which should be met by an adequate number of members of the Board (i.e. non-executive Board members). ***For this purpose, the independence criteria should also***

				take account of group structures and other applicable factors. Meeting such criteria is particularly important for those Board members undertaking specific roles (such as members of the remuneration and audit committees) in which conflicts of interests are more likely to arise. 7.3.9 Objectivity in decision making is also promoted by independence of mind of the individual Board members. This means that a Board member should act without favour; provide constructive and robust challenge of proposals and decisions; ask for information when the member judges it necessary in the light of the issues; and avoid "group-think". c. In keeping with the Basel Committee on Banking Supervision's guidelines on Corporate Governance Principles for Banks which states that an audit committee should: • be required for systemically important banks and is strongly recommended for other banks based on an organisation's size, risk profile or complexity; • be distinct from other committees; • have a chair who is independent and is not the chair of the board or of any other committee; • be made up entirely of independent or non-executive board members; and • include members who have experience in audit practices, financial reporting and accounting.

				The recommendation by ATTIC to reduce the required number of independent directors on the audit committee to one (1) falls far short of these international standards. Furthermore, the current wording of clause 68 of the Bill is the result of amendments made by the Senate in May 26 2015. The amendments were intended to address ATTIC's concerns about the requirements to qualify as an independent person on the Audit committee. In the Bank's view, the amendments made by the Senate go a long way in addressing ATTIC's concerns while at the same time promoting independence and objectivity of decision making. **No changes are recommended** to the current wording of the Insurance Bill, 2016 as it is in keeping with the FIA, Basel Principles, the International Insurance Core Principles and Corporate Governance best practices
Cl. 47, 263 and 265	Section 47. (1) Direction by CBTT for restructuring.	• Insertion of new clause 46 B in the Stamp Duty Act Chap 76:01 Or a new clause in the Insurance Bill • "Notwithstanding anything in the Act, stamp duty and other statutory charges	• Principle in law is that reconstructions and reorganizations are not subject to Stamp Duty (sec 46 Stamp Duty Act)	Not all forms of reorganization meet the Board of Inland Revenue's criteria for stamp duty exemption. Clause 47 of the Bill gives the regulator the power to direct the restructuring of a financial group and establish a financial holding company in order to protect licensees from group risk and contagion and

		shall not be chargeable on any instrument made for the purposes of or in connection with ensuring compliance with the requirements of the Insurance Act."	• However, the application for the waiver of Stamp Duty can take months or years to process • It is ATTIC's position that a compulsory reconstruction as required by the Insurance Bill should not be subject to Stamp Duty and accordingly should be explicit in the Act	to separate financial from the non-financial entities in a conglomerate structure.
	Section 265 Transfers via vesting order	• Amend section 265. "The transfer of and vesting in, the transferee of an undertaking by a Vesting Order or Scheme of Transfer as a result of a restructuring described in section 47 of this Bill shall not be subject to Stamp Duty"		The mechanism of the Vesting order (Clauses 262 to 265), identical to the equivalent clauses in the FIA, is intended to facilitate restructuring in manner that could meet the BIR's criteria for stamp duty exemption. It must be recognized that the insurer may elect to restructure in a manner that meets the regulators goals but may not necessarily meet the BIR's criteria for exemption. **The consideration of an automatic exemption from stamp duty in this circumstance is a matter of tax policy to be decided by the BIR and the Minister of Finance.**

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General	Section 27. (1): Establishment of foreign branch (2): CBTT approval (3): Notice to CBTT	Regulations should specify the information required.	Present Regulations do not specify this.	It is the Central Bank's practice to make such information requirements and other procedural matters known by issuance of guidelines, circular letters and forms to the industry and readily available by posting on its website. Also in the case of documents required for transfers or amalgamations, or establishment or closure of a branch, each situation is unique, and information may be required that is specific to the circumstances of the companies involved.
	Sections 97 (1), (2), (3), (4) & (5) Transfer of business	Specify applicable documents and reports in Regulations	Provides greater clarity to the relevant parties as to the content. Ignores possibility of "short form" under sections 223 and 224 No requirement for an agreement under sections 223 and 224 which can be costly Section 221 requires approval by resolution n of shareholders	The Central does not recommend dealing with these procedural matters via legislation. The Bank will issue the requisite guidance as part of the implementation and rollout prior to Proclamation of the Act.
Cl. 85	85 (1): Investment in T&T assets	• Reduce investment in assets in T&T from 75% to 60%.	• Paucity of domestic investment opportunity • Potential of increased systemic risk • Uneven playing field with	The requirement to match liabilities with a specific percentage of local assets is historically a policy position of the Government to encourage local investment. The maximum permissible share of foreign assets has been 20% for many years. The Bill

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	85(4): Liability in respect of foreign currency policies.	• Investment in foreign assets to be no less than 75% of foreign currency liability.	respect to investments • Investments in assets of CARICOM origin to be reviewed.	increases this proportion to 25% and ATTIC proposes to increase it to 40%. There are provisions within the risk based capital regulation whereby the insurer is required to hold capital as a buffer against foreign exchange mismatch risks. Accordingly the Central Bank does not object to ATTIC's proposal to further increase the permissible foreign assets and/or to eliminate the CARICOM exception if the JSC is so minded.
General	Ex. Section 27 (1) Establishment of foreign branch Ex. 30 (2) CBTT approval	• Consider establishing a timeframe for approvals to be given CBTT to respond to request/approvals within 20 working days. Recommended Clause: *"Notwithstanding any other section in the Act, Central Bank, should respond to all requests or approvals under this Act within 20 working days. If the Inspector does not raise any objections or requests further information by the end of*	The Bill places significant requirements on licensees to respond to requests and submit filings on certain deadlines yet no accountability is placed on the Central Bank. These include but not limited to: •Clarification on the treatment of assets •Requests for decisions on amalgamation •Request for Central Bank reports (Insurance and Pensions Report last published 2007).	• This is not an unreasonable request but the Bank proposes to implement agreed timelines in a Service Standard. • The Central Bank's Service Standards published on its website will be updated after consultation with the industry and before Proclamation of the Act.

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		20 working days from the submission of all required documents, the licensee can proceed as if the request is approved."		
Cl. 4 Definition of credit exposure	Definition of Credit Exposure	Include "net of specific provision in definition". Note: It is our understanding "net of specific provisions" was included in the 2015 Bill and was submitted to the House but was changed in the Senate to remove "net of specific provisions"	• Current definition being used in the FIA 2008 has already created varying interpretations • It is our understanding that CBTT is not against the inclusion • Provisions as per section 89 of the Bill is a remedy for addressing credit exposures	ATTIC's proposal is inconsistent with the FIA. The removal of "net of specific provisions" from the definition of credit exposure was made by the former Joint Select Committee and the Central Bank supports the consistency of approach with the FIA.
Cl. 126	Section 126 (a) &(b) Agreement as to premium to be paid.	Amend section to state: **"in those classes prescribed in Schedule 1."**	Schedule 1 does not have Person or Life as a Class of Insurance	The clause relating to rebating is applicable to any person who is applying for insurance in respect of life, person or property in T&T. ATTIC proposes that it should apply to all classes of insurance business. The Central Bank does not object to this suggestion from ATTIC.
Cl. 134(1)	Section 134. (1) Payment of monies received.	Amend section to "within ten business days **from the date on which it received such monies."**	Ensure premiums are dealt with in a consistent manner.	The Central Bank does not object to a shorter time period along the lines advocated by ATTIC.

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Capital Adequacy Regulations	12 (7)& 13 (3): Investment linked Insurance Business 12 (5): CBTT to provide criteria for credit ratings	Repeat requirement for foreign currency and asset liability mismatched risk charge. S 15 & 16 Directions to be disseminated to industry as a whole		BACKGROUND The risk based capital adequacy framework codified in the Regulations is in keeping with Insurance Core Principle 17 of the International Association of Insurance Supervisors which states: ICP 17 Capital Adequacy The supervisor establishes capital adequacy requirements for solvency purposes so that insurers can absorb significant unforeseen losses and to provide for degrees of supervisory intervention. The capital regime is built on a system that places a risk factors on exposures and risks that an insurer faces. Properly designed, these risk weights put the right prices on risk taking, prices that give insurers an incentive to properly manage their risk profile. At the same time, a well-designed system with well calibrated risk factors ensures that insurers need to add to their loss-absorbing capacity commensurate with any decisions to take on more risk. Additionally, owners/shareholders with capital at risk, have a stake in the outcome, "skin in the game". Currently there are companies doing billions of dollars in business and they are only required to hold $3 million dollars in capital. The risk factors and the requirements of the Capital
Capital Adequacy Regulations	13(2): Income producing real estate Sch.2: Asset Default Risk Factor & Sch13: Counterparty Risk Factors Sch.16 Liquidity and Operational Risk Factor	Factor to be clarified where return less than 4% Definition required for what qualifies for unrated & fully collateralized Application of 1% liquidity charge only on non GOTT instruments.		
Capital Adequacy Regulations	Sch. 12 Asset Limits	Limit on mutual funds and CIS should be reconsidered Increase limit on unrated securities from 5% to 10%		
Capital Adequacy Regulations	• Asset Default Risk Charge	• Charge on non-qualifying ABS-10%		

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	• Credit Rating Agencies	• Clarity/uniformity of ratings used • Guidance on Agency to be used.		Adequacy Regulations were calibrated by the Bank after extensive consultation with the industry through a Technical Working Group1 and after five Quantitative Impact Studies. Insurers are being afforded a five year transition period to achieve the minimum requirements (per Schedule 9 of the Bill). The calibration approach looks at the impact of each of the factors and ratings criteria in totality on each insurer and on the industry as a whole. The Bank will provide comments on the specific points raised by the industry on the Capital Adequacy Regulation in a separate submission when the regulation is being considered.
Cl. 4 Definitions	• Definitions	Required for: • Joint venture • Look through method • Collective investment scheme		
Capital Adequacy Regulations	• Definitions	• Asset default risk charge		
Cl. 230-249	• 230 (4) Registration of Assoc. of U/Writers.	Prioritization of risks ceded to local insurance market.	• Prevent leakage to foreign entities • Growth & development of local industry • Limit demand for foreign exchange • Profits retained locally	• The Joint Select Committee would need to carefully consider the significant policy change from the position under the current legislation as proposed by ATTTIC. • There are implications for consumer choice and access to global insurance capacity. • The business and strategy of Lloyd's is concentrated on large and unusual risks, along with reinsurance business. While there is no prohibition on Lloyd's writing 'vanilla' insurance business such as private motor, it is not very common. Some insureds need and value cover from Lloyd's.

[1] Including representatives from ATTIC, the Institute of Chartered Accountants of Trinidad & Tobago (ICATT) and the Caribbean Actuarial Association (CAA)

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Cl. 266	Sec.266 of the Insurance Bill - Adherence to market conduct	Should confirm whether brokers are included		• Cl. 266 states as follows *"266. Registrants and insurance consultants shall comply with the standards on market conduct as prescribed in Schedule 12."* • Clause 266 is the enabling clause and brokers are included. The word 'registrant' is defined in the Bill to include an 'insurer' and an 'intermediary'. An 'intermediary' is defined in the Bill to include a broker.
Schedule 12	A. Sales &Marketing	Scope should include all intermediaries		• Although agents are not specifically mentioned in Cl 266, agents of insurers are indirectly covered as it is the responsibility of the insurer to ensure that the marketing material and sales practices accord with the Standards of Market Conduct. • Further, paragraph 1(h) of this Part of Schedule 12 refers to intermediaries and will thus extend to agents.
Schedule 12	A. 1. (f)	Clarify 'reasonable' and 'up to date' – Wording suggested		• 1 (f) states "An ***insurer*** must ensure that any assumptions or illustrations, on which a statement, promise or forecast contained in a ***promotional document*** is based, are clearly stated, reasonable and up to date" • The Standards of Market Conduct are intended to provide general guidance that can be used consistently to ensure that materials, products, processes and services are fit for their purpose. • Internationally, more specific requirements governing illustrations are provided through guidelines which are regularly updated to ensure

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				that they keep pace with new products and innovations in distribution. The Central Bank intends to adopt this practice.
Schedule 12	A. 1. (h)	Intermediary to be defined and clarification of whether the name of the provider is to be included	A. 1. (h)	• Definition of intermediary is in the Bill and will thus apply to the Schedules. The provider's name must be included in the promotional material. The intermediary must disclose the fact that it/he is tied to a single provider and also name that provider.
Schedule 12	A. 1. (i)	Clarify 'reasonable assumptions'	A. 1. (i)	• The Central Bank will provide specific guidance through either guidelines or circular letters.
	A. 2. (a)	Change wording to "Investment into this product is solely at the risk of the investor."	A. 2. (a)	• The Central Bank does not recommend any changes to **A 2 (a)** which states as follows:- " *An **insurer** must ensure that a **promotional document** for a product where the **consumer** may not get back 100% of the initial capital invested contain a warning statement, which states that **if you invest in the product, the consumer may lose some or all of the money invested;*** "
Schedule 12	B. Understanding Consumers' Needs	Under General Principles, clarify 'reasonable number of years'		• Central Bank will issue guidance in this area as the appropriate time period will depend on the duration of the product or service.
Schedule 12	B. 1. Knowing the Policyholder	This covers only individuals. What are the requirements for businesses. Clarification of what information is appropriate and hence should be gathered.		• **B. 1. Knowing the Consumer.** This section applies to both individual consumers and commercial consumers.

Schedule 12	B. 1. (a) –(c)	It needs to be defined when this information is considered relevant or not.		• It is the insurer's responsibility to assess relevance in the context of its customer base and business model and to meet the goal of ensuring sufficiency of information so that an appropriate product is offered. Insurers are expected to develop policies, systems and procedures in this area that codify the results of these assessments and are fit for purpose. . • The Central Bank does not recommend any changes to **B. 1. (a) – (c).**
Schedule 12	B. 2. (a)	The provisions appear subjective.		• The Central Bank does not consider these requirements to be outside of the norm of a professionally handled sales process. • **B 2 (a)** The Central Bank does not recommend that any changes be made to the current wording.
Schedule 12	B. 2. (b)	The provisions appear subjective.		• The Central Bank does not consider these requirements to be outside of the norm of a professionally handled sales process. • **B. 2. (b).** This Standard of Market Conduct is considered to be a normal standard in assessing suitability.
Schedule 12	B. 2. (c)	How information is captured should be specified – Suggested ranking of attitude to risk		• **B 2 (c)** The Central Bank expects the insurer to categorize in accordance with the insurance companies policies and procedures.

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SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

Schedule 12	B. 2. (c)(second paragraph)	Information to be specified. How is suitable defined?		• **B.2. (c) Second Paragraph** The information obtained in B1(a) to (c) would inform what is suitable. • There are many internationally accepted approaches that are available to assess consumers' attitudes towards risk.
Schedule 12	C Privacy and Data Protection C1	Include requirement for appropriate disposal and/or destruction of customer information		• **C.1.** The Central Bank disagrees with ATTIC's suggestion. • Because of the long term nature of life insurance contracts, customer information should be kept well beyond normal timeframes for destruction of customer information. The insurers' policies and procedures should reflect this. The Central Bank issued a guideline in 2005 on Security Systems for Safeguarding Customer Information which is intended to set out a standardized framework for an effective customer information security programme intent on preserving the integrity and confidentiality of customer records and information and ATTIC should be referred to this guideline.
Schedule 12	C. 1. (d)	Specify period of time to lock the system for inactivity and changing passwords		• **C .1. (d)** The Standards of Market Conduct are intended to provide requirements, specifications, guidelines or characteristics that can be used consistently to ensure that materials, products, processes and services are fit for their purpose. • More specific guidance can be provided in the form of circular letters or guidelines along the lines of the guideline referenced above.

Schedule 12	D. Agent Training D. 3.	Clarify what is meant by 'point of sale' and "proper needs analysis"		• **D. 3.** The Central Bank expects that all communications to customers either pre-sale or post-sale are done in a clear, fair and balanced way and should not omit anything material from any comparisons or contrasts. There is no reference to "point of sale" in section D3. Sections B1 and B2 require the intermediary to know the consumer and to assess the suitability of a product or service for the consumer. A proper needs analysis would document whether the requirements of B1 and B2 were met.
Schedule 12	D. 4	Specify content of training program and frequency of training		• The Central Bank does not agree with ATTIC that section **D4** needs to be more prescriptive.

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SECTION 2 - COMMENTS FROM LLOYD'S

Ref.	Provision	Recommendation	Rationale	Central Bank's comments
Cl. 233		**Deposit** Our primary concern relates to a lack of clarity over the funding requirement for associations of underwriters, e.g. Lloyd's. As currently drafted the language of the Bill appears, in practice, to place an increased burden upon Lloyd's. This in excess of the requirements in similar territories in the region, typically 40% of premium, and in excess of Lloyd's funding level in a number of its largest sources of premium income globally, including the US. This has the potential to impact the appetite of underwriters at Lloyd's to allocate underwriting capacity to Trinidad and Tobago. Lloyd's respectfully proposes to maintain its deposit in accordance with Section 233(1)(b). Lloyd's believes the deposit requirement set out under Section 233(1)(a) fails to recognise the regulated trust arrangements which already exist to ensure that members' liabilities are adequately reserved in accordance with UK PRA2 requirements. We further observe that the requirement appears at odds with the formulation of Section 233, which appears to contemplate the two methods of calculating a deposit level as being comparable, whereas in practice, where policyholder liabilities are calculated at the current level of 40% of annual premium, the level required by 233(1)(a) would exceed that determined by 233 (1)(b) in every circumstance.		The Central Bank has no objection to this proposal. It maintains the status quo of the current legislation.

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SECTION 2 - COMMENTS FROM LLOYD'S

Cl. 244 (f)		**Reporting** In order to meet the reporting requirements stated in 244 (2)(f), we take note of the clarification produced by the Central Bank of Trinidad and Tobago, indicating that the geographical separation of Lloyd's business would not be required to calculate assets and liabilities. To comply with the audited financial and regulatory disclosures, the liabilities would be equivalent to the amount required for the deposit. In the case of Lloyd's, this is equivalent to 40% of premium income. Assets would be estimated to be the amount held in the deposit pursuant to Section 233 (1). We also take due consideration and would welcome formalisation in the law that the mandatory provisions of actuarial reports under Section 244 (2)(f) are not mandatory. As noted by the Central Bank on the attached correspondence, the production of an actuarial report in respect to Lloyd's Trinidad and Tobago business "is not needed to support the calculation of liabilities".		The Central Bank clarifies that the requirement for an actuarial certificate is not mandatory and Clause 244(2)(f) can be deleted from the Bill.

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SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

Ref.	Provision	Recommendation	Rationale	Central Bank's comments
Cl. 4 Definition	4-Definitions	• Amend "insurance consultant" to specifically exclude brokers.		• The Central Bank has no objection to this proposal.
Cl. 4 Definition	4-Definitions	• Amend "insurance business" to include reinsurance.		• The definition of 'insurance business' includes issuing contracts of insurance. 'Contracts of insurance' is defined to include reinsurance agreements. • Therefore, no change to this definition is required
	21(5) Restrictions on carrying on Insurance business	Direct placement of insurance with foreign providers should be allowed especially for marine and large plants and for specialty policies not available locally, and may be subject to the Client signing a written acknowledgment that it is aware: (a)the insurance company is registered and operating in another territory; (b) is not registered in Trinidad and Tobago, (c)of the risks associated therewith; and (d) that any and action on the policy must be taken in the foreign courts subject to the jurisdictional and legal requirements set out in the contract of insurance.		• Clause 20 defines carrying on insurance business in and from Trinidad and Tobago and Clause 20(2) is referred. The prohibition in Clause 21(5) does not apply to a situation where an insurance broker places business directly abroad with a foreign insurance company. This activity does not fall within the definition of carrying on insurance business in Trinidad and Tobago.. Furthermore, 115(2) states as follows:- *115 (2) Where an intermediary places insurance business with a foreign insurance company he shall disclose this information to the consumer and receive the signed authorization of the consumer in a form approved by the Central Bank.* No change is recommended.

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The entire Bill	• 110(8) and (9)- Registration of Intermediaries • 21(9) Restrictions on carrying on Insurance business. • 123 Notice of termination of Intermediary to be given. • Section 130 Disclosure of preferential arrangements by brokerage • Section 133 Customer trust Account.	• A reduction in the quantum of the fines. • That the fine and duration of the sanction for imprisonment be reduced • That the fine and duration of the sanction for imprisonment be reduced • The penalty should be removed. • The penalty in 133(8) be reduced to the original amount of $150,000.00.		• The Central Bank defers to the JSC on this matter of fines penalties and terms of imprisonment. • However the Bank reiterates the need to ensure that the level of penalties serves as an effective deterrent.
Cl. 113(2)(d)	113(2) Central Bank to Register persons under this Act.	We recommend that section 113(2)(d) be deleted and that the current conditions governing registration remain in force.		The imposition of professional indemnity coverage and minimum capital as registration requirements is not new. Under regulation 4 of the _*Insurance (Agents, Brokers, Salesmen and Adjusters) (Registration) Regulations*_of the Insurance Act 1980, the requirements are: • professional indemnity insurance cover of not less than five million dollars • and paid up capital must not be less than one hundred thousand dollars Under the Bill the minimum stated capital has been

				increased from one hundred thousand to five hundred thousand dollars. The professional indemnity cover remains at five million dollars. These requirements for the protection of consumers are in keeping with ICP 18 which treats with Intermediaries and ICP 18.1.6 states as follows:- "18.1.6 The supervisor may decide to set minimum financial resource requirements, for example to discourage market entrants with insufficient financial resources to withstand shocks. Where this is the case, such requirements might take into account risk factors such as the nature of the business to be intermediated, whether the intermediary operates client accounts, the level of professional indemnity insurance and the level of operating expenses, to ensure that an appropriately risk-based financial resource requirement is set."
Cl. 114(3)	114(3) Provisional Certificates for Sales Representatives	• CBTT should consult before imposing conditions for registration. • Removal of the requirement for brokerage staff to be registered, or CBTT identify with specificity: (a) The staff/ positions to be so registered; (b) The rationale as the brokerage is registered as there is a cost ; (c)The framework for getting this in position and the agency responsible for administering and		• No change is recommended. • If a member of staff of the brokerage is carrying out the duties of a sales representative then he/she must be registered to do so and comply with the relevant registration requirements. • Under the Bill, a sales representative is defined as "an individual who is contracted by an insurer, an agency or a brokerage to solicit applications for insurance or to negotiate insurance on behalf of that insurer, agency or brokerage"

		effecting same. • Sales representatives in brokerages be exempted from the continuous education requirement		
Cl. 115	115(a) Personal Liability.	That the section 115(1)(a) be deleted.		• Under the Bill as drafted, there is no prohibition against an intermediary placing business with a foreign insurance company. • However an intermediary who facilitates the placement of the business with the foreign insurance company is subject to the provisions of Clause 115, must disclose , is personally liable, and receive signed authorization from the consumer. • The personal liability of the intermediary is a critical aspect of protecting policyholders against errant intermediaries. A similar provision is present in the current Insurance Act [sec 102].
Cl. 116	116 Capital and Professional Indemnity Cover	We require clarification on how the quantum was derived and what constitutes approved securities for the purposes of this section.		1. The minimum stated capital for brokers has been increased from $100,000 to $500,000 in the Bill. We consider this increase to be reasonable given inflation over a period of thirty-five years. Furthermore, the sums assured on policies sold by brokers would have significantly increased over this period of time. 2. In addition, brokerages will have a transition period of three years after the commencement of the Act within which to reach the minimum capital requirement of $500,000 . 3. Approved securities are described in the Insurance (Approved Securities) Regulations.

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Cl. 119	119 Continuing education requirement	Persons with a certain level of experience and age in the business should be exempted from this requirement CBTT should identify the level of training and education required for both registration and continuous registration before the Bill is advanced. • Consensus regarding the training requirements governing sales representatives, and also		The Continuing Education Requirements are fundamental requirements of ICP 18 which states inter. alia: "ICP 18 Intermediaries The supervisor sets and enforces requirements for the conduct of insurance intermediaries, to ensure that they conduct business in a professional and transparent manner. ICP - 18.3 The supervisor requires insurance intermediaries to possess appropriate levels of professional knowledge and experience, integrity and competence." The ICP also reiterates of individuals who continue to work as insurance intermediaries to keep their professional knowledge up to date. The Central Bank does not agree that age and experience should automatically exempt an intermediary from the CPD requirements. **ICP - 18.3.3** goes on to state that "More complex products or customer needs will require higher or more specialised qualification and experience. The qualifications and experience of individuals should also be appropriate for the type of intermediation being carried out, whether as agent for a specific insurer or acting as a broker primarily on behalf of the customer. " An approved educational institution will in consultation with the Central Bank determine the scope and form of the examinations in keeping with the objectives of the

		confirmation as to the staff positions that are or will be captured under this rubric		abovementioned core principles and regulation 9 of the Insurance (Intermediaries) Registration Regulations, 2015.
Cl. 125	125 Restriction on the payment of compensation for placing or negotiating insurance.	Insurance consultants should also be captured.		• This clause seeks to prohibit insurance companies from compensating unregistered persons for the placement or negotiation of insurance on their behalf. • Insurance consultants are remunerated by the client for a fee and not by the insurer. Therefore this clause is not applicable to them.
Cl. 126	126 Rebating	(a) CBTT should issue a "statement" with respect to brokerage fee basis presently ongoing with some state enterprises.		The Central Bank is not a party to these arrangements.

Cl. 126	126 Rebating	(b) Insurers should not be allowed to:
		
		(i) rebate premiums to consumers.
		
		(ii) give credit to insureds or preferential premium payment terms e.g. premium financing.
				• The provision on rebating covers insurers. Clause 126 does not allow insurers to rebate premiums to the customer other than as specified in the policy. Therefore this clause is not intended to constrain the latitude of an insurer:
				  ○ to appropriately price products or individual risks; or
				  ○ to market and distribute its products in innovative ways.
				
				• Both the current legislation (Section 48 (1) (c)) and the Bill (clause 92) place restrictions on the credit which insurers can provide.

		(iii) "double quote" or offer conflicting terms and conditions to any intermediary or consumers.		• Insurers market their products either through intermediaries or by selling directly to the consumer. The insurer's pricing and costs vary depending on the way the product is marketed. The suggestion from IBATT would impinge on the insurers ability to sell their products directly and would restrict consumer choice. • **No amendment is recommended.**
Cl. 126	126 Rebating	(c) If a premium is paid directly to the insurer, then the insurer should remit the commission to the intermediary within ten days of the issuance of the receipt. (f) Refund premiums should be in the currency in which it was paid and in the form of an Insurers cheques. (g) Insurance consultants should also be subject to this section.		• This is a contractual issue between the insurer and the broker • Premiums are refunded to the consumer based on the policy contract • Insurance consultants provide advice. If the activities of an insurance consultant also meet the definition of "business of an insurance brokerage" then that insurance consultant is required to register as a broker and would be subject to this section.
Cl. 130	Section 130 Disclosure of preferential arrangements by brokerage	• CBTT should specify the form and arrangements of the letter to be disclosed to the Customer or alternatively the matters that must be included or covered under same.		Clause 130(1) states that " .....the brokerage shall disclose such arrangements to the consumer in writing in such manner as may be specified by the Central Bank." The Bank will issue the requisite guidance as part of the implementation and rollout prior to Proclamation of the Act.

Cl. 132	Section 132 Receipt of premium	Please include a sub-section mandating that "where a broker is to be paid by an insurer from the premium so collected that the insurers remit the payment due to the broker within ten business days of receipt of the said premium by the insurer"		This would best be addressed through the contractual arrangements between the broker and the insurer and not via the legislation.
Cl. 133	Section 133 Customer trust Account.	• Commissions be deducted prior to paying insurers and that the timeframe for payment of cheques to customers and or insurers by intermediaries be applied. • Removal of the requirement for a brokerage to establish a customer trust account for receipt and payment of customer funds, in respect of each type of insurance for which it is registered. • Implementing Separate Customer Trust Accounts (section 133) is impractical, adds unnecessary cost with no additional real consumer protection and will take an inordinate amount time to implement and manage. Established best practices worldwide do not require separate customer trust accounts.		• The requirements for brokers and agencies to establish and maintain consumer trust accounts ensures that policyholders' funds are not co-mingled with the funds of the broker or agency. This is for the protection of consumer. • The Central Bank does not agree that the requirement to implement separate Customer Trust Accounts for each of the two types of insurance business would be impractical to implement. • **No change is recommended**.

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Cl. 133(5)	Section 133 Customer trust Account.	• Section 133(5) should be deleted		• Long term insurance contracts provide that coverage by the insurer only takes place when the risk has been accepted by the insurer **and the full premium is paid to the insurer**. The customer must complete the underwriting process - eg. medical examinations, etc. Therefore, the brokerage is not entitled to a commission until the insurer accepts the risk and the full premium must be paid to the insurer. This is in keeping with long term insurance contractual provisions and normal market practice. • **No change is required**.
Cl. 134(3)	134 Payment of premium to the insurer	We request the deletion of 134(3) and (4)		• Clause 134(3) makes provision where a brokerage an insurer at the request of the brokerage provides temporary cover in respect of general insurance on credit that the brokerage is liable to the insurer for the premium due. This is not an unreasonable requirement. • **No change is recommended** and no rationale has been provided by IBATT.
Cl. 135	135 Payment to the consumer	1. Section 135(1) , that the words "and credited" be inserted after the word received 2. Subsection (3) the stipulated timeframe should be 10 days as opposed to 3 days		1. The term "and credited" is not necessary as Clause 135(1) speaks to cheques in the name of the consumer, not in the name of the agency, brokerage or sales representative 2. The purpose of this clause is to ensure that the funds from the insurer to the broker are not used for any purpose other than to pay claims to the insured. The Central Bank would not object to an increase in the timeframe but no more than five (5) business days.

		3. Consideration be given to direct payment as the section only refers to payment by cheques. Payments are sometimes made via set off, direct deposit and transfers as opposed to cheques. 4. The Section must address timely payment of commissions due to the broker.		3. **No change is recommended** as all transfers and direct deposits should be made directly by the insurer to the consumer trust account. Clause 135(3) is intended to avoid any potential unreasonable delay in the delivery of funds to consumers. 4. This would best be addressed through the contractual arrangements between the broker and the insurer and not via the legislation.
Cl. 136	136(3) Financial statement of intermediary.	• the report be submitted within six (6) months and not sixty business days.		• Six months is too long a period to receive confirmation of the financial position of a company. **No change is recommended.**
Cl. 137	137 Monthly Accounts	• This section be deleted or CBTT should indicate the reason for monthly submissions. • Monthly Accounts (section 137) is impractical and time consuming. Established best practices worldwide do not require monthly reporting in this vein.		• Monthly accounts are an existing requirement under the current Insurance (Agents, Brokers, Salesmen and Adjusters)(Registration) Regulations (regulation 11). • This is not a requirement to provide monthly financial reports to the Central Bank. • The requirement to keep monthly accounts is a requirement to keep reasonably up to date financial accounting books and records.
Cl. 139	139 Audit of accounts of Agencies and brokerages	• This section can be abused and the Inspector's ability to act should be limited to where the person is found guilty of misconduct or the Inspector has proof or a prima facie case to conclude that the person falls under the parameters set out in 2(c).		• The requirement is for the Inspector to have reasonable belief before making a report under Clause 139(2). By law, a 'reasonable belief' of the Inspector must be one based on the evidence presented before him and is judged in an objective sense, i.e., the conclusion reached by the Inspector must not be illogical (Nakkuda Ali v Jayatne [1951] AC 66; Registrar

				of Restrictive Trading Agreements v W.H.Smith & Son Ltd [1969] 1 WLR 1460 and Ridge v Baldwin [1964] AC 40 73; and Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223). The Inspector must, therefore, have some objective basis for forming the reasonable belief. Given this standard, there are limits on the ability of the Inspector to abuse the process under Clause 139. The proposal that the report should be made only when the auditor is found guilty does not appear workable. This is because the issue at hand is the professional misconduct of the auditor and the body to make a finding on this point is ICATT which must first have a report or information before it.
Cl. 140	140 Persons may act as adjusters during a catastrophe	We recommend that this section be deleted. Alternatively, subsection (1) should be amended to include cases of major loss and not only catastrophe. The commercial reality is that several international reinsurers/ insurers under the policy of insurance will stipulate or be entitled to stipulate the adjuster and they tend to stipulate international adjusters with considerable experience and expertise in the area which our local adjusters may not have.		The Central Bank agrees with the principle put forward by IBATT. There are circumstances in relation to large or complex losses, in addition to catastrophes, where engagement of a foreign adjuster would be appropriate for insurer and insured alike. **Recommendation:** • Amend Clause 140(1) by inserting the words "or complex claim" after the word "catastrophe". • Amend "catastrophe" to "complex claim or catastrophe" in Clause 140(2). • Consider deleting Clauses 140(3) to 140(6) and place the onus on the insurer to assess the bona fides of the foreign adjuster in keeping with Guidelines to be issued by the Central Bank.

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general	Fair Claims Practice.	We recommend that this be settled by CBTT together with the Bill and propose Insurers should be given a deadline to remit claims payments recovered through subrogation to their insureds either through direct collection or contra payments. 2. Insurers should be given deadlines for the settlement of claims. The following are our recommended timeframes: (a)Acknowledgement of notification of a claim within five (5) working days; (b)Appointment of an adjuster-within three (3) working days of notification of the Claim; (c)Adjustment timeline to the interim report –five (5) working days; (d)Adjustment timeline to final report-ten (10) working days; (e)Final settlement payment –five (5) working days from the date the settlement was reached.		The Central Bank has issued a Guideline[2] to treat with the payment of claims. The purpose of this Guideline is to provide the Board of Directors and management of insurers, brokers or agents with a framework for the establishment of policies and procedures for effective claims management.to facilitate prompt and fair settlement of claims to policyholders. Clause 278 of the Bill gives the Central Bank the power to issue Guidelines to facilitate compliance with the Act and enable the Bank to meet its objectives. A Claims Guideline will be re-issued after consultation and as part of the implementation and rollout prior to Proclamation of the Act.

[2] http://www.central-bank.org.tt/pdf/Other/Claims%20Guideline.pdf