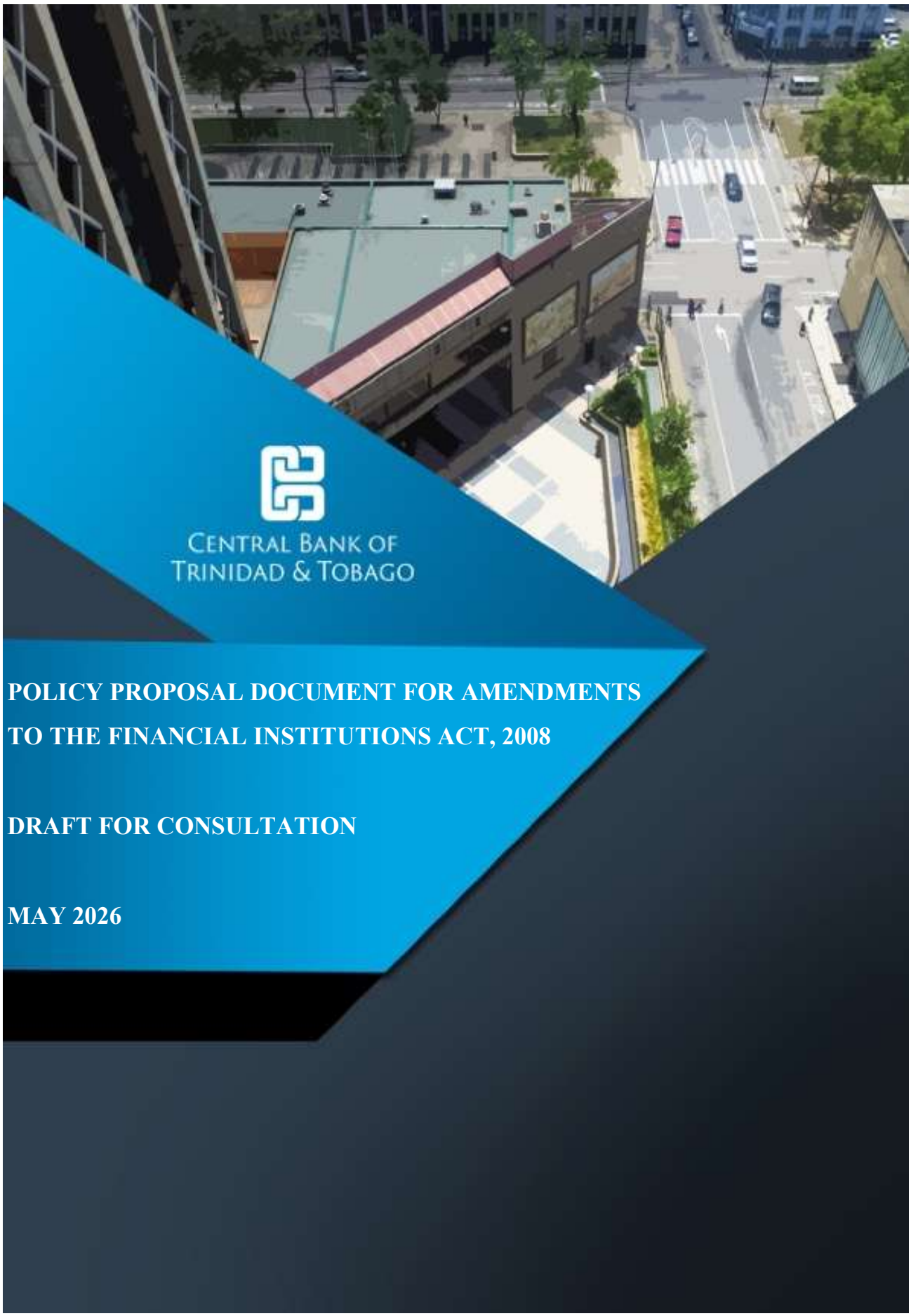

CENTRAL BANK OF
TRINIDAD & TOBAGO

POLICY PROPOSAL DOCUMENT FOR AMENDMENTS TO THE FINANCIAL INSTITUTIONS ACT, 2008

DRAFT FOR CONSULTATION

MAY 2026

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I. ABBREVIATIONS

ATTIC	The Association of Trinidad and Tobago Insurance Companies
BATT	The Bankers Association of Trinidad and Tobago
BCP	Basel Core Principles for Effective Bank Supervision
CBTT/Central Bank/Bank	The Central Bank of Trinidad and Tobago
DIC	Deposit Insurance Corporation Trinidad and Tobago
FIA	Financial Institutions Act, 2008
FSAP	Financial Stability Assessment Programme
IA	Insurance Act, 2018
ICATT	The Institute of Chartered Accountants of Trinidad and Tobago
IMF	International Monetary Fund
KA	The Key Attributes of Effective Resolution Regimes for Financial Institutions issued by the Financial Stability Board (FSB)
MoF/Minister	Minister of Finance
NBFI	Non-bank financial institution licensed to conduct business of a financial nature under the FIA
PPD	Policy Proposal Document
TTSEC	Trinidad and Tobago Securities and Exchange Commission
WB	World Bank

1. INTRODUCTION

The Financial Institutions Act, 2008 ("FIA") was enacted over seventeen years ago and requires updating to treat adequately with the emergence of new risks posed by technological innovation, and due to changes in international regulatory standards and best practices, including those pertaining to corporate governance, risk management, and the regulation of financial conglomerates.

Moreover, in 2020 the International Monetary Fund ("IMF") and World Bank ("WB") conducted a joint Financial Stability Assessment Programme ("FSAP") of Trinidad and Tobago's financial sector and the compliance of the Central Bank of Trinidad and Tobago ("Central Bank") with the Core Principles for Effective Banking Supervision ("BCP") and made some recommendations for strengthening financial sector regulation.

Further, based on its administration of the FIA over the years the Bank has identified certain inconsistencies, drafting errors, and areas for clarification in the legislation or amendment.

Finally, a new Insurance Act, 2018 ("IA") came into effect which was further amended in 2020. Therefore, some of the proposed FIA amendments seek to harmonise with best practice provisions introduced in the new IA. This is intended to prevent regulatory arbitrage by affording consistent regulatory treatment for similar issues in the financial sector and to ensure effective supervision of mixed financial groups comprising banks and insurance companies, to the extent relevant and practical.

This Policy Proposal Document ("PPD") is being issued for stakeholder consultation for an eight-week period commencing **May 8, 2026** with relevant stakeholders[1] that have an interest in ensuring a modern, relevant and comprehensive FIA that can treat effectively with new and emerging risks posed by climate change, technological developments and shifting geopolitical ideologies. **Written comments on the PPD should be submitted in soft copy using the attached template to FIAConsultation@central-bank.org.tt by July 3, 2026**.

2. RATIONALE FOR AMENDING THE FIA, 2008

The existing FIA was enacted over seventeen years ago and has been subjected to several amendments[2] throughout that time. The Central Bank engages in a continuous review of the legislative framework for banks and non-bank financial entities licensed under the FIA pursuant to its statutory mandate[3] and has determined that further updating is required on account of the following:

- ***Changes in International Standards and Best Practice***: Since enactment of the FIA in 2008, international standards such as the BCP have been updated and best practices have evolved. The BCP plays a critical role in setting the international best practice for the prudential regulation of banking institutions such as those licensed under the FIA to ensure that they are operating safely and soundly;

- ***Treating with FSAP Recommendations:*** Trinidad and Tobago was the subject of a joint IMF/World Bank FSAP in 2020. The FSAP review made several

[1] Stakeholders will include licensees and FHCs under the FIA, other regulated financial institutions, the TTSEC, DICTT and FIUTT and stakeholder associations such as BATT, ATTIC and ICATT.

[2] See Acts 17 of 2012, 4 of 2017, 4 of 2018, 19 of 2018, 12 of 2019, 3 of 2020, 10 of 2020 and 25 of 2020.

[3] The Central Bank's statutory mandate as it relates to legislation is set out in section 3(3)(f) of the CBA and section 5(2) and (3) of the FIA

recommendations for strengthening the country's banking and financial system, including financial sector regulation and supervision;

- ***Rapid Technological Innovation and Digitalisation of Finance:*** Digitalisation of finance and the emergence of financial technology ("fintech") and artificial intelligence ("AI") are transforming the financial services sector at a rapid pace. This has led to fragmentation in the delivery of financial products and services, and the emergence of new digital products and delivery channels. Globally, we have seen the emergence of digital banks, while locally, in the post Covid-19 era, there is a thrust to more digital delivery of financial products and services, including payments. Notwithstanding their benefits, fintech, digitalisation of finance and AI have exacerbated fraud, cyber and technology risks, as well as concerns around data privacy and protection of customer information. In Trinidad and Tobago, the growing use of online payments and transfers have led banks to reduce their branch networks and scale back on in-branch services in favour of digital delivery. In this regard, the Central Bank proposes to include provisions for agent banking which will allow certain qualifying institutions to deliver certain services on behalf of a bank.
- ***Enhancing Supervision and Regulation of Financial Conglomerates:*** Mergers and acquisitions in the financial sector have increased since 2008, which have led to the emergence of financial conglomerates, including financial holding companies comprising banking, insurance and securities firms. It is necessary to ensure adequate oversight of these mixed financial groups to ensure holistic supervision and prevent regulatory arbitrage;
- ***Treating with Proportionality:*** Proportionality in financial system regulation and supervision seeks to ensure that the applicable rules and supervision practices are consistent with banks' systemic importance and risk profile, and are appropriate for the broader characteristics of a particular financial system. The application of proportionality seeks to address differences in the size, complexity and risks of financial institutions but must be applied in an appropriate and consistent manner. Amendments to the FIA will also seek to address proportionality concerns, as appropriate. For example, the FIA governs financial institutions conducting the "business of banking" as well as "business of a financial nature". The activities of institutions conducting business of a financial nature are restricted and as such, entities cannot conduct short-term business of less than a year. In addition, most non-banks are relatively small enterprises, are often affiliates of the commercial banks, and some have developed a business model which focuses on performing the role of a *trustee* and not on deposit taking or traditional financial intermediation. Additionally, the emergence of systemically important banks/financial institutions on the financial landscape means that such institutions should be subject to more rigorous regulatory requirements;
- ***Correction or Clarification of Legislative Provisions:*** Administration of the FIA over the years has led to the identification of drafting errors, areas requiring clarification, and areas that may no longer be relevant or best practices considering the evolving financial landscape and standards. A key matter requiring clarification is the scope of financial institutions to which the FIA applies, or should apply, as the FIA was intended to apply to deposit-taking financial institutions conducting the "business of banking" or "business of a financial nature" as defined in the FIA and not all financial institutions whose activities may be regulated under other laws; and
- ***Harmonization of Regulatory Requirements***: The IA was implemented in 2021. As a consequence, the IA contains certain provisions and best practices that warrant

inclusion as amendments to the FIA to facilitate harmonization of requirements with financial groups containing banks and insurance companies and to prevent regulatory arbitrage.

Having regard to the foregoing, the Central Bank is therefore desirous of introducing comprehensive amendments to the FIA to update and enhance the regulatory regime for banks, NBFIs and FHCs. The proposed amendments take into account international standards and best practices given that five of our commercial banks are foreign owned and the three locally owned banks have regional and/or international cross-border affiliates.

3. FSAP RECOMMENDATIONS AND BASEL CORE PRINCIPLES

The FSAP outlined several recommendations that required a review of, and amendments to, the FIA. The FSAP recommendations are directly aligned with the BCP[4] and seek to close identified gaps in certain areas, most notably, BCP 1 (Responsibilities, Objectives and Powers), BCP 2 (Independence, Accountability, Resourcing and Legal Protection for Supervisors), and BCP 6 (Transfer of Significant Ownership).

BCP 1 requires that a suitable legal framework for banking supervision is in place to provide each responsible authority with the necessary legal powers to authorize banks, conduct ongoing supervision, address compliance with laws and undertake timely corrective actions to address safety and soundness concerns.

3.1 BCP#1 – Responsibilities, Objectives and Powers

Principle 1: *"An effective system of banking supervision has clear responsibilities and objectives for each authority involved in the supervision of banks and banking groups. A suitable legal framework for banking supervision is in place to provide each responsible authority with the necessary legal powers to authorise banks, conduct ongoing supervision, address compliance with laws and undertake timely corrective actions to address safety and soundness concerns."*

The BCP E*ssential Criteria* (under Principle 1) is that laws and regulations should:

a. Provide a framework for the supervisor to set and enforce minimum prudential standards for banks and banking groups (Essential Criteria 3);

b. Endow the supervisor with the power to increase the prudential requirements for individual banks and banking groups based on their risk profile and systemic importance (Essential Criteria 3); and

c. Facilitate the updating of banking laws, regulations and prudential standards, as necessary, to ensure that they remain effective and relevant to changing industry and regulatory practices (Essential Criteria 4).

The FSAP identified the need for a re-assessment of, *inter alia,* the areas within the FIA where the Central Bank should have authority and autonomy in relation to operational and financial independence. The FSAP noted that the Central Bank lacks a key power to make prudential regulations for banks and the power to make certain supervisory decisions independently from the Ministry of Finance. The FSAP noted that the Central Bank did not have the power to set prudential criteria since the power lies with the Minister of Finance ("MoF") in section 9 of the FIA. The FSAP further noted that *"Setting prudential requirements is the core of banking*

[4] Bank for International Settlements - latest version April 2024 https://www.bis.org/bcbs/publ/d573.pdf

supervision. Lacking this power is a material deficiency, and this finding was previously raised in the 2010 FSAP".

The power of the MoF to set prudential requirements is evident in respect of several aspects of the FIA, including the following:

- Capital adequacy, solvency and liquidity requirements;
- Treatment of credit exposures, assets and investments;
- Transactions with connected parties;
- Reporting requirements;
- Information required in public financial statements; and
- Relationships with holding companies, controlling and significant shareholders, subsidiaries and other affiliates as they may affect a licensee's capital position.[5]

The process to update regulations is protracted, impinging on the Central Bank's ability to maintain and/or implement supervisory standards in a timely manner that are effective and relevant to changing industry and regulatory practices. Amendments to banking Regulations, including those which prescribe prudential criteria, are recommended by the Central Bank to the MoF. Regulations made by the MoF are then subject to a negative resolution of the Parliament, i.e. they can be annulled within 40 days of being laid in each House of Parliament by a resolution of either House, if an objection should be raised at the parliamentary level.

The FSAP stated that "*this procedure to amend banking regulations and prudential standards is burdensome, involving a recommendation by the technical authority and a double political decision: firstly, at the MoF level, the only authority who could make regulation to set prudential criteria; and, secondly, at the parliament level, which could invalidate the entire process*."

There is regional and international precedent for regulators having rule making power for prudential criteria as several regulators (such as the Eastern Caribbean Central Bank ["ECCB"], Cayman Islands Monetary Authority ["CIMA"], Central Bank of the Bahamas, Office of the Superintendent of Financial Institutions ["OSFI"]) have the power to issue prudential standards/rules for capital adequacy, liquidity and risk management of financial institutions. It is therefore recommended that the FIA be amended to permit the Central Bank to make Rules on specific key prudential requirements under the Act, while the Minister would retain the ability to make broad regulations on other matters generally required for the smooth operation of the FIA.

Accordingly and in keeping with the FSAP recommendations, the Central Bank proposes **that section 9 of the FIA be amended to give the Central Bank the power to set prudential criteria for licensees and FHCs under the FIA through the issuance of Bye-Laws** similar to those issued under the Securities Act Chap. 83:02[6].

Further, section 10(1)(a) of the FIA empowers the Central Bank to make guidelines to give effect to the Act, but does not expressly refer to guidelines which are required to facilitate compliance with Regulations made pursuant to the Act. It is therefore also recommended that section 10(1) of the FIA be amended to harmonise with section 278(1)(a) of the IA in order to

[5] Section 9(3) of the FIA.

[6] Pursuant to section 148(1) of the Securities Act, the Minister may on the recommendation of the Commission, make Bye-laws on, *inter alia*, minimum and ongoing capital requirements.

make it abundantly clear that guidelines of the Central Bank could also be issued to facilitate compliance with either the Act, Regulations and Bye-Laws.

PROPOSALS:

Based on the foregoing the Central Bank proposes the following amendments:

A. Amend section 9 of the FIA to give the Central Bank the power to set prudential criteria by issuance of Bye-Laws. These Bye-Laws will relate to issues such as, *inter alia*, capital adequacy, solvency requirements and liquidity in relation to licensees and their financial holding companies as well as the treatment of credit exposures;

B. The draft Bye-Laws are to be subject to consultation with stakeholders, similar to the process for the making of Regulations under section 11 of the Act;

C. Amend section 10(1) to include a new paragraph for a power to make Guidelines to "facilitate compliance with this Act and any Regulations or Bye-laws made thereunder"; and

D. Propose consequential amendments to the relevant section of the IA that reflect proposals A and B above. This is to maintain harmony between the provisions of the FIA and the IA given the existence of mixed financial groups.

3.2 BCP#2 – INDEPENDENCE, ACCOUNTABILITY, RESOURCING AND LEGAL PROTECTION FOR SUPERVISORS

A number of provisions in the FIA provide for the involvement of the MoF in certain aspects of the Central Bank's supervisory mandate, impacting its ability to act independently. BCP 2 states:

"The supervisor possesses operational independence, transparent processes, sound governance, budgetary processes that do not undermine autonomy and adequate resources and is accountable for the discharge of its duties and use of its resources. The legal framework for banking supervision includes legal protection for the supervisor."

The FSAP identified the need for a re-assessment of, *inter alia,* the areas within the FIA where the Central Bank should have authority and autonomy in relation to operational and financial independence. The FSAP noted that the Central Bank lacks the key power to make prudential regulations for banks (*addressed above under BCP 1*) and also lacks the power to make certain supervisory decisions independently from the MoF. Consequently, the provisions within the FIA under which the Central Bank should possess the power to make approvals relating to operational and financial independence, as well as the regulatory approvals concerning banks should be reassessed.

PROPOSALS:

The following are provisions within the FIA that should be amended to provide the Central Bank with the appropriate tools for greater independence:

A. Section 16(4) and 17(8) specify the minimum stated capital required to carry on the business of banking and business of a financial nature respectively, and include the power of the Minister to specify a larger amount on the advice of the Central Bank. Capital requirements are a matter to be determined based on international best practice

adjusted to local conditions through the technical expertise of the banking regulator[7]. The Central Bank ought to be able to independently exercise its discretion to adjust the capital required pursuant to its mandate under section 3(f)(i) of the CBA. **As such, an amendment is recommended to sections 16(4) and 17(8), as well as the introduction of new subsections, allowing the Central Bank to adjust capital requirements through the publication of an Order in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago;** and

B. **Consequential amendments to the IA** is recommended to harmonise with proposed amendment to the FIA above. Amend sections 22 and 25 of the IA to harmonise with proposed amendments to sections 16(4) and 17(8) of the FIA respectively, by including a power of the Central Bank to increase the minimum stated capital for insurers and brokers.

3.3 BCP#6 – Transfer of Significant Ownership

Principle 6: *"The supervisor has the power to review, reject and impose prudential conditions on any proposals to transfer significant ownership or controlling interests held directly or indirectly in existing banks to other parties."*

Under the current legislative regime, in order to become a significant shareholder of a licensee, the approval of the Central Bank is required. Currently, the FIA defines "*significant shareholder*" as a person who either alone or with one or more affiliates or relatives or connected parties is entitled, whether by agreement or otherwise, to directly or indirectly, exercise 20 per cent or more of the voting power at any general meeting of the licensee.

The FSAP considered the threshold of 20 per cent at the time of approval to transfer significant ownership or controlling interest to be too high, given that many jurisdictions of both developed and developing countries set a lower threshold to identify and assess a significant shareholder. In the Euro Zone and Canada for example, the threshold is set at 10 per cent, similar to the threshold in Peru. In other jurisdictions such as India and Bangladesh, the threshold was even lower at 5 per cent. Regionally, the Eastern Caribbean and Barbados have set the threshold for significant ownership at 10 per cent.

Notably, the FIA currently defines an "acquirer" as a "*financial entity or a significant or controlling shareholder of a financial entity that either alone or with an affiliate, relative or connected party, is entitled to exercise 10 per cent or more of the voting power at any general meeting of a licensee"*. However, the threshold for approval of a non-financial entity acquiring a licensee is 20 per cent. The FSAP suggested that this is a gap and a reduction in the approval threshold will strengthen the Central Bank's ability to scrutinize all requirements of fitness and propriety to cases where the proposed shareholders, other than an acquirer, might negatively influence the banks' decision-making processes.

Acquirers that are already approved by the Central Bank and issued with a permit under section 74 of the Act would be grandfathered and deemed to have a significant shareholder permit. Upon commencement of the proposed amendments, persons other than acquirers, holding at least 10 per cent of outstanding shares will be given a transition period to apply for a significant shareholder permit from the Central Bank, and where such an application is refused by the Bank, the shareholder would be given time to dispose of the shares.

[7] IMF Country Report No. 20/291 T&T dated October 2020: Financial Sector Oversight Framework *"Financial supervisors should be given powers to issue prudential regulations and take supervisory decisions independently from the MoF."*

In addition to the FSAP, the Financial Obligations Regulations made under the Proceeds of Crime Act Chap. 11:27, require financial institutions and listed business to obtain "*information on the identity of shareholders holding more than ten per centum of the paid up share capital*", and based on discussion emanating from the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum"), the Companies Act Chapter 81:01 ("Companies Act") was amended to set beneficial ownership thresholds at 10 per cent.

Further, the BCBS treats a person as a significant shareholder if the person **holds a significant portion of a bank's capital or voting rights, or is able to exercise significant influence over the bank's management or policies, whether directly, indirectly or acting in concert.**

PROPOSALS:

In order to implement the recommendation under BCP#6 above, amendments are proposed to the following provisions of the FIA:

A. Amend the FIA to change the threshold of a significant shareholder under the Act from 20 per cent to 10 per cent shareholding in a licensee and FHC;

B. Amend the definition of significant shareholder in Section 2(1) of the FIA to mean "a person who either alone or with one or more affiliates or relatives or connected parties is entitled, whether by agreement or otherwise, to directly or indirectly exercise twenty per cent or more of the voting power at any general meeting of an entity and the term significant interest shall be construed accordingly" shall be amended to align with the definition in the IA.

C. Amend section 45(1)(a) by deleting paragraph (iii). Section 45(1)(a) (iii) currently states "*45.(1) A licensee shall not, directly or indirectly, acquire or hold shares or ownership interests in any company or unincorporated body, if such acquisition or holding would result in –*

(a) the licensee having the power to—

(i) exercise twenty per cent or more of the voting rights at any general meeting of the company or unincorporated body;

(ii) elect twenty per cent or more of the directors or officers of the company or unincorporated body; or

(iii) exercise significant influence over the conduct of the business and affairs of the company or unincorporated body".

This deletion of (iii) is proposed given that the threshold for significant is proposed to be reduced to 10 per cent making sub-section (iii) misaligned with the previous sub-sections. For clarity, the change in the significant shareholding threshold is not intended to impact a licensee's ownership interest in a company or unincorporated body.

D. Amend sections 72(4) which reads "A person who, on the coming into force of this Act, holds shares that entitle him to exercise **twenty per cent** or more of the voting power at any general meeting of a licensee is deemed to hold a permit under this section for such shares", and 72(7) which reads "Where a significant shareholder is no longer a fit and proper person in accordance with the criteria in the Second Schedule, or where a person under subsection (3) is not granted a permit, or where a person holds shares that require him to obtain a permit and no permit is obtained, he shall be notified in writing

by the Central Bank of this fact and he shall be required to take such steps in such time as may be specified by the Central Bank to reduce his entitlement to exercise **twenty per cent** or more of the voting power of a licensee or prohibit him from exercising a significant interest in the licensee" –to reduce the per centage of shareholding from twenty per cent to ten per cent to align with the new significant shareholder threshold.

E. Propose consequential amendments to the IA to reflect A to D above for regulatory harmonization purposes given the existence of mixed financial groups comprising banks and insurers.

The above amendments will be subject to an appropriate transition period.

3.4 BCP#8 –Supervisory Approach: Domestic Systemically Important Banks

Principle 8 Essential Criteria 2 requires that: *The supervisor, in conjunction with relevant authorities where appropriate, uses a process to assess and identify which banks are systemically important in a domestic context. Supervisors publicly disclose information that provides an outline of the process employed to assess and determine systemic importance. The supervisor conducts these assessments sufficiently regularly to ensure they reflect the current state of the domestic financial system.*

The Central Bank introduced a framework for *Determination of a Domestic Systemically Important Bank ("D-SIB") and the Higher Loss Absorbency Charge* with effect from January 1, 2024 in accordance with the Financial Institutions (Capital Adequacy) Regulations, 2020 ("Regulations"). The Regulations require D-SIBs to hold additional Tier 1 capital of between 1 and 2.5 per cent. In addition, the Corporate Governance Guidelines includes some additional governance requirements for a D-SIB, however this is not a legislative requirement.

Currently, the existing regulatory framework does not contain all the enabling provisions that are necessary to ensure effective oversight of a D-SIB. Therefore, it is proposed that the FIA be amended to allow the Central Bank to require higher prudential, governance, risk management and operational standards for a D-SIB. These may be set out in the Act, Regulations and/or in Bye-Laws. Notwithstanding, the Central Bank intends to specify certain governance provisions for a D-SIB in law.

PROPOSALS:

Having regard to the foregoing, the Central Bank proposes the following amendments to the FIA:

A. **Governance** – Require D-SIBs and the FHCs of D-SIBs to have a minimum board membership of nine (9) persons, a majority of whom must be independent;

B. **Risk Management and Operational** – a DSIB must establish a Risk Management Committee, Credit Committee and Nomination Committee in addition to an Audit Committee. FHCs of D-SIBs must establish an Enterprise Risk Management Committee; and

C. **Independent Oversight** – a prohibition on concurrent membership of Audit Committee members on other board committees for D-SIBs.

3.5 BCP#20 – TRANSACTIONS WITH RELATED PARTIES

Principle 20: *"To prevent abuses arising in transactions with related parties and to address the risk of conflict of interest, the supervisor requires banks to enter into any transactions with related parties on an arm's-length basis, to monitor these transactions, to take appropriate steps to control or mitigate the risks and to write off exposures to related parties in accordance with standard policies and processes."*

Principle 20, Essential criteria #1 states that laws or regulations provide, or the supervisor has the power to prescribe, a comprehensive definition of "related parties." This considers the parties identified in the footnote to the Principle. The supervisor may exercise discretion in applying this definition on a case by case basis.

The FSAP noted that Government credit exposures arising from indirect ownership interest in licensees were excluded from the definition of 'connected party' for the purpose of the credit exposure limits to connected parties and connected party groups under sections 43(1) and (2) of the FIA[8]. It was noted this could potentially have an impact for lending to state-owned enterprises. This exclusion is particularly relevant to state-owned banks, since their lending business to certain public-sector entities (those fully owned by the Corporation Sole) might be at risk of not being conducted in line with the arm's-length principle. The FSAP suggested that an amendment to the wording of the FIA is required to ensure that government exposures continue to be undertaken using the arm's length principle and criteria for approval.

Essential criteria #2 states that laws, regulations or the supervisor require that transactions with related parties are not undertaken on more favorable terms (e.g., in credit assessment, tenor, interest rates, fees, amortization schedules, requirement for collateral) than corresponding transactions with non-related counterparties.

The FSAP noted that the FIA provides a broad definition of connected parties and captures all the actors in principle that are able to extract private benefits from the licensee. However, certain requirements (arm's-length principle and Board approval) in the legislation mainly focused on related-party lending, rather than related-party transactions, which could result in abuse related to transactions other than lending. **In particular, the FIA consistently refers to credit exposures to a connected party rather than to transactions with related parties. Consequently, transactions other than lending (for instance, asset purchase and sale, outsourcing contracts) do not appear to be subject to the arm's-length principle.** As an example, section 43(6) of the FIA states that "any credit exposure incurred by a licensee, connected parties and connected party groups under this section shall be on terms and conditions no less favorable to the licensee than the terms and conditions on which such credit exposure is offered to the public."

The FSAP suggested that the law should extend the arm's-length principle to include transactions other than lending with related parties.

Essential criteria #3 further states the supervisor requires that transactions with related parties and the write-off of related-party exposures exceeding specified amounts or otherwise posing special risks are subject to prior approval by the bank's Board. The supervisor requires that

[8] Section 43A states that "For the purposes of section 43(1) and (2) and subject to sections 42(1), (1A) and (3), the Government of Trinidad and Tobago or any company wholly owned and controlled by Corporation Sole shall not be considered a connected party or a member of a connected party group by reason of its holding of shares in a licensee directly or indirectly through a company, body corporate, unincorporated body or trust."

Board members with conflicts of interest are excluded from the approval process of granting and managing related-party transactions.

The FSAP highlighted that the Board's approval is limited to related-parties' lending, without encompassing related-parties' transactions. It noted that the FIA is silent on the subject of the write-off of credit exposures pertaining to related-party transactions.

Essential criteria #7 states that the supervisor obtains and reviews information on aggregate exposures to related parties. The FSAP noted that while the Central Bank receives banks' quarterly regulatory reporting (CB105) on related-parties' credit exposures, the threshold for reporting credit exposures is ten per cent of the capital base, and the Central Bank is not in a position to regularly monitor the compliance with the limits to loans (including on an aggregate basis) to directors and officers (two per cent of the capital base or two years' emolument, whichever is lesser).

The FSAP also pointed out that exposures to fully owned subsidiaries and to holding companies or an FHC which is itself a licensee or a permit holder are exempted from the limit under section 43 of the FIA. The exemption exposure is questionable since it might lead to abuse in intra-group transactions.

PROPOSALS:

Having regard to the foregoing, the Central Bank proposes to:

A. Amend sections 38 and 43A to address FSAP recommendations, by **including an express requirement for government and other connected party transactions to be undertaken using the arm's-length principle and criteria for approval**. All transactions involving the Government of Trinidad and Tobago ("GORTT") or any company wholly owned and controlled by Corporation Sole must comply with the arm's-length principle; and

B. Include a definition of the *arm's-length principle* in section 38. The following definition is adapted from section 43(6) of the FIA but expanded to apply to all transactions and not just credit exposures. The definition will read as follows:

   "*For the purposes of sections 38 and 43A, a transaction would be considered as conforming to the "arm's-length principle" only where it is entered into on terms and conditions no less favourable to the licensee than the terms and conditions on which such a transaction would be entered into with an independent person not connected with the licensee*."

3.6 BCP# 19 - LARGE EXPOSURES & CONCENTRATION RISKS

Principle 19 requires that "*The supervisor determines that banks have adequate policies and processes to identify, measure, evaluate, monitor, report and control or mitigate concentrations of risk on a timely basis. Supervisors set prudential limits to restrict interbank exposures to single counterparties or groups of connected counterparties."*

Sections 42 and 43 of the FIA restrict the size of credit exposures that licensees and financial holding companies are allowed to extend to categories of borrowers and borrower groups relative to the size of their capital. The Basel Committee on Banking Supervision ("BCBS") issued a Large Exposure Standard ("LEX") in 2014 which was updated in 2023. **At the time**

of the FSAP, it was noted that there were a few areas where the FIA's provisions for large exposures were out of alignment with the large exposures standard as follows:

- The threshold limit for large exposures was twenty-five per cent of the licensees or FHC's total capital base which was the same as the definition of large exposures. The BCP defines a large exposure as a credit exposure of ten per cent or more of the licensee's or FHC's capital base. The updated large exposure standard also calibrated the large exposure limit as a percentage of Tier 1 capital. The FSAP assessment also noted that given several of the systemically important financial institutions and the larger banking groups operate in multiple jurisdictions in the Caribbean, the Central Bank should assess the need for those banks to be held to a higher international standard.

Further, **the assessors also noted that the FIA section 42 contained several exemptions from the large exposure regime which were not in line with Basel standards**. In particular:

- Section 42(1)(f) allows exemption of interbank exposures maturing in less than one month while the Basel Standard **only allows exemption of intra-day interbank exposures**; and
- Section 42(1)(e) allows exemption for a period of one month, exposures that are fully secured by investment grade securities as rated by a credit rating agency approved by the Central Bank, so, however, that the licensee shall give the Central Bank prior notice of such exposure being incurred.

However, the BCBS LEX requires supervisory authorities to do the following:

1. Set the threshold for defining a "Large Exposure" at 10per cent of Capital;
2. Clarify the measure of capital as *Tier 1 Capital*;
3. Set the limit of large exposures to a single counterparty at 25per cent of Tier 1 Capital;
4. Set the limit on exposures to a group of connected counterparties at 25per cent of Tier 1 Capital;
5. Expand the definition of connected counterparties;
6. Specify the exemptions from the large exposure limits;
7. Allow a higher exemption limit for multilateral development banks;
8. Allow the application of eligible Credit Risk Mitigation in the calculation of exposures;
9. Introduce the Use of Credit Conversion factors to include off-balance sheet items in large exposure computations; and
10. Enhance the reporting requirements for large exposures.

In light of the foregoing and in order to align with the LEX standard, the following amendments are proposed:

A. Section 2 of the FIA to be amended as follows:

   i. Amend the **definition of "large exposure"** from twenty-five per cent of the licensee's or FHC's capital base to ten per cent of Tier 1 Capital;

   ii. Amend the **large exposure limit/ threshold** to twenty-five per cent of Tier 1 capital from twenty-five per cent of the licensee's or FHC's capital base;

iii. Introduce a definition for "Tier 1 Capital", as this measure of Capital has now been explicitly included in the FIA Regulations;

iv. Amend the definition of "control" to refer to an entity as opposed to specifying only a licensee, company or other incorporated body and to harmonize the definition of control in the FIA with the definition in the IA. The definition of "control" has implications for determination of connected parties;

v. Introduce a definition of entity, since it is not currently defined in the FIA and utilize the definition in the IA to ensure harmonization with both the FIA and the IA. Expand the definition of "related group" to include not only companies but entities in general; and

vi. Introduce a definition of "interbank exposures" as this term has been introduced in the FIA.

B. Amend the definition of "connected party" and "connected party groups" in Section 3 of the FIA to:

i. Remove the specificity of being connected only to a licensee. This will aid in providing clarity for those sections of the FIA which utilize this term but not in the context of being connected to a licensee; and

ii. Include the concept of economic interdependence as a criterion for being a connected party in accordance with the Basel LEX Standard, define the term, and include a provision to allow the Central Bank to issue guidelines or criteria for assessing economic interdependence.

C. Amend Section 3(2) of the FIA to specifically allow the Central Bank to make a determination that even where the definition of control applies, such control does not necessarily result in the entities concerned constituting a group of connected parties;

D. Amend Section 42 of the FIA to:

i. Align the measure of capital to Tier 1 Capital throughout section 42;

ii. Remove the term 'related group' from the large exposure requirement as the definition of related group can be mapped into the definition of Borrower group for the context of Section 42; and

iii. Generally apply the requirement to FHCs and supplement the provision at section 42(12).

E. Amend the exemptions in Section 42(1) to align with the Basel LEX Standard as follows:

i. Section 42(1)(c) to include exposures to the Central Bank as an exemption. Consequently 42(1)(c) should read "*extended directly to the Central Government of Trinidad and Tobago and the Central Bank*.";

ii. Remove the exemption for cash security in section 42(1)(d). It should be noted however that cash collateral can reduce the exposure value, provided it meets the eligibility criteria for financial collateral (*see I below*);

iii. Include an exemption to central banks of other sovereign states once the other sovereign states have an investment grade rating from a credit rating agency approved by the Central Bank. This provision should replace the existing 42(1)(d);

iv. Amend Section 42(1)(e) to remove the exemption for exposures with a tenor of less than one month secured by investment grade investments and replace with an exemption for exposures which are secured by financial instruments issued by GORTT or another sovereign state with an investment grade rating from a Credit Rating Agency approved by the Central Bank; and

v. Section 42(1)(f) to amend the exemption from an interbank exposure of less than one month to intra-day. Interbank exposure extends to domestic and foreign banks. Overnight interbank exposures that exceed the large exposure limit must be reported to the Central Bank and cleared by the next day to avoid incurring an administrative fine or other regulatory action.

F. Section 42(1B): Create a new subsection to allow licensees to incur a credit exposure of up to fifty per cent of their Tier 1 Capital to Multilateral Development Banks ("MDBs") when the MDB is risk weighted at zero per cent under Regulations or bye-laws;

G. Section 42(3A): Amend to introduce a new subsection to clarify the exposures subject to aggregation in the eight hundred per cent limit imposed by subsection (3), to include all exempt exposures;

H. Section 42(6): Amend to clarify the intent, which is to specify ways to reduce risk, including providing the Inspector of Financial Institutions ("Inspector") with the power to instruct the institution to take such other action as he deems fit;

I. Section 42(13): Create a new subsection which allows the Central Bank to specify in guidelines how the value of credit exposures will be calculated. (This will include the allowance of Credit Risk Mitigation ["CRM"] methods which will enable items such as cash or collateral to be used as CRM in the calculation of net credit exposures, and it will introduce the use of Credit Conversion factors to include off-balance sheet items in large exposure computations.);

J. Section 43 of the FIA to be amended as follows:

i. To ensure the measure of capital used is Tier 1 Capital;

ii. To remove reference to connected party group in subsection (1)(a), and so clarify that the lower limit is to apply to any connected party of the licensee;

iii. Amend subsection (1)(b), to remove connected party group as it is redundant as "all connected parties" will constitute a connected party group;

iv. Amend subsection (4)(c), to delete the word "relative" and to explicitly state the relationship of the person as either husband, wife, cohabitant or children;

v. Introduce a new subsection 6A, to specify that the provisions of subsection (6) shall not apply to a director or officer who is an employee of a licensee when the licensee makes a credit exposure on terms and conditions similar to its other employees;

vi. Amend subsection (9), to clarify that the word "set it aside" means that the licensee can be required to deduct the excess exposure from its capital base, hold additional capital or provisions for the exposure, or take such other action as directed by the Inspector to reduce, restructure or mitigate the exposure; and

vii. Section 43(12) Create a new subsection which allows the Central Bank to specify how the value of credit exposures will be calculated. (This will include

the allowance of Credit risk mitigation (CRM) methods which will enable items such as cash or collateral to be CRM in the calculation of net credit exposures, and it will introduce the use of Credit Conversion factors to include off-balance sheet items in large exposure computations);

K. Create a new section to reiterate that the arm's length principle to apply to credit exposures involving the GORTT and any company wholly owned and controlled by Corporation Sole;

L. Section 44 amended to include reporting of large and connected party exposures and that the Central Bank would determine the value of exposures in a guideline. This replaces the requirements at section 79 and places the reporting requirement in proximity to the regulatory limits for the sections. Section 44 (1) deals with the reporting of contraventions in sections 42 and 43; and

M. Fourth Schedule sections amended to align the specific penalty to the correct section.

4. ADHERENCE TO INTERNATIONAL STANDARDS AND BEST PRACTICES

4.1 BCP#14 – Corporate Governance

Principle 14: *"The supervisor determines that banks and banking groups have robust corporate governance policies and processes covering, for example, strategic direction, group and organizational structure, control environment, responsibilities of the banks' Boards and senior management, and compensation. These policies and processes are commensurate with the risk profile and systemic importance of the bank."*

Principle 14 contains nine (9) essential criteria for Corporate Governance but only three (3) are reproduced in this section for the purpose of explaining the rationale behind some of the proposals in this section.

Essential criteria #1 states *"Laws, regulations or the supervisor establish the responsibilities of a bank's Board and senior management with respect to corporate governance to ensure there is effective control over the bank's entire business. The supervisor provides guidance to banks and banking groups on expectations for sound corporate governance."*

Essential criteria #2 requires that "*The supervisor regularly assesses a bank's corporate governance policies and practices, and their implementation, and determines that the bank has robust corporate governance policies and processes commensurate with its risk profile and systemic importance. The supervisor requires banks and banking groups to correct deficiencies in a timely manner."*

Essential criteria #3 states that "*The supervisor determines that governance structures and processes for nominating and appointing Board members are appropriate for the bank and across the banking group. Board membership includes experienced non-executive members, where appropriate. Commensurate with the risk profile and systemic importance, Board structures include audit, risk oversight and remuneration committees with experienced non-executive members.*"

The Central Bank issued a revised Corporate Governance Guideline in March 2021, which addressed several of the gaps identified by the FSAP, however Corporate Governance standards continue to evolve. It has since been determined that the Guideline needs updating and some of the requirements in the Guideline should be enshrined in the Act to ensure compliance and enforceability. (*also refer to the section on D-SIBs in this PPD*).

4.2 Minimum Number of Board Members and Audit and Risk Committees

The size of licensees and FHCs boards need to be addressed. The FIA currently requires a minimum of three (3) directors to constitute an Audit Committee ("AC") but does not specify a minimum number for the board of directors of a licensee or FHC. The Central Bank has observed however that some licensees' board of directors comprise just 3 directors. A minimum of three directors only guarantees that an AC can be constituted and in such an instance the Board and the AC are the same members, which is not considered a safe and sound practice.

Therefore, consistent with the principle of proportionality it is proposed that:

A. the board of directors of a licensee that conducts *the business of banking* shall comprise a minimum of seven (7) directors, while a non-bank financial institution ("NFI") that conducts *business of a financial nature* comprise a minimum of five (5) directors, the majority of whom shall be independent; and

B. D-SIBs and FHCs of DSIBs will also be required to maintain a minimum of nine (9) directors – see section 3.4 for additional provisions related to DSIBs.

The FIA also requires the AC to comprise a majority of independent directors, one member must be a financial expert and the chair of the AC must be an independent director. The FSAP noted that both section 36 of the FIA and the Central Bank's Corporate Governance Guideline prescribed this minimum requirement of two independent directors. However, two independent directors can only guarantee that the AC is established. However, if one is absent or resigns then the AC fails to be properly constituted.

Further, it is noted that some licensees have combined Audit and Risk Committees. While this may be allowable for small NFIs, banks should be held to higher governance standards commensurate with their business model and size, complexity and risks. Accordingly, banks will generally be required to have separate and distinct Audit and Risk Committees of the Board in order to provide clearer accountability and facilitate better alignment with their specific mandates.

Consequently, it is proposed that:

A. In general, licensees must establish separate and distinct Audit and Risk Committees;

B. A licensee with an asset size of five (5) per cent or less of banking sector assets, for example, may be allowed to establish a combined Audit and Risk Committee but must first seek the approval of the Central Bank;

C. An FHC must establish an Enterprise Risk Management Committee; and

D. The Central Bank should also have the power to direct a licensee or an FHC to establish any other committee of the board it considers necessary given the complexity of risks faced by the entity.

Further, cross-membership on core committees of the board namely Audit, Risk as well as Credit Committees should be limited. These committees should not have all the same members and the chairs of each of these committees should be different individuals and independent or non-executive directors. Additionally, for D-SIBs, members of the Audit Committee must not sit on the Risk or Credit Committee concurrently. The Central Bank may also impose this requirement on other large banks not specifically designated as a D-SIB.

4.3 Independent Versus Non-executive Directors

Research has also shown that countries such as Singapore, Sri Lanka, Ghana, Nigeria, the UAE and Barbados, distinguish between independent non-executive directors ("INED") and non-executive directors ("NED"). An INED is someone with no ties to the licensee or FHC or any connected or related parties to the licensee or FHC. Persons who are officers or directors of a licensee while also being a director of the FHC or a connected party of the licensee or FHC will therefore not be considered independent.

The Central Bank of Barbados[9] requires at least fifty-one per cent of board members of a licensee to be non-executive directors and at least forty per cent of the Board to be independent of the licensee or its affiliates. The ECCB requires at least twenty per cent of the Board members to be independent and stipulates that the Board should have no more than two (2) executive directors. In addition, several jurisdictions have a time period for membership on the board after which the independent director is no longer considered to be independent, for example, ten years. Moreover, the chair of the board and the Chief Executive Officer shall be required to be different persons.

Having regard to the foregoing, it is noted that the current definition of an independent director in the FIA does not exclude directors on the boards of related or connected parties of the FHC or the licensee. Therefore, the Central Bank proposes to amend the definition to provide for only persons with no direct or indirect ties to the licensee to qualify as independent. This is considered best practice and if small jurisdictions like Barbados and ECCB can adopt this practice, so can Trinidad and Tobago. Directors of a licensee or FHC who sit on the boards of connected or related parties' boards will be considered non-executive and not independent directors of the license with this proposed change.

The independence criteria is also proposed to be enhanced by the inclusion of a provision currently set out in The Securities (Collective Investment Scheme) Bye-Laws, 2023 which disqualifies an individual from being considered independent **if they have served on a board for more than 9 years from the date of them first being elected/appointed**. This provision intends to address potential issues related to familiarity and impairment of independence if a person sits on a board for an inordinate amount of time.

Finally, the chair of a Board plays a crucial role in the proper functioning of the Board and should be either an independent or non-executive board member. This aligns directly with the BCP's emphasis on sound governance, board independence and effective oversight. This requirement was specified in the Central Bank's Corporate Governance Guideline but is now proposed to be codified in law to ensure compliance.

4.4 Serving on Multiple Boards in a Financial Group

The existence of mirror boards (that is, where all or the majority of the same directors serve on multiple boards in a financial group) is posing an increasing concern from a regulatory perspective as it confuses the location of mind and management within a subsidiary of a financial group. While mirror boards are intended to foster alignment and synergies, they can also lead to weakening of independent oversight and challenge and facilitate 'rubber stamping' of decisions by subsidiary boards. Consequently, it is expected the proposal in 4.3 above where all licensees in a financial group must have a minimum number of independent directors will treat with this issue and risk.

[9] Central Bank of Barbados Corporate Governance Guideline 2013:01.

PROPOSALS:

A. Amend the definition of independent director in Section 36(6)(c) of the FIA to include a director that is not a director or officer of the licensee or of a connected party of the licensee;

B. The board of a licensee or FHC must comprise of at a minimum, one third independent directors and the majority of the board should comprise independent and non-executive directors. Consequently, the FIA should also be amended to include a definition of a non-executive director.; and

C. The chairperson of a licensee's or FHC's board of directors must not be an executive director of the licensee or FHC. Boards must be chaired by either an independent or a non-executive director.

4.5 REQUIREMENT FOR NOTIFICATION OF A CHANGE IN DIRECTORS OR OFFICERS OF ACQUIRERS, SIGNIFICANT AND CONTROLLING SHAREHOLDERS OF A LICENSEE OR FHC

The FIA currently places an obligation on a licensee to notify the Central Bank of any change in its directors and officers subsequent to the granting of a license. This notification must be made within 7 days of the change. The provision in section 21(8) reads as follows:

> *"21(8) It shall be a condition of every licence that the licensee shall—*
>
> > *(b) within seven days of any change in the directors or officers, including a principal representative under section 18(2) in the case of a licensed foreign institution, notify the Central Bank in writing of such change."*

While implied, there is no explicit requirement for acquirers, controlling or significant shareholders of a licensee or FHC issued a permit pursuant to the Act to notify the Central Bank when its directors or officers change. In practice the requirement to notify the Central Bank of any changes is generally included as a condition of the permit. However, the specification of a time limit for notification has not been historically included on these permits and therefore the obligation is not as direct as it is for licensees. The Central Bank is of the view that there should be a specified time for notification of this change.

PROPOSALS:

A. Section 21(8) to be amended to include the requirement as follows "**and submit such documents as the Central Bank may specify"**; and

B. In addition, an obligation similar to section 21(8)(b) should be included in sections 70, 71, and 72 for permit holders under the Act. The proposed amendments to the section should include a provision as follows:

   i. It shall be a condition of every permit granted that the (financial holding company/controlling shareholder/significant shareholder) shall:

      (a) within seven days of any change in the directors or officers, notify the Central Bank in writing of such change, and submit such documents as the Central Bank may specify.

4.6 Related Amendments to the Second Schedule of the FIA

Section A of the Second Schedule at number four (4) reads as follows: *In determining whether a company is a fit and proper person to be a controlling shareholder or significant shareholder, regard shall be had to, but not limited by, the following criteria: (a) whether the directors of the company have satisfied the fit and proper criteria set out in paragraphs (1) to (3*). The equivalent provision in Section B(1) of the Fifth Schedule of the IA includes reference to "acquirer" which is currently not included in Section A4 of the Second Schedule of the FIA therefore "acquirer" should be added. Also, "officers" are to be included as persons required to be fit and proper in determining if an acquirer or shareholder/company is fit and proper. This is to ensure alignment and standardise the fitness and propriety assessment across regulated entities, the Second Schedule of the FIA.

Sections B and C of the Second Schedule currently speak to the minimum number of board members and requirements in relation to the composition of the board and their collective experience. Proposed amendments to these sections seek to bring clarity to the requirements as well as to align the provisions with international best practices and standards of good governance, current supervisory practices and guidance issued to the industry. Jurisdictional research and updated supervisory standards support specifying a minimum number of board numbers as well as a requirement for a minimum number of independent directors on the board of financial entities. Precedents include Jamaica, Barbados, Canada and Australia to name a few.

The requirement for resident officers and directors is also being introduced to align with international corporate governance practices and it is considered important for mind and management of a licensee or financial holding company to reside in country. This requirement also aligns with what pertains in other jurisdictions such as New Zealand and the USA.

Proposals

A. Paragraph A number 4 to include the words "acquirer" and 4(a) to include the word "officer";

B. Amendments also proposed to the following paragraphs in the Second Schedule:

   i. Paragraph B to be amended to align with the provisions relating to the minimum number of directors expressly provided for in these proposals as well as the Paragraph will be expanded to:

      a. Expressly provide for licensees and FHCs to be managed by competent and knowledgeable persons. For instance, members of the board should possess expertise and experience relevant to the principal issues that the institution faces, including, but not limited to, internal controls, capital management, banking risks and corporate planning; and

      b. Require that a majority of the officers of a licensee or financial holding company, including the chief executive officer or managing director and chief financial officer, be resident in Trinidad and Tobago.

   ii. Paragraph C to:

      a. Enhance the criteria the Central Bank may consider in exercising its discretion regarding the number of directors without executive responsibility, required for a company incorporated in Trinidad and Tobago;

b. In addition to the skill sets already in the Second Schedule, to include cyber security, information technology, strategy and business planning, and risk management to the list of skills the board should collectively possess;

c. Include a requirement for a minimum of two directors of the licensee (not including executive directors) to be resident in Trinidad and Tobago;

d. Set out the Central Bank's considerations in determining fitness and propriety by assessing the time commitment and conflict of interest exposure of the individual. As a general rule of thumb the Central Bank will apply increased scrutiny to a director with five or more directorships; and

e. In determining the overall strength of a board, collective suitability of the individual members taken as a whole should be included.

5. FINANCIAL STABILITY BOARD'S KEY ATTRIBUTES OF EFFECTIVE RESOLUTION REGIMES FOR FINANCIAL INSTITUTIONS

The Financial Stability Board's Key Attributes of Effective Resolution Regimes for Financial Institutions ("KAs") is the international standard for resolution regimes. It outlines the core tools, powers and arrangements that resolution regimes should have to enable authorities to manage the failure of such firms in an orderly way that maintains the firm's critical functions, while ensuring that shareholders and unsecured creditors bear an appropriate share of the losses.

Consideration was also given to the IMF's Technical Note on Bank Resolution and Crisis Management, which was completed in February 2020 as part of the FSAP. The weaknesses identified included the following:

i. The legal regime applicable to financial institution failures is complex, does not provide for a number of powers advocated in the international standard, exposes resolution actions to potential Court reversal, and has not been sufficiently interpreted by means of formal policies;

ii. Recovery and resolution planning regimes are not in place; and

iii. The Central Bank can only lend to solvent financial institutions (commercial banks and non-banks) that provide specified collateral in a non-crisis situation and without collateral in a crisis situation.

The following two recommendations stem from a review of the FSB's Key Attributes and the IMF's Technical Note referenced above. The recommended amendments also seek to address the FSAP's findings and recommendations in relation to BCP #12 Consolidated Supervision and BCP#15 – Risk Management.

5.1 Recovery and Resolution Plans

An essential element of banking supervision is that the supervisor supervises the banking group on a consolidated basis, adequately monitoring and, as appropriate, applying prudential standards to all aspects of the business conducted by the banking group worldwide.

The FSAP recommended that the FIA be amended to include a requirement for the development of group-level recovery and resolution plans, including resolvability assessments that incorporate all sectors of operations (e.g. insurance, investment funds)[10].

PROPOSALS:

As such, a new provision is proposed to be included in the FIA to set out a requirement for licensees and FHCs to prepare and submit periodically to the Central Bank, a recovery plan and for the Bank to have the power to require a licensee to:

- Revise and resubmit a recovery plan which is found to be inadequate or otherwise requires improvement; and
- Implement all or part of a recovery plan, if in the opinion of the Central Bank it necessary to do so.

These new provisions may suitably be placed in Part IX of the FIA immediately after section 75 as a new section 75A.

5.1.1. KA 5 - Creditor Claim Hierarchy

Key Attribute 5.1: "*Resolution powers should be exercised in a way that respects the hierarchy of claims while providing flexibility to depart from the general principle of equal (pari passu) treatment of creditors of the same class, with transparency about the reasons for such departures, if necessary to contain the potential systemic impact of a firm's failure or to maximise the value for the benefit of all creditors as a whole. Equity should absorb losses first, and no loss should be imposed on senior debt holders until subordinated debt (including all regulatory capital instruments) has been written-off entirely (whether or not that loss-absorption through write-down is accompanied by conversion to equity)*."

The language above makes it clear that as a main rule, the resolution authority must respect the hierarchy of claims laid down in the applicable law, with equity absorbing losses first, followed by subordinated debt holders. However, the legal regime should provide the option for the resolution authority to deviate from this rule, if necessary.

This may be done to:

i. Protect the stability of the financial system by containing the potential systemic impact of the bank's failure; or

ii. Maximise the value of the bank for the benefit of all creditors.

A clear creditor claim hierarchy is needed for several reasons, including to provide investors, creditors and depositors, with certainty about the ranking of their claims in the event of a bank's insolvency.

For shareholders, it should be stated that in the event of bank liquidation or resolution their claims are at the bottom of the creditor hierarchy. For depositors, it should ensure that they are at the higher level of the hierarchy, which together with a sound deposit insurance scheme, creates confidence in the financial system, minimizing the risk that broad runs on banks will occur in the event of an impending bank insolvency.

[10] The Financial Stability Board's Key Attributes of Effective Resolution Regimes for FIs, in particular KA 11 provides additional support for this amendment.

In the case of the absence of a hierarchy of claims, as determined by law, creditors may race to seize the assets of a failing bank, in order not to be the last in line. Alternatively, creditors could negotiate a priority in their contract with the bank, but this will affect all other creditors and therefore would require negotiations with each of them, which could lead to inconsistencies among priority claims and likely challenges in court. The spinoff effects of this would be increased litigation costs, and an unclear and uncertain legal situation for creditors that would adversely affect the willingness to provide credit.

In order to avoid this situation, and all the costs associated with it, most insolvency regimes (for banks and other legal persons) contain a set of standardized priority rules and a hierarchy of claims, or priority regime. The latter applies in liquidation for creditors, and others with an interest in a failing property, such as secured creditors, tax authorities, and employees of a firm. In the case of retail banking, where many unsophisticated depositors entrust relatively small balances with a bank, there is even more cause to protect these creditors.

As Key Attribute 5.1 defines that these priority rules for the liquidation of a bank should also apply in the event of the resolution of a bank, it implicitly requires that the hierarchy of claims for a bank in liquidation must be the same for a bank in resolution[11]. This is important to ensure that shareholders and creditors are treated the same in liquidation as in resolution, thereby ensuring that creditors have incentives to support the most efficient settlement of a failing bank.

The Central Bank reviewed legislative precedent both regionally and internationally and found that the creditor hierarchy set out in proposed amendments to the Jamaican banking legislation to be most suitable for incorporation into local law.

PROPOSAL:

Based on the foregoing, it is recommended that a new provision be inserted in Part VII of the FIA "Inspection, Investigation and Winding-Up" containing the following creditor hierarchy:

1. Liquidator / Manager / Receiver / Central Bank expenses
2. Secured creditors, including charges payable by Court order and fixed charges (e.g. under debenture)
3. Deposit insurance subrogated claims
4. Uninsured deposits
5. Unpaid contributions to employee pension benefit plans
6. Preferential statutory debt / obligations under section 435 of the Companies Act (e.g. NIS, taxes [excluding corporation tax], unpaid wages and salaries of employees [excluding officers], severance)
7. Floating charges
8. Unsecured creditors, and uncovered deposits (e.g. USD deposits)
9. Subordinated debt
10. Unpaid salaries of the officers (subject to the provisions of section 447 of the Companies Act, where applicable)
11. Ordinary shareholders

[11] See KA 3.5

6. GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Trinidad and Tobago is a party to the Global Forum on Transparency and Exchange of Information for Tax Purposes. Under the Global Forum Terms of Reference, jurisdictions are required to ensure that ownership, identity, accounting and banking information is available and to this end the standard requires information to be maintained for at least five years, even in cases where the relevant entity has ceased to exist. The minimum period of five years applies from the end of the period to which the information (ownership and identity, accounting and banking information) relates in all cases and would generally relate either to a taxable year, a calendar year, or an accounting period.

Section 455(2) of the Companies Act currently provides that the records of a company may be kept up to five years from the dissolution of the company. However, the language implies that the five-year period is an outer limit and subject to the discretion of the Court.

PROPOSAL:

In order to ensure compliance with the Global Forum Terms of Reference, the Central Bank recommends amending the FIA to make it clear that the records of licensees must be kept for a minimum period of five years, which may be achieved through the insertion of a new section 66A at the end of Part VII ("Inspection, Investigation and Winding-Up") as follows:

A. *"66A Notwithstanding section 455 of the Companies Act or any Rules made under that Act, the books, records, accounts, vouchers, minutes of meetings, and any other documents, including documents stored in electronic form, of any licensee which has been wound up shall not be destroyed for a period of five years from the dissolution of the licensee and the Court may make such orders for the preservation of the books, records, accounts, vouchers, minutes of meetings, and other documents of the licensee as it thinks fit*."

7. PROPOSAL RELATED TO THE DIGITILISATION OF FINANCE

7.1 INTRODUCTION OF AGENT BANKING

The concept of *agent banking* whereby a commercial bank is allowed to conduct aspects of banking business through an authorized agent, carries several key benefits, especially as it relates to financial inclusion and reduction of the operating costs of commercial banks, which can in turn reduce the cost of financial services to the customer.

The Central Bank notes that over the past few years, commercial banks have taken steps to increase the digital delivery of services to customers, including elimination of physical bank statements, greater access to financial services through electronic means such as computers (internet/online banking) and smart devices such mobile phones (mobile banking). In addition, commercial banks are also reducing both the number of services available at branches as well as branches themselves. The result is reduced access to necessary physical banking services that cannot be totally delivered electronically, e.g. supplying physical cash. This can be addressed to a limited extent through the use of automated teller/banking machines ("ATMs"). However, these carry both costs and risks to the financial institution and the customer depending on where they are located.

A reduction in physical availability of banking services also tends to affect lower income persons and persons living in rural areas and can lead to financial exclusion. Agent banking can support the digitalization of finance through the establishment of an alternative avenue to provide banking services where a small physical presence is required. This also facilitates the national drive for increased financial inclusion rates amongst lower income households and households in rural areas.

Regionally, Jamaica has allowed its commercial banks to make use of authorised agents through amendments to the Banking Services Act of Jamaica and it is recommended that similar provisions be introduced in the FIA to allow for this important and effect financial inclusion toolkit for commercial banking.

PROPOSAL:

It is recommended that:

A. A new Part IIIA be inserted to allow for institutions conducting banking business under the FIA to carry out business through authorized agents;

B. The Minister's power to make regulations be extended to include regulations in relation to agent banking; and

C. That this new Part only take effect upon proclamation by the President, to allow for sufficient time for the Central Bank to develop Regulations or Guidelines and conduct the requisite consultation in accordance with the procedures set out in section 11 of the Act.

7.2 Digital Banks

Given the rapid technological changes occurring in the financial services sector, it is expected that persons may be interested in licensing a digital bank. A digital bank is a licensed financial institution that delivers banking services primarily or entirely online. Examples include online only banks, neobanks and fintech-backed banks.

The Central Bank intends to license digital banks under the FIA in the same manner as a normal bank. Digital banks will be allowed to have limited or no retail branches, but they will be required to maintain a registered office and operational headquarters in the country, establish audit, compliance and risk functions and have real employees. Regulations, Bye-Laws and Guidelines may be developed to guide the operations of digital banks.

8. PROPOSALS RELATED TO CLARIFICATION, AMENDMENTS, CORRECTIONS OR OMISSIONS IN THE FIA AND ENHANCING EXISTING PROVISIONS

8.1 Financial Groups, Financial Holding Companies and Restructurings of Related Groups

One of the cornerstones of risk-based supervision is the ring-fencing of financial institutions in a mixed group (i.e. a group with companies that engage in non-financial activities and financial activities).

In the interest of protecting depositors from risks posed by non-financial members of a mixed group, the FIA provides that the Central Bank may direct a mixed group, which has two (2) or

more financial institutions, one of which is a licensee under the FIA, to restructure so that the financial entities are segregated under a FHC (see section 67 of the FIA).

However, the Act also makes allowance for certain group structures where a restructuring under a FHC is not required. For example:

(a) Where all financial entities, in a mixed group, are either already subsidiaries of a holding company that does not have any operations and which also does not own any non-financial subsidiaries, or

(b) Where all financial institutions are subsidiaries of a supervised entity, which itself does not have any non-financial subsidiaries. In the first example, the non-operating holding company would be required to apply for a financial holding company permit and in the second example, the supervised entity would merely need the permission of the Central Bank as well as obtaining controlling shareholder permits for its supervised financial subsidiaries.

The Act also provided that restructuring **may not** be required where the locally incorporated financial institutions were owned by either a regulated foreign financial institution or FHC. A question has arisen as to precise circumstances under which restructuring would not be required where a foreign financial holding company is involved and also whether they would be required to obtain a permit.

The Central Bank's position is that where a foreign financial holding company is the parent of two or more financial institutions in Trinidad and Tobago and at least one of those companies is a licensee under the FIA, it may be required to restructure its operations so that all financial institutions in Trinidad and Tobago are located either under a local financial holding company incorporated in and under the laws of Trinidad and Tobago or will be subsidiaries of the licensee, to facilitate **consolidated supervision** of the local financial institutions. The local financial holding company would be required to apply for a financial holding company permit in accordance with section 70 of the FIA and a licensee-holding company would not require a financial holding company permit.

Further, in consideration of the restructuring and whether the financial holding company should be established under the FIA or IA, the Central Bank shall consider the number, type, size and contribution of financial entities in the group and the most effective structure to facilitate consolidated supervision. This position is already confirmed under sections 70(7) and 51(9) of the FIA and IA respectively.

In order to clarify the context in which both restructuring and permits are required under the Act, **the Central Bank proposes to amend sections 67 and 68, to specify the circumstances where restructuring is required for groups with parent companies that are foreign financial institutions/financial holdings companies and which companies require permits**.

8.2 Amendments to Restrictions Set out in Section 46 And Extension of Requirements to A Financial Holding Company Permit

The FIA introduced the concept of *consolidated supervision* in the banking sector (which has since been introduced in the insurance sector by the IA 2018). Under this concept, the structure of a financial group (headed by either a licensee-holding company or a financial holding company with a permit under section 70, must facilitate consolidated supervision. One aspect of consolidated supervision, is the ability of the Central Bank, as regulator, to be able to assess the acquisition of new subsidiaries so as to ensure that it does not pose risk to the group and by extension depositors (or other customers) of the supervised entities in the financial group.

Presently, section 46(1) requires a licensee to seek the approval of the Central Bank to directly/indirectly establish or acquire a subsidiary and also to the sale/transfer of a subsidiary or a controlling or significant interest the licensee has in a financial entity. Subsection (2) also contain restrictions on the licensee transferring ten per cent or more of its assets, those of a subsidiary or a company or unincorporated body in which the licensee has a controlling or significant interest, or undertaking any other restructuring that would result in a reduction in the capital of the licensee.

Section 46 also references the requirement for approval for reductions of capital (up to regulatory minimums). However, it does not require a licensee to seek the approval of the Central Bank for transactions or activities that results in a reduction of its capital, other than those related to a restructuring. This deviates for the general approval required for capital reductions regionally and internationally (for example, Guyana, Barbados, Australia and Canada).

Additionally, the FIA does not require a FHC to either notify or to seek the approval of the Central Bank for transactions or other activities that result in a reduction of its capital.

It is the Central Bank's view that appropriate regulatory oversight will aid in ensuring that the reduction of capital is appropriately managed so as not to breach prudential capital requirements or compromise the bank's ability to meet its obligations under stress scenarios.

Section 69 of the FIA sets out the restrictions on the activities of financial holding companies, however, it does not contain similar restrictions to those set out in section 46. Based on provisions in the Act, the Central Bank attaches conditions to the permits awarded to FHCs to impose such restrictions or other requirements it deems necessary. The Bank is, however, of the view that the restrictions imposed on licensees, regarding subsidiaries and capital, set out in section 46 of the FIA should also expressly apply to FHCs and breaches of same should also be subject to administrative fines.

The current provisions of sections 46 and 69 can therefore potentially allow certain transactions to take place without appropriate regulatory oversight. This could potentially weaken a bank's ability to absorb shocks, or affect the FHC's ability to support the subsidiaries in times of stress, leading to increasing systemic risk and potentially triggering broader financial instability.

PROPOSALS:

Based on the foregoing, the Central Bank proposes the following amendments to the FIA:

A. Expanding Section 46(2) of the FIA to take account of any transaction or activity resulting in a reduction of the licensee's capital;

B. Including a new provision as section 46(3) which will clarify what is meant by a reduction of a licensee's capital referenced in section 46(2)(b);

C. Including new clarifying provisions as subsection 46(4) and 46(5) to outline the minimum documents required to be submitted to the Central Bank for its consideration as well as the Central Bank's expectation of a licensee regarding any such request for approval of its capital reductions;

D. Insertion of a new provision equivalent to section 46(1) and (2) of the FIA in section 69;

E. Including a provision equivalent to amended section 46(2) and new subsections 46 (3) to 46(5) in new sub-sections of section 69 applicable to FHCs; and

F. Introduction of administrative fines for breaches of sections 46 and the equivalent provisions proposed to be introduced in section 69 under paragraphs D and E above.

8.3 Extending the applicability of ownership requirements to FHCs

Sections 72(1) of the FIA states "*Notwithstanding any other law but subject to section 74 a person or a person on whose behalf shares are held either in trust or by a nominee, shall not become* ***a significant shareholder of a licensee*** *without first obtaining a written permit from the Central Bank."*

Section 74(1) of the FIA states "*A financial entity or a significant or controlling shareholder of a financial entity shall not become* ***an acquirer of a licensee or of the financial holding company of a licensee*** *without obtaining a permit*". Section 72(1) makes no specific reference to the significant shareholder of a financial holding company requiring a permit. This is considered an omission and therefore it is proposed that section 72(1) be amended to include the reference **"or of the financial holding company of a licensee"**.

8.4 Defining/Clarifying the Regulatory Perimeter

Currently, there is lack of clarity on the regulatory perimeter of the FIA. The FIA was intended to regulate *deposit-taking* financial institutions conducting either the "**business of banking**" or the "**business of a financial nature**".

The FIA defines the business of banking as:

"*the business of soliciting and receiving sums of money from the public on current or deposit account which may be withdrawn on demand, by cheque, draft, order or notice, and the solicitation and granting of credit exposures, by a person whether as principal or agent and includes payment card business and, generally, the undertaking of any business appertaining to the business of commercial banking*"[12].

Business of a financial nature is defined as:

"*the solicitation and collection of funds in the form of deposits, shares, loans and premiums and the investment of such funds in loans, shares and other securities*"[13].

Persons licensed to conduct business of a financial nature under the FIA are referred to NFIs.

NFIs are not allowed to carry on short-term business i.e. taking of deposits or making of loans for periods of less than one year except for specifically identified circumstances. Consequently, NFIs are not allowed to conduct payment card business i.e. the issuance of debit or credit cards due to the short-term nature of such business. However, a deposit taking NFI can act as a trustee, administrator, executor, attorney and issue electronic money.

The acceptance of deposits or customer funds from the public in some form is a pre-requisite for an institution to be considered as carrying on banking business or business of a financial nature. While intended, the definitions of 'banking business' and 'business of a financial nature' in sections 16(2) and 17(2) of the FIA respectively do not indicate with absolute clarity that only financial institutions which collect funds in the form of deposits from

[12] See section 16(2) of the FIA
[13] See section 17(2) of the FIA

the public for the purpose of investing in loans, investments and other credit exposures are subject to the licensing requirement in the FIA.

Over the years, there have been changes in the business model of several NFIs affiliated to commercial banks as financial groups sought to rationalize their operations to reduce operational expenses. Further, the legislation governing securities firms required the separation of the trust, custodial and asset management functions within a financial institution. Consequently, several NFIs affiliated with banks are no longer deposit taking financial institutions and may be conducting largely trust or asset management activities. The Guidelines for Collective Investment Schemes ("CISs") also mandates that custodians of CISs must be either a company licensed under the FIA or a person regulated as a bank or trust company under the laws of a foreign jurisdiction. Moreover, there are several provisions under the FIA and IA which require the use of a trustee that is a financial institution licensed by the Central Bank.

The lack of clarity on the regulatory perimeter of the FIA poses an administrative challenge to the Central Bank when dealing with applicants that have business models which include activities set out in the First Schedule to the FIA but do not involve the taking of deposits, with the exception of institutions wishing to act as trustee for a mutual fund, CIS, pension plan or saving plan.

In addition, sections 16(7) and 17(11) of the FIA prohibit persons from doing 'any aspect' of banking business or business of a financial nature respectively without a licence. This could possibly create some ambiguity on how the term 'aspect' is to be applied since the banking business and the business of a financial nature contain key elements which must all be met. This ambiguity has implications for entities, for example, which only do financing (for the products they sell) and do not accept deposits. In that case, sections 16(7) and 17(11) could be viewed as a prohibition, and the Central Bank ought to be requiring these entities to discontinue that line of business. This was not the intention of the Act and as such, the revised definition would not include such language.

The Central Bank, therefore, proposes to amend the definitions of 'banking business' and 'business of a financial nature', to clarify that deposit taking is an essential component, without which the entity would not be considered to be conducting such business. The Central Bank is also recommending the creation of a specific type of license for institutions wishing to act as trustee for mutual funds, CISs, pension plans and savings plans, which would not be required to accept deposits.

PROPOSALS:

In light of the foregoing, the following changes to the FIA are proposed:

A. Amend the definitions of "business of banking" and "business of a financial nature" in sections 16(2) and 17(2) of the FIA to clarify that the requirement for licensing applies where a company is receiving deposits from the public and investing the deposits into loans or other securities;

B. Amend section 17 to provide for two (2) types of business "business of a financial nature" and "business of a trust company";

C. Amend the First Schedule to streamline the business activities that may be conducted by non-bank financial institutions into the following four (4) classes:

   i. Finance Company;

   ii. Merchant Bank;

iii. Trust Company; and

iv. Electronic Money (E-Money) Issuer.

D. Amend section 23 of the FIA to:

i. make it mandatory for the Board of the Central Bank to revoke the licence of a company that has not been accepting deposits in Trinidad and Tobago within the period of twelve (12) months from the day on which the licence was issued or having accepted a deposit or deposits, has subsequently not done so for a period of more than six months;

ii. require that where such licensees that have not accepted deposits are given an option to apply for a new licence within six (6) months (transition period) following this amendment;

iii. require that the same provisions for applications for licences under sections 20 to 21 of the FIA should apply to applications made during the transition period, subject to nuances in the procedures; and

iv. require that upon making a decision for the revocation of a licence, the Board shall give such directions to the licensee as are necessary;

E. Amend section 29(1) of the FIA to refer to the additional provision for mandatory revocation of a licence in the amended section 23; and

F. Amend sections 16(7) and 17(11) to delete the words "any aspect of".

8.5 Restriction on Banks acting as agents of Insurers

A licensee shall not act as an agent of an insurer, as this is necessary to prevent tied selling, which may lead to anti-competitive practices and negatively affect consumers.

PROPOSAL:

A restriction on a licensee acting as an agent of the insurer should be clearly stated in the Act. This would also require a deletion of section 131 which refers to the date on which section 52(2)(b) comes into force.

8.6 Definition of Capital Base

The capital base is currently defined under section 2(1) of the FIA to include *paid up share capital, statutory reserve fund, share premium account, retained earnings, and any other capital account approved by the Central Bank.* Since the promulgation of the Financial Institutions (Capital Adequacy) Regulations in 2020, other capital accounts have been approved in the Regulatory Capital and are therefore to be included in the capital base as the definition provides for "any other capital account approved by the Central Bank". However, this has not always been reflected in practice in the submission of regulatory returns set against the capital base. In the Basel Capital Adequacy Framework, capital base refers to the total amount of regulatory capital that a bank is allowed to count towards meeting its minimum capital adequacy requirements.

PROPOSAL:

It is therefore proposed that the definition of capital base be amended to refer specifically to Regulatory Capital calculated in accordance with the Regulations or Bye-Laws made under the FIA. Accordingly, definitions for Regulations and Bye-Laws are proposed for inclusion in section 2(1) of the FIA. As a consequence of this amendment, minor amendments to sections 16(6) and 17(10) are proposed to include Regulations *or Bye-Laws made under this Act*.

8.7 PROHIBITION AGAINST "SHELL BANKS"

A *shell bank* refers to a financial institution that does not have a physical presence, meaningful staff or any real operations, including mind and management, within the jurisdiction in which it is located. A shell bank also is not affiliated with a regulated financial group that is subject to effective consolidated supervision.

Best practices for banking supervision, as well as anti-money laundering and counter-terrorist financing, prohibit countries from approving the establishment, or continued operations, of 'shell banks' because their business model impedes effective supervision. Shell banks are not currently licensed under the FIA, however, the FIA does not explicitly prohibit the licensing of or dealing with shell banks. As such, the Central Bank proposes that a clarifying prohibition be included in the law. Based on our research, there is precedence for this internationally (the United States of America, Hong Kong) as well as regionally (Jamaica).

PROPOSAL:

It is proposed that a definition of 'shell bank' be added in section 2(1) and a clarifying provision that explicitly prohibits dealings with and undertaking of business as a shell bank be included.

8.8 REQUIREMENT FOR BRANCHES AND REPRESENTATIVE OFFICES

8.8.1 Representative Offices

Currently, the Act requires approval for the establishment of a representative office by a foreign financial institution in Trinidad and Tobago as well as for the establishment by a licensed (domestic) institution within or outside of Trinidad and Tobago. Upon further considerate of these existing requirements, and pursuant to current provisions of the IA, it has become necessary to ensure that engaging in activities which constitute a "representative office" refer to the specified activities conducted by a licensee outside of Trinidad and Tobago or by a foreign financial institution within Trinidad and Tobago.

The definition of representative office in the Act currently sets out the activities as mainly promoting the services of the foreign financial institution, or licensed domestic institution, or an affiliate; acting as a liaison between clients of the relevant institution and other offices of that institution or its affiliates; carry on activities of a financial group.

We note that some banks have established representative offices as separate legal entities which is not consistent with the intent of the current wording of the FIA which defines a representative office as "*an office established*…". However, a representative office is intended to be a non-incorporated extension of a bank, with no separate legal personality and established solely to perform non-banking functions such as liaison and market development.

PROPOSALS:

The definition above will also be amended to:

A. Harmonise the definition of "representative office" in section 50(2) of the Act with the definition of the term in respect of a local insurer in section 4(1) of the IA;

B. Clarify that a representative office must **not** be a separate legal entity, cannot conduct core business activities (i.e. banking business or business of a financial nature), and must not be income generating;

C. Clearly define the activities of representative offices which will be to act strictly as a liaison between clients and other offices of the institution; conduct marketing and research activities; administrative and support activities. It will be clarified that no deposit taking, credit extension or transactional banking activities will be allowed at representative offices;

D. Include the words "or foreign financial institution" after the word "licensee" in section 50(9) for clarity;

E. Include a transition period of six (6) months to either wind down or restructure the operations of existing representative offices that do not currently meet this requirement; and

F. Include a provision that the Central Bank may issue Bye-Laws or guidelines for the operations of representative offices.

8.8.2 Timeline for notification related to branches and representative offices

Section 50(4) of the Act currently requires licensees to notify the Central Bank at least seven (7) days prior to establishing, acquiring, opening, closing or relocating a local branch or representative office.

This is not in alignment with the requirement in the section 7.5 of the Market Conduct Guideline, 2018, which requires at least thirty (30) days' notice of a closure or relocation of a branch and will be rectified by amending the Act to require thirty (30) days' notice as this is more reasonable and practical for the Central Bank operationally. Although approval is not required, historically the Central Bank has had instances where, because of the location, concerns were raised that needed to be addressed by the licensee prior to the establishment or opening of the branch or representative office.

PROPOSAL

All references to seven (7) days' notice in section 50 to be amended to thirty (30) days' notice.

8.9 CORRECTION OF CROSS-REFERENCING ERRORS IN THE FOURTH SCHEDULE

The Central Bank also identified several cross-referencing errors in the Fourth Schedule, where the incorrect provision is cited in the Schedule. As such, the following amendments are recommended to the first column in order to correct the citation of the section to which the admin fine is intended to apply:

- The reference to section 43(3) should be amended to 43(4);
- The reference to section 43(5) should be amended to 43(6);

- The reference to section 43(6) should be amended to 43(7); and
- The reference to section 43(8) should be amended to 43(9).

In conducting its review of the admin fines under the FIA and comparing the same with the IA 2018, the Central Bank also identified the following cross-referencing errors in Schedule 6 of the IA 2018, which should also be corrected:

- The reference to section 87(6) should be amended to 87(8); and
- The reference to section 89(4) should be amended to 89(4)(b).

8.10 Proposals Related to Enhancing Compliance Directions

Section 86(7)

The subsection currently allows for the Bank to consider representations submitted within the effective twenty (20) day period of an interim direction(s). However, this presumes that the institution submits its representations in a timely manner within that period and does not wait to the penultimate or last day of the interim direction, which would leave the Central Bank with little to no time to properly consider the representation and make a decision whether to continue, vary or revoke the direction.

Proposal:

In this regard, it is recommended that the subsection be amended to provide the Central Bank with a minimum of 10 business days to consider the institution's representations. Further, a consequential amendment should be made to section 155(8) of the IA to achieve harmonisation.

Section 87

Currently, section 87(a) contemplates prohibitory injunctive and other relief, to prohibit or prevent an activity or course of conduct. However, in order to remedy a breach of the FIA, the Bank may be required to direct a person to carry out an activity or undertake a certain course of conduct. This would require the Bank to seek a mandatory injunction.

Proposal:

Although mandatory injunctions are covered under the broad language of section 87(b), the Central Bank recommends that this type of order be expressly referenced in section 87 for clarity and the avoidance of doubt. Further, a consequential amendment should be made to section 156 of the IA to achieve harmonisation.

8.11 Clarifying the Treatment of Exempted Institutions

Section 121 of the Act sets out the institutions and types of business activities that are exempt from the provisions of the Act. The exemption in this section was intended to exempt the listed institutions from licensing and the consequent prudential and regulatory requirements applicable to a licensee. However, the exemption was never intended to disapply fit and proper

requirements to the exempted institutions where such institution have ownership interests in licensees and FHC. As worded, this blanket exemption would seemingly allow for shareholders of licensed entities that are exempted pursuant to this section and the Third Schedule to not be scrutinized by the Central Bank or be subject to the fit and proper requirements. To better reflect the intended scope of the exemption in the law, it is proposed that an exception be included to require exempted institutions to be subject to the requirements of Part VIII of the Act – Ownership of Licensees.

PROPOSAL:

A. The chapeau of section 121 (1) to read: Subject to section 123, there are exempt from the provisions of this Act, **"except for Part VII"**…

B. Amendments to Parts X, XIII as well as sections 117, 119, 120, 125 and 126 of the Act will also require relevant amendments to support the applicability of Part VIII above to the exempted institutions.

8:12 PROPOSALS RELATED TO ENHANCING MARKET CONDUCT

A significant aspect of the market conduct of licensees is the levying of fees and charges on customers for the products and services they provide. In November 2017, a Joint Select Committee on Finance and Legal Affairs ("JSC") conducted an inquiry into Commercial Banking fees in Trinidad and Tobago. The Committee's interest in the topic arose from poor public sentiment at the time as well as their own personal adverse experiences. At the conclusion of the enquiry, the JSC's recommendations included, *inter alia,* the following:

- ✓ *Expansion of the regulatory role of the CBTT to ensure that commercial banks establish and comply with an enhanced Code of Practice on consumer related matters including:*

  a. educating customers on bank fees and charges;

  b. promoting "fair and reasonable" charges for financial services and products;

  c. providing reasonable notice of bank fee adjustments;

  d. providing quality customer service and establishing effective mechanisms for attending to customer complaints;

- ✓ *The CBTT to publish comparative data on fees charged by banks in a sample of CARICOM countries; and*
- ✓ *The CBTT and Ministry of Finance should examine the feasibility of enacting legislation for the purpose of establishing standards and procedures in the provision of commercial banking services.*

To address certain recommendations emerging from the JSC inquiry, in 2018, the Central Bank issued its Market Conduct Guideline for Institutions Licensed under the Financial Institutions Act, 2008 ("Market Conduct Guideline"). The Market Conduct Guideline addressed, *inter alia*, the matters requested by the JSC listed as (a) to (d) above. The Central Bank also began publishing comparative data on fees and changes from Commercial Bank on its website.

Notwithstanding the above, issues have intermittently arisen regarding the increase of fees and charges in the banking industry and its impact more so on vulnerable customers and small and micro businesses. The Central Bank has considered the recommendations of the JSC, the current regulatory climate and demands on commercial banks to shore up their technology and cyber security as well as meet other legislative requirements and in seeking to balance the licensed entity's costs arising from these issues

with responsible conduct and passing on of costs to customers, the following amendments to the FIA are being proposed:

PROPOSAL:

A. Banks must have documented board approved policies guiding the levying and revision of fees and charges;
B. Banks must notify the Central Bank at least sixty (60) business days before any material increases/changes are made to their customer or account fees and charges and await the Bank's no-objection (see D below);
C. Submissions must be accompanied by information in relation to:
    a. the rationale for the proposed changes;
    b. impact of the increases/changes on customers and moreso, vulnerable persons and groups; and
    c. information on available options for persons in (b) above.
D. The Central Bank shall inform the licensee of its objection or no-objection within thirty(30) business days of the submission date;

In addition, the Central Bank will issue guidance in respect of this requirement setting out the particulars of submissions and the considerations that will be applied in granting a no-objection.

9. PROPOSALS RELATED TO HARMONISATION BETWEEN THE FIA AND IA

9.1 PROHIBITION ON THE LICENSING OF FOREIGN FINANCIAL INSTITUTIONS

A 'foreign financial institution' or a 'licensed foreign institution' is defined in section 2(1) of the FIA as a company which is not incorporated in Trinidad and Tobago, but authorised to carry on banking business or business of a financial nature in Trinidad and Tobago through licensed branches. In this regard, the FIA presently allows foreign financial institutions to carry on business through licensed branches, rather than requiring such institutions to establish local subsidiaries, which are generally subject to the same regulatory and supervisory requirements as a locally incorporated company. However, since a branch does not have the same legal, financial and governance characteristics as a separate company, it is common for jurisdictions that permit such branches to operate to impose such further conditions as are necessary to account for the unique situation. For example, the FIA requires that such a company appoint a person resident in Trinidad and Tobago to be its principal representative[14].

There are, however, risks that go along with the licensing of branches of foreign financial institutions. The branch is not a separate legal entity, which can raise issues such as the adequacy of capital ring-fencing, which is ambiguous under a principal-branch setup compared to a parent-subsidiary relationship, where there are two distinct legal persons with separate assets, liabilities and capital.

It should be noted that the former insurance regulatory regime allowed branches of foreign insurance companies, however, under the new regime under the IA 2018, registration of the branches of foreign insurance companies was prohibited and companies with branches were given a transition period to transfer the branch business into a locally incorporated company. In this regard, Central Bank is proposing to harmonize the regulatory position under the FIA with what already obtains under the IA. Moreover, there are currently no licensed branches of

[14] See section 18(2)(a) of the FIA.

foreign financial institutions, as such the proposed amendment would have no direct impact on the domestic industry and no transitionary period would be required for this change.

Notably, however, the retention of the definition for a 'foreign financial institution' in the FIA would still be applicable, since such institutions are permitted to establish representative offices in Trinidad and Tobago under section 50 and are otherwise mentioned in Part VIII of the Act regarding restructurings of related groups.[15]

PROPOSALS:

In light of the foregoing, it is proposed that the FIA should be amended by:

A. Removing the words "in Trinidad and Tobago" in the definition of "foreign financial institution" in section 2(1) of the Act and replacing them with the words "outside of Trinidad and Tobago" after the term "business of a financial nature";

B. Deleting the term "licensed domestic institution" in section 2(1) of the Act and replacing the word wherever it is used in the Act with the term 'licensee' or 'licensed institution' as the context requires;

C. Amending the definition of "licensee" or "licensed institution" in section 2(1) of the Act by deleting the words "a licensed domestic institution or a licensed foreign institution" and replacing them with the words "a local company that is duly licensed under this Act";

D. Deleting the definition of "licensed foreign financial institution" in section 2(1) of the Act in light of the proposed requirements for all licensees to be local companies;

E. Deleting the words "to section 18(2)" in paragraph (b) of the definition of "officer" and replacing them with the words "to section 50(7)";

F. Deleting section 18 regarding the application for a licence by foreign financial institutions in its entirety;

G. Amending the definition of "principal representative" to remove the reference to a 'licensed foreign financial institution' and replace it with a reference to a 'foreign financial institution';

H. Deleting the provisions in the Act that refer to section 18, are otherwise applicable to branch business, i.e., "licensed foreign financial institutions". This requires an amendment of sections 4, 16, 17,19, 20, 21, 22, 33, 36, 47, 50, 56, 57, 60, 62, 63, 67, 68, 77, 80, 81, 82, 83, 85, the Fourth and Sixth Schedule;

I. The definition of 'assigned capital' would no longer be relevant and should be deleted from section 2(1) of the Act;

J. The definition of 'large exposure' in section 2(1) should be amended by deletion of the words "or assigned capital";

K. Section 56(1) of the Act should be amended to remove the reference to the requirement for a licensed foreign institution to maintain a statutory reserve fund; and

[15] See sections 68(1)(a) and 70(3) of the Financial Institutions Act (FIA/Act)

L. Section 60(1) and the Fourth Schedule (*Administrative Fine and Criminal Penalty for a Contravention of Section 60(1)*) should be amended to delete the words "or assigned capital".[16]

9.2 Duties of Directors - Remuneration

Sections 35 of the FIA requires the directors of a licensee or FHC to notify the Inspector of any developments that pose material risks to the licensee or FHC. However, sections 67(5) and (6) of the IA go further and require:

> *"(5) The directors of an insurer or of a financial holding company to establish and maintain procedures for the determination of remuneration for themselves and officers of the insurer or financial holding company.*
>
> *(6) An insurer or financial holding company shall submit to its audit committee an annual report containing complete and accurate information regarding the total remuneration paid to directors and officers, within twenty business days after the end of its financial year and such report shall be made available for review by the Central Bank."*

Proposal:

It is recommended that Section 35 of the FIA be amended to harmonise with section 67(5) and (6) of the IA.

9.3 Internal Controls and Risk Management Systems

Section 40 of the FIA should be amended to align more closely with sections 72 and 73 of the IA. Section 40 of the FIA requires the board of directors of a licensee to establish and maintain adequate internal controls, safety and security measures and documented operational standards to deal with automatic payments and transfers, authentication of financial transactions and electronic messaging.

Section 72 of the IA requires:

> *"72. The board of directors of an insurer shall –*
>
> *establish, **document** and maintain adequate **risk management** and internal controls; and*
>
> ***appoint an internal auditor, who shall report to the audit committee**."*
>
> Section 73 of the IA requires:
>
> *"(1) **The board of directors of** an insurer **shall review annually the policies and documentation required under** sections 70,71, and 72(a).*
>
> ***(2) The board of directors shall provide to the Inspector –***
>
> ***(a)upon request, the policies and documentation required** under section 70, 71 and 72; and*

[16] In keeping with the above, the Central Bank will recommend amendments to the Central Bank (Supervisory Fees and Charges) Regulations, 2011 to the Minister of Finance.

(b) within sixty business days after the end of its financial year, the results of the compliance reviews referred to in subsection (1).”

PROPOSAL:

Section 40 of the FIA should be amended as appropriate to contain the provisions highlighted in bold above.

9.4 NEW OR MATERIALLY AMENDED PRODUCTS AND SERVICES

The process for approval of a new or materially amended product or service in section 51(2) and (3) appears unworkable, impractical and unclear in some instances.

Section 51(1) states that the Inspector should be notified regarding the product at least one (1) month before the launch. In accordance with section 51(2), the Inspector must acknowledge receipt of the notice and supporting documents within seven (7) days. However, the Inspector does this after the attached documents are reviewed and all further documents required from the licensee are received. The review and further submissions/resubmissions from the licensee could extend into periods covering well over one (1) month. As a consequence of this, there is uncertainty in the Act concerning the date on which the:

(a) Period of fourteen (14) days for the Inspector to object to the notification ends; and

(b) Licensee could proceed to issue the new or materially amended product/service, due to the Inspector’s non-objection.

Section 51 should be amended to clarify the process for the review and non-objection to new and materially different products or services.

PROPOSAL:

Section 51 should be amended and harmonized with section 164 of the IA, which clearly sets out the timeframe within which the Central Bank is to review and respond to an application to issue a new or materially different product or service.

The provision would read:

‘Where a licensee has submitted a request for approval of:

(a) a new product or service; or

(b) a product or service that is materially different from existing products and services offered by the licensee,

the product or service will be deemed to be approved sixty business days after the request and all of the required information is received by the Inspector, unless he informs the licensee otherwise.’

9.5 CHANGE IN SHAREHOLDING AND EFFECT ON PERMITS HELD UNDER SECTIONS 70, 71 AND 72

Under Part VIII “Ownership of Licensees”, persons are required to obtain permits from the Central Bank in relation to quantum of their shareholding in a licensee. The position is, however, somewhat unclear as to what should happen to a permit issued to one category of

shareholder when their shareholding changes. For example, where a person holding a significant shareholder permit increases their shareholding and as a result becomes a controlling shareholder, what happens to the significant shareholder permit?

This issue was addressed under section 55 of the IA, which provides for the revocation of permits. The Central Bank is of the view that the clarity that section 55 of the IA provides should be brought into the FIA to make clear that where a person's position changes in relation to their ownership interest in a licensee, they are to apply for and receive a new permit from the Central Bank and that the old permit would be revoked. Applying the provision to the aforementioned example, after obtaining the permission of the Central Bank to increase its shareholding in a licensee such as to move from being a significant shareholder to a controlling shareholder, then that person would be issued a controlling shareholder permit and the significant shareholder permit would be revoked.

PROPOSAL:

Based on the foregoing, the Central Bank recommends including a provision equivalent to section 55 of the IA in the FIA. The provision may be inserted as a new section 74A at the end of Part VIII.

9.6 COMPLIANCE DIRECTIONS HARMONISING PROVISIONS

Section 86(1)

The Compliance Directions ("CD") provisions under Section 155(1) of the IA applies to "any person" and not just to specified persons. This expands the powers of the Bank to enforce compliance with the IA and protect the interest of policyholders. It is thus proposed that section 86(1) of the FIA also be amended to reflect this position and thus the words "any person, including" be added to that section.

It is recommended that section 86(1) of the FIA be amended to include the words "any persons, including" before the words "a licensee or…" where the first appear.

SECTION 86(1)(A)

In relation to the concept of an *unsafe and unsound practice,* the FIA currently limits the concept to where the institution is conducting the business of banking. The activities of licensees under the FIA is restricted to the business of banking/business of a financial nature, with some exceptions. In this regard, not every activity a licensee conducts would fall within the definition of banking business/business of a financial nature. As such, the language in section 86(1)(a) may be unduly restrictive. Moreover, the equivalent provision in the IA is not so restrictively worded.

The Central Bank recommends that the words "in conducting the business of banking" should be removed from section 86(1)(a) of the FIA. This would allow for harmonisation with section 155(1)(a) of the IA.

SECTION 86(1A)

This provision relates to the Central Bank's role in ensuring that licensees comply with obligations under declared agreements. The provisions in the IA were updated and should be the same under the FIA.

In this regard, the Central Bank recommends harmonizing section 86(1A) with the equivalent provision in the IA, 155(1A).

SECTION 86(2)

The Central Bank recommends harmonizing section 86(2) with the equivalent provision under the IA (section 155(2)). In this regard, the word "shareholders" should be deleted from the section.

9.7 USE OF THE WORDS "COURT" AND "court" IN THE FIA

The IA makes references to the "High Court", whereas "Court" in section 2(1) of the FIA is defined as the High Court of Justice of Trinidad and Tobago. However, the term 'Court' is intended to be used to refer to other local courts and even foreign courts in the FIA which leads to ambiguity.

Section 33(1)(a) states that:

> *"A person who has been—*
>
> *(a) a director or officer of a company in the ten years immediately preceding a winding-up order being made by a Court or the date that the company has been placed in receivership; …"*

However, the intention is to also capture individuals from foreign jurisdictions who were directors or officers of companies in 10 years preceding a winding-up. As such, the word 'Court' (i.e., the High Court of Justice of Trinidad and Tobago) is inapplicable under that section.

Section 33(2)(a) prohibits a person from acting/continuing to act as a director or officer of a licensee or financial holding company where he/she has been convicted by a "Court" for certain offences. However, this section is intended to apply to convictions in any court, whether local or foreign.

PROPOSALS:

It is thus proposed that the FIA should be amended by:

A. Deleting the definition of "Court" in section 2(1) of the Act;

B. Inserting new definitions of 'court' and 'High Court' in section 2(1) of the Act;

C. Replacing the word "Court" in sections 33(1)(a) and (2)(a) of the Act with the word "court"; and

D. Reviewing the applicable provisions in the Act to delete the word "Court" wherever it may appear and replace it with the words "High Court" or "court" where the context fits.

9.8 Enhancement of the Inspector's Power Under the FIA To Harmonise with the Power Under the IA to Require Licensees to Hold Additional Capital and/or Liquidity

At present there are several provisions under the FIA which speak to the adequacy or sufficiency of capital and liquidity of licensees[17]. The Inspector currently has the power under sections 16(6) and 17(10) to require licensees to provide additional capital, but the Act does not extend the power expressly to liquidity.

Section 82(3) of the IA allows for the Inspector to direct an insurer to increase its capital or provide additional liquidity in such forms and amounts, based on the circumstances of the insurer or financial holding company. The language employed in the IA provides the Inspector with more flexible discretion regarding the forms of the additional capital or liquidity the institution is required to provide.

Section 83 also mandates compliance with such a direction from the Inspector and states that where an institution fails to comply with the direction it commits an offence.

PROPOSALS:

Based on the foregoing, the Central Bank recommends the following amendments:

A. Sections 16(6) and 17(10) be amended to harmonize with the language of section 82(3) of the IA; and

B. New subsections be included in sections 16 and 17 of the FIA similar to subsections (4) and (5) of section 82 of the IA.

9.9 Section 47 - Restriction on Distributions of Capital and Requirements to Maintain Assets

Section 47(1) of the FIA restricts the directors of a licensed domestic institution from declaring or proposing payment of a dividend to shareholders except where certain circumstances apply.

This proposed amendment seeks to amend section 47(1) to expand the restriction of payments of dividends to include other distributions of capital when the requirements under the Capital Adequacy Regulations are not satisfied. This will include the restrictions provided under Regulation 18 and Schedule 5 of the Financial Institution (Capital Adequacy) Regulations, 2020.

Additionally, the proposal seeks to widen the scope from licensees only to include financial holding companies as the Regulation 18 and Schedule 5 of the Regulations contemplate the application of the restriction to "financial organizations" which is not a term defined under the FIA, but includes both licensees and financial holding companies. Therefore, including "financial holding companies" would ensure that these entities are also captured for restrictions should the conditions not be satisfied.

This position will provide better harmonize with section 84 of the IA.

PROPOSALS:

[17] See sections 23(1)(h) and (8), 33(9)(b).

In light of the foregoing, it is proposed that the FIA be amended by:

A. Deleting the term "licensed domestic institution" in section 47(1) of the Act and replacing the word with "licensed institution";

B. Adding the words "or financial holding company" after the term "licensed institution", replacing the words "propose payment of" with "pay" and adding the words "or make any payment to purchase or redeem any shares issued by it or reduce its stated capital or reduce its capital through distributions," after the words "a dividend to shareholders" in section 47 (1);

C. Adding the words "Regulations, Bye-Laws or guidelines made thereunder" after the words "the requirements of this Act" and adding the words "capital and" after the words "relating to" in section 47(1)(e); and

D. Deleting and repealing section 47(2) as a licensed foreign institution shall no longer apply.

9.10 Notification of refusal of a licensing application

When the Central Bank refuses to grant an application for a licence under the FIA, the Bank is required to notify the applicant within fourteen (14) days from the date of its decision. Section 21(2) states:

"Where the decision is made to refuse a licence, the Central Bank shall give reasons for the said refusal to the applicant within fourteen days of the date of refusal."

The reference to a deadline of fourteen (14) days from the date of the decision for the Central Bank to give reasons for refusing a licence creates some ambiguity for applicants, as this date would be an internal date of the Bank. Added to this, the fourteen (14) days' period may not be reasonable in all circumstances depending on the complexity of the application.

This position under the FIA is in contrast to the equivalent provision at section 25(2) of the IA under which the Central Bank is required to notify an applicant of its refusal of registration of an insurer and reasons in writing, but not within a specified period. In that case, the Central Bank's timeline would be what is reasonable, depending on the specific circumstances.[18]

PROPOSAL:

In light of the foregoing, it is proposed that section 21(2) of the FIA should be harmonized with the equivalent provision in section 25(2) of the IA.

9.11 Revocation and Restriction of Licences

The grounds for revocation of a licence under the FIA includes a licensee's non-compliance with the Act or any other written law. Section 23(1)(b) of the FIA states that the Board of the Central Bank:

> *"... may revoke a licence where—...*
>
> *(b) the licensee has failed to comply with any obligation imposed on it by or under this Act or any other written law*."

[18] See section 23 of the Interpretation Act

This is in contrast with mirror provisions in section 34(1)(b) of the IA which permits the Board to revoke registration of an insurer if the insurer breaches that Act, Regulations under that Act, laws regulating financial services or laws design to protect against fraud[19].

It is necessary to ensure that the Board of the Central Bank will have grounds for revoking a licence where a licensee has failed to comply with Regulations made under the FIA, such as the Financial Institutions (Capital Adequacy) Regulations. Further, revocation of a licence based on non-compliance with any written law is considered to be too wide. This ground should be restricted to failure to comply with other pieces of legislation related to the regulation of financial services or to protect against fraud. This would ensure harmonisation of section 23(1)(b) of the FIA with section 34(1)(b) of the IA.

PROPOSAL:

In light of the foregoing, it is proposed that the FIA be amended in:

A. Section 23(1)(b) by deleting the words "or any other written law" after the word "Act" and replacing it with the words, "… *or Regulations made thereunder, or any other written law relating to the regulation of financial services or designed to protect against fraud*"; and

B. Section 34(1)(b) of the IA should be amended by inserting the words "by or" before the words "under this Act".

9.12 ENFORCEMENT ACTION AGAINST UNLICENSED PERSONS

Where the Central Bank believes that a person is conducting business of banking or business of a financial nature without a licence under the FIA, Sections 16(7) and 17(11) of the Act allows the Central Bank to require information from, inquire into and examine the affairs of, that person, and may take any action that the Central Bank sees fit to ensure that the person discontinues the activity in question, including, without limitation, the issue of a compliance direction to cease the activity under section 86.

Similar provisions exist in section 21(6) of the IA, but in addition to this, the Bank is allowed to obtain an *ex parte* order of the Court[20]. Obtaining such an order, there would be no uncertainty that the Central Bank is able to enter into the premises of the person suspect of conducting business without a licence in order to examine the books and records of the entity.

Moreover, pursuant to section 62(13) of the FIA, the Inspector, or a person authorised by the Central Bank, may enter into premises of any licensee/FHC to, *inter alia*, inspect books, records, accounts, etc. to determine whether there is compliance with the Act and Regulations and provides for an application for an *ex parte* order of the Court where the Bank is prevented from exercising its powers under section 62(13), required to exercise its powers outside of normal working hours; or urgently.

[19] 34. (1) The Board may revoke the registration of an insurer in respect of any or all classes and types of insurance business for which it is registered where— …
b) the insurer has failed to comply with any obligation imposed on it under this Act or its Regulations, or any other written law relating to the regulation of financial services or designed to protect against fraud;

[20] An ex parte order is a court order that a judge signs without a hearing.

The IA also makes similar provision for entering into the premises of registrants and also non-registrants suspected of carrying on business while unregistered. Since entering upon the premises of persons can potentially conflict with constitutional rights and ought to only be carried out by a financial regulator with sufficient checks and balances, it is recommended that a provision similar to section 21(6) & (7) of the IA be included in the FIA, to support the proper operationalization of sections 16(7) and 17(11).

PROPOSAL:

It is proposed that sections 16(7) and 17(11) of the FIA be amended to be harmonised with sections 21(6) and (7) of the IA by the inclusion of provisions for the Bank to obtain an *ex parte* order to treat with persons reasonably believed to be carrying on business of banking or business of a financial nature.

9.13 Definitions for 'Insurance Business' and 'Insurance Brokerage'

The FIA refers to the terms 'insurance business' and 'insurance brokerage' in the definitions of a 'financial group' and 'financial services'. However, the terms 'insurance business' and 'insurance brokerage' require clarification as there are no relevant definitions in the FIA.

PROPOSAL:

The terms "insurance business" and "business of an insurance brokerage" as defined in section 4(1) of the IA should be included in section 2(1) of the FIA and the definitions of 'financial group' and 'financial services' amended accordingly.

9.14 Reference to Insurance Companies in the FIA

The IA refers to "insurers" while the FIA refers to "insurance companies". The FIA should therefore be amended to ensure consistency. The reference to 'insurance company' in section 52 and other provisions of the FIA should be deleted and replaced with the term 'insurer' to align with the terminology in the IA.

PROPOSALS:

The Act should be amended as follows:

A. Sections 45(5), (6) and (7)(a), 52 and 70(4), the Third and Fourth Schedules and other applicable provisions should be amended by the replacement of the words "insurance company" or "insurance companies" with the word "insurer" or "insurers" as applicable;

B. Section 52(2)(b) should be deleted;

C. Section 41(1) should include a clear restriction on a licensee acting as agent of an insurer; and

D. Section 131 should be deleted.

9.15 Clarification of Business Relating to Pension Funds

The reference to 'business relating to pension funds' in the definition of 'financial services' in the FIA is ambiguous.

PROPOSAL

The reference should be deleted and replaced with the term "the management and administration of pension fund plans" in keeping with the nomenclature in the definition of financial services in the IA. This will serve to achieve harmonisation with the definition of 'financial services' in the IA.

9.16 Confidentiality Provisions in the FIA, IA and Central Bank Act ("CBA") and Disclosure Requirements

Public disclosure of suspension of a financial institution or the issuance of an Administrative Fine

Additionally, as an exception to the similar confidentiality requirements in the FIA, the IA requires the Central Bank to notify the public where an insurer or FHC is suspended[21], which was inserted as a transparency measure to help provide protection to policyholders and potential policyholders. However, there is no equivalent requirement in the FIA.

Consideration has also been given to the disclosure to the public when a Notice has been issued pursuant to section 122 of the Act – Fourth Schedule Administrative Fines. The Central Bank considers this necessary to improve market discipline and disclosures which parallels with the proposed introduction of the Pillar III Market Disclosure Guideline. Precedent has also been set by the Trinidad and Tobago Securities and Exchange Commission where the Commission issues a summary of Orders made for non-compliance with certain sections of the Securities Act 2012, as amended.

Protection of 'supervisory information'

Further, although the secrecy provisions in section 16 of the IA were modeled after those in section 8 of the FIA, the IA also protects what has been classified as "supervisory information" of the Central Bank.

The IA defines 'supervisory information' as[22]:

> *"... a record created or obtained by the Central Bank in connection with the performance of its responsibilities under this Act,* ***such as a record concerning supervision, registration or examination of a registrant or enforcement actions with respect to a registrant****, and includes any communication or correspondence between the registrant and the Central Bank arising from its performance of such responsibilities*".

Section 17 of the IA provides that:

[21] Section 16(10) of the IA
[22] Section 4(1) of the IA

> "*Supervisory information is the property of the Central Bank and may not be disclosed by a registrant or any other person to whom the information is made available without the prior written consent of the Central Bank*."

The section protects 'supervisory information', while allowing for sharing with those persons with whom a regulated entity may need to share such information. E.g. This provision, *inter alia*, allow registrants to share information with other parties during acquisitions/mergers and other commercial transactions.

Central Bank therefore recommends that section 8 of the FIA be harmonized with the IA to include a provision controlling the disclosure of supervisory information. However, there should be an express exception to the confidentiality provisions in both section 16(1) of the IA and section 8(1) of the FIA in order to resolve any conflict between those sections and the provisions covering supervisory information.

Immunity from suit

Section 8(9) of the FIA provides the Central Bank with immunity from suit where information is disclosed under that section.[23] However, equivalent provisions are absent from the IA. Section 56 of the CBA also contains secrecy provisions and are supplemental and subject to confidentiality provisions in the FIA and IA. Section 56(1) states:

"Except in so far as may be necessary for the due performance of its objects, ***and subject to section 8 of the Financial Institutions Act and section 16 of the Insurance Act****, every director, officer and employee of the Bank shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Bank,* ***any financial institution*** *or* ***person or entity registered under the Insurance Act or of any customers*** *thereof that may come to his knowledge in the course of his duties."*

There are, therefore, several gaps in section 56(1) of the CBA:

(a) Section 17 of the IA allows the Central Bank to give consents to registrants and other persons to share supervisory information (which, by definition in that Act, includes records created by the Central Bank concerning registrants and their affiliates[24] such as controlling shareholders/financial holding companies). As a consequence, section 17 of the IA is a deviation of confidentiality provisions in section 16 of the IA as well as the CBA. The exception created by section 17 of the IA should, therefore, be referenced in section 16 of the IA as well as section 56(1) of the CBA; and

[23] Section 8(9) of the FIA provides, "(9) No action shall lie against the Central Bank or any person acting under the direction of the Central Bank for the disclosure of information authorised under this section."

[24] An 'affiliate' in the FIA and IA is defined as:
"… in relation to a given company ("C"), means—
(a) a company which is or has at any relevant time been—
(i) a holding company of C;
(ii) a holding company of a holding company referred to in subparagraph (i);
(iii) a subsidiary of a holding company referred to in subparagraph (i) or (ii);
(iv) a subsidiary of C; or
(v) a subsidiary of a subsidiary referred to in subparagraph (iv); and
(b) where company C is a licensee, any company over which the licensee and any connected party or connected party group of the licensee has control.
In the IA, an affiliate is similarly defined.

(b) The Central Bank is required to keep information regarding a licensee, a person or entity registered under the IA or any of their customers confidential. However, there is no reference to a person who is not a customer who is dealing with a licensee or entity/person registered under the IA or section 56(1) of the CBA (*other person dealing with them*) who are equally entitled to confidentiality of their information.

The confidentiality of information currently applies to controlling shareholders and FHCs, but based on the definition of affiliates, would not apply to significant shareholders or acquirers under the IA or FIA. This should be clarified in the FIA and IA.

PROPOSALS:

In light of the foregoing, the FIA should be amended by:

A. Harmonising section 8 of the Act with section 16(10) of the IA by introducing provisions which require the Central Bank to notify the public where a licensee or financial holding company is suspended;

B. Including the words "Notwithstanding subsection (1)" at the start of the section 8(2A) and (2B) and the words "Notwithstanding subsection (1) or any written law," at the start of section 8(5);

C. Introducing provisions which define 'supervisory information' and allow the Central Bank to share supervisory information, notwithstanding the provisions of section 8(1);

D. Clarifying that the confidentiality provisions apply to controlling shareholders and financial holding companies (affiliates of the licensee) as well as acquirers and significant shareholders;

E. The Central Bank may notify the public where a Notice has been issued pursuant to Section 122 of the Act and the reasons therefor

In addition to this, section 16 of the IA should be harmonized with section 8 of the FIA by:

F. Introducing provisions on immunity of the Central Bank from suit where information is disclosed under that section;

G. Clarifying that the power of the Central Bank to provide supervisory information under section 17 is not circumscribed by section 16 of the Act; and

H. Clarifying that the confidentiality provisions apply to controlling shareholders and financial holding companies (affiliates of an insurer) as well as acquirers and significant shareholders.

Streamlining the confidentiality provisions in section 56(1) of the CBA in reference to the IA and FIA by amending the provisions in that section of the CBA to indicate that the confidentiality requirement:

I. Is also subject to the provisions on sharing of supervisory information; and

J. Also applies to persons dealing with a financial institution or entity or person registered under the IA/FIA who are not customers.

9.17 Delegation of Powers

Section 14 of the FIA permits the Central Bank, Governor and the Inspector to delegate their functions, powers and duties to officers, employees and agents. Also, section 15 of the Act empowers the Board of the Central Bank to delegate its functions to a committee.

However, it is not expressly clear that such delegations should be in writing as is the case under sections 13(1) and (5) of the IA.

PROPOSAL:

Sections 14 and 15 of the FIA should be harmonised with sections 13(1) and (5) of the IA to clarify that the delegations referred to under that section should be in writing.

9.18 Extending Administrative Fines to Cover Failure to File Financial Statements and Returns

When the FIA 2008 was first enacted, it introduced the concept of *Administrative Fines* ("admin fines"), to provide the Central Bank with an intermediate enforcement tool which would operate as an alternative to potentially lengthy and burdensome criminal prosecution through the Court system. Section 122 of the FIA provides that the Central Bank may issue to any person who, there is reasonable cause to believe, has committed an offence referred to in the Fourth Schedule, a Notice offering the person the opportunity to discharge any liability to conviction in respect of that offence by payment of the fixed penalty specified in the said Schedule.

The offences which may be discharged through the issuance and payment of an admin fine are those of strict liability in nature and which do not require proof of *mens rea*. Admin fines have proved to be an effective enforcement tool, as the civil penalty serves to encourage compliance and act as persuasive deterrent to breaches of the regulatory regime.

More recently, the administrative fine regime has been employed in the new legislation governing the insurance sector, which expanded the imposition of administrative fines to breaches of financial reporting requirements as well as failure to notify the Central Bank of changes to directorships of the supervised institutions.

With a view to fostering harmonization between the FIA and IA, as well as expanding the regulatory toolkit to ensure compliance with the FIA, the Central Bank recommends amending the Fourth Schedule of the FIA to add specific criminal penalties and administrative fines for breaches of section 21(8)(b) and 75(1). The provisions most closely resembling section 21(8)(b) and 75(1) of the FIA are sections 31 and 145(1) of the IA and it is recommended that similar criminal penalties and administrative fines be adopted.

Additionally, based on the recommendations under paragraph 15 above on BCP 12, an administrative fine should be included where a licensee fails to comply with the requirement to submit a recovery plan on time or at all.

9.19 Harmonisation of the Procedure for Making of Regulations and Issuing of Guidelines

Currently under the IA 2018, the process for the making of Regulations and the issuance of Guidelines requires consultation, with an exception where the making or amending of Regulations or Guidelines has become urgent, the Minister in the case of Regulations or the

Governor (after consultation with the Inspector) in the case of Guidelines may proceed to make the Regulations or issue the Guidelines.

Given the interplay between the banking and insurance sectors and the fact that Trinidad and Tobago has several mixed financial groups containing institutions licensed under the FIA and registered under the IA, the Central Bank is of the view that the provisions relating to the making of Regulations and the issuance of Guidelines ought to be harmonized between the two Acts.

PROPOSAL:

In light of the foregoing, the Central Bank proposes amending the FIA as follows:

A. Delete section 11 of the FIA and replace with provisions modelled after section 277 of the IA which states:

"(1) Before making or amending Regulations under this Act, the Minister may consult with the registrants and other persons who may be affected by the draft regulations or amendment.

(2) Before making or amending Guidelines referred to in section 278, the Central Bank shall issue draft Guidelines or draft amendments thereof and shall consult for a period not exceeding sixty business days with the registrants who may be affected by the draft Guidelines or amendments.

(3) Where, in the opinion of the Minister, any matter to be dealt with in Regulations has become urgent, the Minister may proceed to make such Regulations without the consultation referred to in subsection (1), and may subsequently consult within sixty business days with the registrants and other persons who may have been affected by the Regulation or amendment.

(4) Where, in the opinion of the Governor after consultation with the Inspector, any matter proposed to be dealt with in Guidelines or by an amendment thereof has become urgent, the Central Bank shall proceed to issue the Guidelines or amendments thereof without following the process referred to in subsection (2), and shall subsequently consult with the registrants who may have been affected by the Guidelines or amendments."

9.20 UNSATISFACTORY FINANCIAL STATEMENTS AND RETURNS

The Insurance Act 2018 introduced new provisions relating to the power of the Inspector to treat with the submission of financial statements and regulatory returns which were found to be unsatisfactory, incomplete, incorrect, misleading or otherwise found to not be compliant with the requirements of the IA.

PROPOSALS:

It is recommended that a similar provision also be included in the FIA, to allow the Inspector the express power to request explanations and where appropriate reject the financial statements or returns and give directions for the varying of the financial statements or returns or to issue compliance directions as they think necessary. This new provision, based on section 148 of the IA, may be inserted as a new section 77A in the FIA.

9.21 Administrative Fine Notice

The Central Bank has the discretion to issue a Notice to a person who, there is reasonable cause to believe, has committed an offence referred to in the Fourth Schedule, offering the person the opportunity to discharge any liability to conviction in respect of that offence by payment of the fixed penalty specified for the offence in the Fourth Schedule.

The form of the Notice offering is set out in the Financial Institutions Order (Order) made by the Minister under section 122(7)(a). To a large extent, the Order is redundant with section 122(5) which sets out the general matters to be included in the Notice. Additionally, both section 122 and the Order dictate that the administrative penalty should be paid to the Comptroller of Accounts, which makes the process cumbersome. Consequently, it is proposed that the administrative penalty should be paid into the Central Bank and the form of Notice should be solely contained in the FIA, as currently set out in section 260 of the IA. In this regard, it would also be necessary to repeal the Financial Institutions Order [161/2011]. Further, based on the foregoing recommendations section 122(7) would be rendered otiose and should therefore be deleted. The proposed amendment would harmonize the process for admin fines in the FIA with the IA.

PROPOSALS:

Based on the foregoing, the Central Bank recommends amending section 122 to harmonize the provision with section 260 of the IA, as follow:

A. Inserting a new subsection (4) "Where a person paid fixed penalty under subsection (1), but continues to commit the offence and is convicted under subsection (3), he is liable to the criminal penalty prescribed in the Fourth Schedule from the date after which he made the payment."

B. Renumbering subsection (4) as subsection (5) with the following amendments "Payment of a fixed penalty under this section shall be made to the Central Bank and in any criminal proceedings against an offender referred to in this section. A certificate that payment of the penalty was or was not made to the Central Bank by the specified date shall, if the certificate purports to be signed by an authorised officer of the Central Bank, be admissible as evidence of the facts stated therein."

C. Inserting a new subsection (6) "All monies received under this section shall be paid into the Central Bank and credited to the Consolidated Fund."

D. Deleting subsection (7); and

E. Renumbering current subsections (5) (6) as subsections (7) and (8).

9.22 Updating of the Third Schedule

Schedule 3 contains references to several institutions established by statute which are exempted from the provisions of the FIA in relation to those activities which they are allowed to conduct under their constituent Acts. One of those statutory entities was the Trinidad and Tobago Mortgage Finance Company Limited ("TTMF") formed pursuant to Chapter 32:01. The TTMF recently underwent a name change and is now referred to as the Trinidad and Tobago Mortgage Bank.

As such, it is recommended that the Third Schedule be amended to update the name of TTMF to Trinidad and Tobago Mortgage Bank.

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