



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

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**OPENING STATEMENT BY THE COMMISSIONER  
THE HON. SIR ANTHONY COLMAN**

This Enquiry was established on 17th November 2010 when His Excellency Professor George Maxwell Richards, President of the Republic of Trinidad and Tobago, acting on the advice of the Cabinet, appointed me as Commissioner pursuant to powers under section 2 of the Commissions of Enquiry Act.

As Commissioner I exercise powers under the Commissions of Enquiry Act. These powers include the power under section 11 to summon and to examine witnesses on oath, as well as to call for the production of documents. This section states that the Commissioner's powers with regard to those matters shall be the powers of a High Court Judge. Consistently with these powers, all persons summoned to attend and give evidence or to produce books plans or documents at any sitting of the commission shall be bound to obey the summons as fully as if they had been summoned to attend as witnesses who are bound to obey subpoenas issued from the High Court. Such witnesses will be entitled to the same expenses as if they had been summoned to attend a criminal trial in the High Court.

With regard to witnesses who are summoned to appear, I shall read out section 12(2) of the Commissions of Enquiry Act:

12 (2) Any person who refuses or fails, without sufficient cause, to attend at the time and place mentioned in the summons served on him, and any person who attends, but

leaves the commission without the permission of the commissioners, or refuses without sufficient cause to answer or to answer fully and satisfactorily to the best of his knowledge and belief, all questions put to him by or with the concurrence of the commissioners, or refuses or fails without sufficient cause to produce any books, plans or documents in his possession, or under his control, and mentioned or referred to in the summons served on him, and any person who at any sitting of the commission wilfully insults any commissioner or the secretary, or wilfully interrupts the proceedings of the commission, is liable on summary conviction to a fine of two thousand dollars.

However, all witnesses have the most important safeguard set out in section 12(3) of the Act:

12(3) No person giving evidence before the commission shall be compellable to criminate himself, and every such person shall, in respect of any evidence given by him before the commission, be entitled to all privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him before such Court.

Just as I have many of the powers of a High Court Judge, so will the proceedings of this Enquiry be conducted in public. There will be an Enquiry website on which all the documentation and daily proceedings will be posted. So anyone with internet access can view what is being said and read and what is going on day-by-day.

In addition I shall from time to time be making procedural directions setting out timetables for such matters as the production of submissions and documents and the calling of witnesses to give evidence. As well as appearing in the press these procedural directions will appear on the website.

Although public enquiries in many respects resemble proceedings in the High Court, there are important differences which I must explain.

Firstly, Terms of Reference. Whereas, in a civil trial the scope of the jurisdiction of the Judge is defined by his judicial duty to provide the parties with the answer to the issues in dispute between them as identified by the pleaded cases, in a public enquiry the Commissioner's



function is to investigate and find the facts relating to the matters referred to him in the Terms of Reference. This involves two main exercises. The first is finding the primary facts, that is the facts which explain the circumstances giving rise to the setting up of the Enquiry, for example paragraph 1(a), (b) and (c) of the Terms of Reference in this case:

(1) To enquire into:

- (a) the circumstances, factors, causes and reasons leading to the January 2009 intervention by the Government of the Republic of Trinidad and Tobago for the rehabilitation of Colonial Life Insurance Company (Trinidad) Limited, CLICO Investment Bank Limited, British American Insurance Company (Trinidad) Limited and Caribbean Money Market Brokers Limited (CMMB);
- (b) the legal and fiscal bases which informed the decision of the Government of the Republic of Trinidad and Tobago in January 2009 to inject capital or funding into Colonial Life Insurance Company (Trinidad) Limited, CLICO Investment Bank Limited, British American Insurance Company (Trinidad) Limited and Caribbean Money Market Brokers Limited (CMMB); how that injection of capital was structured; and what policies, procedures and processes were used in the distribution this capital or funding;
- (c) the causes, reasons and circumstances leading to the deterioration of the financial conditions of CL Financial Limited, Colonial Life Insurance Company (Trinidad) Limited, CLICO Investment Bank Limited, British American Insurance Company (Trinidad) Limited, Caribbean Money Market Brokers Limited (CMMB) and the Hindu Credit Union Co-Operative Society Limited (hereinafter referred to as "the said companies") which threatened the interest of depositors, investors, policyholders, creditors and shareholders of the said companies.

The second is evaluating those facts for two basic purposes:-

- (1) To ascertain who, if anyone, was at fault in relation to the causes of the circumstances in question, including whether, as it is put in paragraph 2 of the Terms of Reference: To make such findings, observations and recommendations arising out of its deliberations, as may be deemed appropriate, in relation to:
  - (a) whether there are any grounds for criminal and civil proceedings against any person or entity; whether criminal proceedings should therefore be recommended to the Director of Public Prosecutions for his consideration; and whether civil proceedings should be recommended to the Attorney General for his consideration;
  
- (2) To make recommendations aimed at preventing a recurrence of the circumstances of such governmental or professional defects as might have been found and which have led to the need to set up the Enquiry.

Secondly, whereas in civil litigation there is a claimant and a defendant who are the parties to the proceedings and who take part in the trial through their legal representatives, or in person, the position in an Enquiry is totally different. The Enquiry is an investigatory body whose functions are to accumulate all the evidence and make all the findings of fact relevant to the terms of Reference by developing procedures which enable it to do so. It has for this purpose its own counsel and attorney and its own administrative staff. Thus, although, like a judge, I shall be present at all the hearings, the investigative function in the course of the hearings will be carried out primarily by Counsel to the Enquiry, namely Peter Carter Q.C., a very experienced Silk who has appeared in many substantial high profile fraud trials in England, together with Gerald Ramdeen who is a very experienced junior counsel at the Trinidad Bar, both assisted by Celeste Jules, an experienced Trinidad Attorney, as instructing attorney.

However, all the ultimate findings of fact will be made by me personally.



That said, the whole administrative machinery of the Enquiry is under the management of the Secretary to the Tribunal, Judith Gonzalez, who, like me, holds her appointment from the President. She is assisted by clerical staff and it is through her that all communications to the Enquiry must pass. She is the medium of contact between the Enquiry and the parties as well as the witnesses and the media. Her responsibilities are many, diffuse and complex and her staff and office resources are limited so I will urge that all concerned show reasonable patience in their dealings with her and her staff.

Thirdly, because of their involvement in the events giving rise to the appointment of this Enquiry certain individuals and companies and professional firms, as well as public bodies, can be identified at an early stage as having documentation and information which are likely to be highly material to the findings and decisions which the Enquiry is required to arrive at. Many of these individuals, companies and bodies are unlikely to be subject to criticism for the part which they played in events, whereas others can be seen from the outset to be at least at risk of criticism, in some cases serious criticism. It is important that all such individuals, companies, firms and public bodies should be given the opportunity to participate fully in the proceedings of the Enquiry. By that I mean that they should be invited to become Parties to the Enquiry. A Party to the Enquiry will be entitled to appear at all hearings in person or by counsel or attorney to call its own witnesses, to cross-examine the witnesses of other parties, as well as witnesses called by Counsel for the Enquiry and to make oral opening submissions and oral closing submissions.

The decision as to whether any individual or entity is to be made a Party rests exclusively with me as Commissioner. Whereas I propose to adopt a reasonably liberal approach to the selection of Parties, everybody will appreciate that it is only those who have or are likely to have substantial material evidence to provide who will be given the standing of a party.

There may be many others who can provide evidence of a more limited scope but who are not major participants in events. If this evidence is likely to be helpful, they will be called as

witnesses by Counsel to the Enquiry. But I do want it to be very clearly understood that, whereas I do have the greatest sympathy for those thousands of people whose pensions and investments have been exposed to destruction, there can be no question of that fact alone entitling each of such people to be made parties or even to give evidence. That said, I am anxious that representative bodies which may have been formed to look after the interests of such investors should be made parties and should be represented either by a member so appointed or by counsel or attorney. I would therefore urge such bodies, if they exist, to make contact with the Secretary. While the Enquiry will make findings and recommendations, it cannot order compensation even if it finds that financial loss has been due to the fault of particular individuals, companies, firms or government bodies.

With regard to the selection of Parties, I intend that this process should be completed within the next week. It may be that, after the first round of selection, other individuals or entities or public bodies will be added later. However, those whom the Enquiry is minded to designate Parties at the outset have already been informed and, following their statement today, they will have an opportunity of addressing this Enquiry should they object to being given standing.

As to future timetabling and procedures to be followed, I have the following comments:

The main initial procedural directions for the timetabling of evidence will be given at the First Directions Hearing to be held on 6th and, if necessary, 7th April. On that occasion the Enquiry will indicate what witnesses it proposes to call at the First Evidence Hearing. The provisional dates for the First Evidence Hearing are from 9th to 20th May. Depending on how much time these witnesses are likely to take, the Enquiry will also take decisions at the First Directions Hearing as to the order in which the Parties will call their evidence at the First and later Evidence Hearings and make any oral opening submissions they consider necessary. The Enquiry will provide each Party in advance with witness statements covering the evidence to be given by each witness to be called by the Enquiry. Each Party will do likewise.

The Enquiry will decide whether the evidence in chief of any witness, whether called by the



Enquiry or by a Party, will be given orally or whether the witness's written statement will stand as his evidence in chief. All witnesses will give evidence under oath or affirmation.

On the day before any witness is to give evidence the Enquiry and any party wishing to cross-examine him or her must inform the Secretary and all other Parties how much time they estimate cross-examination to require. I shall then decide, having regard to that witness's witness statement whether the estimate is reasonable. To the extent that it exceeds what is reasonable, that party's time for cross-examination will be capped at the amount of time I consider to be reasonable.

I would add that, whereas I am determined that this Enquiry will be conducted with the utmost fairness to all concerned, I am equally determined that it will not suffer from public enquiry intermidability syndrome of the kind which notoriously affected a recent public judicial enquiry in the United Kingdom. I shall therefore demand that all cross-examination will be structured, focussed and kept strictly to the point. There are to be no wasted words. If there are, you can expect me to intervene and you will be facing the judicial equivalent of Holding and Garner at both ends on a very hard wicket.

May I now say a word about the order of batting as between Parties.

I have already said that the first witnesses will be those to be called by Counsel to the Enquiry. The next to be called will be the witnesses of those Parties as to whose conduct there is unlikely to be serious criticism. However, the last to be given the opportunity of adducing evidence will be those who are more at risk of significant criticism than others. Before evidence is adduced by those Parties, the Enquiry will provide them with a summary of those areas of evidence of particular relevance to potential criticism of such Party's conduct.

Lastly with regard to evidence, a word about independent expert evidence. This Enquiry is still in the process of considering whether it needs to call an independent expert witness on matters of accountancy and audit practice. At present the President has appointed to assist me, as a technical adviser on such matters, Mr. Ian Marshall who is a partner in the very well-known firm

of Chiltonington which has for as long as I can remember been a leading expert in the London insurance market in accountancy and audit investigations. Ian Marshall will be my in house adviser on the evidence. He will not be a witness. He will not be writing my report. A decision will be taken at an early stage as to whether the Enquiry should call another independent expert in these disciplines.

With regard to the First Directions Hearing to be held on 6th and 7th April, the Enquiry will by 23<sup>rd</sup> March, inform all Parties of the directions which it is considering making and all Parties who wish to put forward differing or additional directions must so inform all Parties by 30<sup>th</sup> March, giving their reasons.

Finally, I wish to assure everybody here that I regard it as a privilege to be appointed to conduct this Enquiry which relates to matters of essential importance to the well-being of so many of the people of Trinidad and that I shall do my best to do so as justly and conscientiously as I can.

11<sup>th</sup> March, 2011





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**The Honourable Sir Anthony Colman, Commissioner**

**Background Information**

Formerly Queen's Counsel in London specialising in Commercial litigation and arbitration, including insurance and banking disputes (1977 – 1992).

From 1992 to 2007: High Court Judge, in the Commercial Court, London, and Judge in charge of the Commercial Court.

From 2007: international commercial arbitrator in London and Singapore

From 2008: Judge and Deputy Chief Justice of the Court of the Dubai International Financial Centre, UAE.



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**RULES OF PROCEDURE  
STANDING**

1. Leading and junior Counsel to the Commission have been appointed by the Government of Trinidad and Tobago. They have standing throughout the Enquiry. They will assist the Commission by providing advice and submissions whenever they or the Commissioner consider it appropriate, and will examine witnesses called before the Commission. They will have regard to the Terms of Reference and to the public interest in assisting the Commission.
2. Person, groups of persons, bodies corporate or unincorporated who wish to participate in the Enquiry may seek standing before the Commission. The Commission may grant standing if it is satisfied that an applicant has a substantial and direct interest in the subject-matter of the Enquiry or that the applicant's participation in the Enquiry may be helpful to the Commission in fulfilling its mandate. Persons or bodies who are granted standing are referred to in these Rules as a "Parties".
3. The Commission may determine that a person, groups of persons, body corporate or unincorporated should be designated as a Party whether or not application has been made as in Rule 2.
4. Any person whose conduct is the subject of the Enquiry or is in any way implicated or concerned in the subject-matter of the Enquiry is entitled to be represented throughout the Enquiry by an Attorney-at-law. The Commission will identify those who fall into this category at the outset of the Enquiry and from time to time as is appropriate.
5. Subject to Rule 4 the Commission will determine on what terms a Party may participate in the Enquiry, and the nature and extent of such participation.
6. A party is entitled to be represented by an Attorney-at-law or may appear in person.
7. Any witness called to testify before the Commission who is not a Party and does not fall within Rule 4 may, with the leave of the Commission, be represented by an Attorney-at-law during the hearing of that witness' evidence before the Commission.