

**THE CHANGING FACE OF REGULATION  
IN THE EASTERN CARIBBEAN**

**PRESENTED BY**

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## Salutations

I want to first of all thank the IAC for inviting me to be a presenter at this 29<sup>th</sup> Annual Caribbean Insurance Conference. I think your Conference theme entitled “Weathering the Storm” is quite appropriate. There certainly is an economic and financial storm out there which we all need to weather, together.

As the Chairman said I am the Executive Director of the Grenada Authority for the Regulation of Financial Institutions (GARFIN) and I will speak more later as to exactly what GARFIN is and what it does

The topic I have been asked to speak on today is “The Changing Face of Regulation in the Eastern Caribbean”. The Eastern Caribbean here refers to the eight islands comprising the Organization of Eastern Caribbean States (OECS) or referred to also as the Eastern Caribbean Currency Union (ECCU). These islands are the following -

	Population
Grenada	100,000
St. Vincent	110,000
St. Lucia	160,000
Dominica	72,000
Antigua	69,000
St. Kitts / Nevis	40,000
Montserrat	5,000
Anguilla	14,000

The total population of the OECS is five hundred and seventy thousand with a total GDP of US\$4.5 billion. For comparison purposes the GDP of Barbados is US\$5 billion and Guyana is US\$3 billion. This gives you an idea of the size of the region as a whole.

These islands are referred to as a Currency Union because they have a single currency, the EC dollar and a single Central Bank, the Eastern Caribbean Central Bank (ECCB). They have a single Securities Exchange, the Eastern Caribbean Securities Exchange (ECSE) and they have a single securities Regulator the Eastern Caribbean Securities Regulatory Commission (ECSRC). They have a uniform Banking Act and a uniform Securities Act. The islands are also now moving towards an economic union. In other areas the islands have a single Court system for their Supreme Court and Court of Appeal. For those of you who might be familiar with CARICOM I would say that the development of the OECS as a regional body promoting regional cooperation and integration is far more advanced than Caricom is.

I am sure that some of you may be asking questions about the topic today.

Firstly, you may be asking - Why is regulation changing in this region? What was wrong with regulation before or was anything at all wrong with regulation before? And secondly you may also be asking - Was the financial sector (insurance sector) properly regulated before and is there really a need for change? Let me say that the face of regulation is definitely changing and I will start by examining what existed before this change.

Historically in each island the regulatory authority for the insurance sector was an official in the Ministry of Finance. In many cases it was the Permanent Secretary in the Ministry of Finance or another very senior officer assigned the responsibility of Supervisor of Insurance. In Grenada's case it was the Permanent Secretary Finance who was the Supervisor and he had under him an Insurance Officer. Supervision in Grenada and in all of these islands was largely constrained to administrative work including collection of fees, maintenance of statutory deposits, approval of new products, approval of licenses for new companies and intermediaries, and the annual registration of companies and intermediaries after fees were paid. In some countries consumer complaints were also handled by the insurance officials in the Ministry of Finance. The actual detailed supervision would have varied in each island with St. Lucia being the most developed.

St. Lucia was able to enforce compliance and had developed a significant relationship with the industry far better than any other island.

However, there was only annual reporting requirements by insurance companies in each island and detailed analysis was limited. There was no quarterly reporting in any island. Off-site supervision was therefore, as a whole, very limited and on-site supervision was non-existent again with the exception of St. Lucia and maybe Anguilla. Being a part of the central government bureaucracy the Insurance Department was subject to the public service culture and infrastructure, the public service rules and regulations and salary scales etc. This meant staff being subject to transfer and despite the availability of training courses regionally and internationally the actual implementation of such training would have been limited. Supervision was therefore at best patchy throughout with limited off-site and no on-site supervision in almost all islands. Supervision of the insurance sector was certainly not developing in keeping with modern and international best practices. Again I want to stress that each island was slightly different with St. Lucia being the most developed of all.

Few Supervisors issued any sort of Report and statistics on the industry as a whole would have been very limited.

The insurance legislation governing the industry in the islands dates back several years in some cases, as follows –

	<u>Insurance Act</u>	<u>Number of licensed companies</u>
Grenada	1973	26
St. Vincent	2003	23
St. Lucia	1995	26
Dominica	1974	20
Antigua	2009(1967)	25
St. Kitts / Nevis	2009	17
Montserrat	2001	7

Anguilla	2004	22
Total		166

As you can see the existing legislation dates back as much as thirty six years in the case of Grenada and thirty five years in the case of Dominica. And as you can see there are some one hundred and sixty six (166) licensed insurance companies in the Eastern Caribbean.

This is a staggering number of companies for a region with a total population of under six hundred thousand and a staggering number for each island individually. As a matter of interest Jamaica has seventeen insurance companies with a population of 2.6 million. Every island in the OECS except Montserrat and St. Kitts/Nevis have more insurance companies than Jamaica. St. Kitts has the same number as Jamaica.

In summarizing the existing status, what we see therefore is a large number of companies operating in a very small region, small individual jurisdictions, outdated legislation and a poorly developed overall regulatory framework. Is it any wonder then that the CLICO and British American problems are having a more significant impact on the Eastern Caribbean than any of the other jurisdictions affected.

The situation noted here for insurance supervision would have applied also for the rest of the non-bank financial sector in the OECS. I am referring here to credit unions which were supervised by a Registrar of Cooperatives in the Ministry or Department of Cooperatives. You also had a separate Registrar for the offshore sector and there were other entities in some islands such as the Registrar of Building Societies and the Registrar of Friendly Societies all being officers in the public service. And there was no supervision of money service businesses such as the money value transfer operators.

What we see therefore is a very fragmented approach to supervision of the non-bank financial sector with several regulators in each island covering a range of institutions and legislation. There was obviously an inconsistency in the quality of supervision of the sector throughout.

It is against this background that about seven years ago it was recognized by such agencies as the ECCB and the International Monetary Fund that overall regulation of the whole non-bank financial sector in the Eastern Caribbean region needed urgent attention. It would have been recognized that as the economies of these islands developed supervision of the financial sector was not keeping pace. Following a study by CARTAC in 2002 on a “Strategy for strengthening the supervision of the OECS financial institutions” the Monetary Council of the Central Bank took a decision to establish an integrated framework for supervising financial institutions in member countries. A consultant, Mr. Bernard La Corbiniere, was commissioned by CARTAC to conduct a study in Grenada and other OECS islands into the feasibility of establishing an integrated unit for the financial sector.

The outcome of all of this is now the first major change in regulation across the Eastern Caribbean region and this is the creation of new regulatory authorities in each island. These are called the single regulatory units or SRU’s and as the name suggests they consolidate under one single unit responsibility for regulating a number of financial entities. These regulatory units are responsible for the supervision and regulation of the non bank financial sector in each island. In the case of Grenada the single regulatory unit is called the Grenada Authority for the Regulation of Financial Institutions or GARFIN.

GARFIN is a statutory body, created by an Act of Parliament in 2006 which commenced operations in 2007. Grenada was the first island to establish this new regulatory unit. Anguilla did have a statutory body doing the same thing since 2002 and also Montserrat. Anguilla however is mainly an offshore jurisdiction. Of the other islands, however Grenada was the first and GARFIN is being used as the model for the rest of the region. GARFIN is responsible for the administration of twelve pieces of legislation namely the Insurance Act, the Cooperative Societies Act (as it relates to financial cooperatives or credit unions), the Money Services Act, the Building Societies Act, the Friendly Societies Act, the Grenada Development Bank Act and six pieces of offshore legislation. You will notice that commercial banks are not under GARFIN and neither is securities business

e.g. mutual funds, hedge funds etc. These fall under the Central Bank (ECCB) for the commercial banks and the Eastern Caribbean Securities Regulatory Commission (ECSRC) for securities business. GARFIN is therefore responsible for supervising all financial institutions, both onshore and offshore, except banks and securities business and this is the model being followed in the Eastern Caribbean generally.

GARFIN is accordingly the Supervisor of Insurance for insurance companies, the Registrar of Cooperatives for credit unions, the Authority under the Money Services Business Act and the Registrar or Authority for the other pieces of legislation for which it is responsible. All of these Acts have a Registrar or a Supervisor or an Authority as the official office responsible for its administration.

The powers of GARFIN and the other SRU's include specifically the right to examine the affairs and inspect any books, records document etc. of any licensee, to request any information from any licensee and to maintain a general view of the operations of all entities for which it is responsible. These powers are in addition to the powers granted in the specific legislation for each type of entity.

Now what does GARFIN and the SRUs bring to the table? What does it mean for supervision as a whole? The SRUs bring several things including the following –

- A greater consistency in supervision across the financial sector. You now have one regulator for the whole non-bank financial sector instead of four or five. Therefore the level of supervision is expected to be more consistent.
- An enhanced level of supervision. The SRUs are supposed to operate with a level of independence and are able to hire and train better staff. This should lead to more efficient and effective supervision.
- Economies of scale. One central regulator instead of several would lead to cost savings. If the Regulator is called upon to do more things than in the past then the total cost will obviously be higher. The offset, however, would hopefully be a better regulated and a safer financial sector.

- Improved confidence in the financial system in the islands. Lack of confidence could lead to a flight of capital and increased black market and other criminal activity. Improved confidence could lead to increased investment accordingly. I am sure that reputable investors and companies would prefer to operate in an efficiently regulated jurisdiction than one which is poorly regulated.
- The SRUs will also bring improved compliance with the FATF 40 + 9 Recommendations on anti-money laundering and terrorist financing.

We must note that some islands are still in the process of enacting necessary legislation and determining the exact legal status for their SRU's i.e. should it be a statutory body or a special department of central government? The former however is the preferred structure with an independent Board of Directors and managing its own finances.

Also we should note that many of the units are being called the Financial Services Commission (FSC) or the Financial Services Authority (FSA).

Yesterday we heard that one of the IAC's objectives is to achieve harmonized legislation. Well, the second major change across the region is the standardization of financial legislation throughout. This was actually a decision of the Monetary Council of the ECCB taken several years ago. As mentioned earlier the ECCU territories already have a uniform Banking Act as well as a uniform Securities Act and since 1994 we have had a uniform Companies Act. There are three further major pieces of legislation being enacted in the region right now and these are a new Uniform Insurance Act, a new Uniform Cooperative Societies Act and a new Uniform Money Services Business Act. All of these Acts are the initiative of, and coordinated by, the ECCB. All of these Acts have been around the region in draft form for several years – in the case of the Insurance Act at least since 2004.

St. Lucia passed a new Insurance Act back in 1995 which actually formed the basis for the Uniform Act now being formulated. St. Kitts has passed the new Act in 2009 and a concerted effort is being made to pass it in all islands before the end of 2009.

As we saw earlier the existing legislation in the region is in some cases thirty six years old. Certainly much has changed in insurance since then and a new and modern Act is timely.

As far as a comparison in Grenada goes the following are some of the major changes in the new legislation -

- It brings pension fund plans under the jurisdiction of the Supervisor of Insurance for the first time. Previously there was no supervision of pension funds in Grenada. These were only registered at the Inland Revenue Department for tax purposes.
- It requires the Supervisor to submit a Report to the Minister of Finance by June 30 each year. The previous Act was open ended as there was no specific time for the Supervisor to report to the Minister.
- It increases sanctions for non-compliance in all areas and introduces sanctions in several areas where there were none before. eg. the penalty for companies carrying on insurance business without a license will be EC\$100,000 up from EC\$30,000 previously. Failure to submit any document or information required by the Supervisor will now attract a penalty of EC\$200 per day.
- It provides for the specific establishment of Insurance Funds to be held in trust and penalties for non-compliance.
- Capital requirements will be increased and there will be a transition period of five years to meet the new requirements for local companies.
- Solvency requirements will also be increased.
- The Minister may by an order of the Court attach the bank deposits of an insurance company for failure to satisfy the statutory deposit requirements.
- It imposes fit and proper requirements for directors / management and shareholders and a transparent ownership structure must be evident.
- The Supervisor may require an appraisal of property.

- It makes provision for an Insurance Appeals Tribunal to consider appeals against decisions of the Supervisor.

Most of the above differences would also apply in the other islands ie. when comparing the existing legislation with the new legislation. Effective regulation calls for an effective legal framework and outdated legislation cannot be effective in today's world. The new legislation may not meet everyone's expectations but it significantly strengthens the capacity of the regulators to carry out their duty of ensuring that policyholders and investors are protected and that the insurance sector as a whole is well managed and good service is provided. The enactment of uniform legislation throughout the Eastern Caribbean should be welcome news for those companies which operate in more than one island. It should certainly make life easier in terms of understanding the legal requirements and complying with them. We want to take this opportunity to stress the need for insurance companies to familiarize themselves with the requirements of the new Insurance Act and all other relevant legislation and ensure full compliance accordingly.

When GARFIN became operational in 2007 and started talking about compliance, the lack of knowledge by some insurance companies of the requirements under the Insurance Act and other legislation, which they were supposed to be adhering to, was almost frightening. The new uniform Act therefore provides a good opportunity to ensure that all management, compliance officers and senior staff become familiar with its requirements at an early stage. Greater focus will be placed on compliance in the coming months in the region and in fact GARFIN is following a compliance or rules based approach to supervision, at this point in time, rather than a risk based approach.

Another major change being addressed in the region is the question of reporting by insurance companies. Presently, insurance companies report annually and that is in the form of audited financial statements mainly. Effective supervision cannot be attained by a regulator obtaining financial and other information once a year. Effective supervision requires more frequent reporting. It is normal in the financial sector, banks etc, that institutions report quarterly. To this end, in 2008 Grenada (GARFIN) introduced quarterly reporting for all insurance companies in keeping with international standards.

Obviously quarterly reports are unaudited and are management accounts only. The larger jurisdictions in the region all have quarterly reporting requirements and the SRU's in the OECS will all be introducing the same once they become operative. All large and I would say properly run financial institutions prepare accounts for their Boards of Directors at least on a quarterly basis and therefore this new requirement should not pose any problems for the industry.

Since the OECS SRU's will be operating under a uniform Insurance Act an exercise was conducted in 2008 to prepare a standardized reporting format. The existing forms from Grenada and St. Lucia along with those of other regional and international jurisdictions were reviewed and with the assistance of an IMF/CARTAC consultant a standard set of reporting forms were developed taking account of requirements under the law as well as international best practices. These should be rolled out in each jurisdiction once the new Act is passed. Here again this should be good news for regional companies since the format will be the same for each island.

Quarterly reporting allows the regulator to conduct an analysis of the operations of the company, from the information provided, on a more frequent basis. It allows him to conduct off-site supervision which, along with on-site supervision and sound legislation are some of the pillars of an effective regulatory framework. This is therefore another major change in supervision in the region ie. greater off-site supervision.

Apart from St. Lucia and Anguilla none of the other islands have conducted on-site supervision (except maybe for anti-money laundering purposes). Grenada will be commencing on-site supervision later in this month with assistance provided from another regulatory agency in the region. It is expected that once the SRUs become operational on-site supervision will also become a normal part of the Supervisor's activities in due course.

Unlike in the past, regulators in the Eastern Caribbean are now talking to each other much more frequently. We presently meet monthly by video or teleconference to discuss matters of mutual interest and to share ideas and experiences as well as to discuss developments in the industry and the region. We have established a special Regional Oversight Committee (ROC) to consider oversight matters from a regional perspective. This committee will consider such things as financial sector stability and regulatory gaps as well as legislative updates which may be necessary. The recent problems experienced across the region with CLICO / British American highlighted, very painfully, the need for increased levels of communication among regulators in order to be able to deal with cross border issues. It highlighted the need for greater cooperation among regulators and the need for the exchange of information. This level of greater cooperation among regulators will be for the benefit of all concerned and for the fulfillment of individual respective mandates. Consideration is being given to the signing of a Memorandum of Understanding among the regulatory authorities in each island to formalize this new spirit of cooperation and information exchange.

Furthermore, the Heads of Government in the wider region have mandated that the CLICO/BA issue must be handled on a regional basis given the nature and complexity of the Group structure of these companies and the fact that they operate across several jurisdictions. This has led to the formation of a wider CARICOM College of Regulators which is actually supposed to be meeting in Guyana today for the first time.

I must also mention that in Grenada, as a result of the formation of GARFIN, there is now enhanced communication with the industry as we have institutionalized semi-annual meetings with all companies as well as periodic meetings with the local Association as necessary.

Another area of insurance supervision undergoing change is a greater focus being placed on the area of anti-money laundering and combating the financing of terrorism or AML/CFT. As members of the Caribbean Financial Action Task Force (CFATF) we all

are subject to the FATF 40 + 9 Recommendations. All countries in the world are presently going through the FATF third round of mutual evaluations and being rated accordingly. The recent G20 summit in London placed much attention on the so called tax havens in the Caribbean and there are moves on to introduce another level of “blacklisting”. All of this places a burden on the financial sector of which insurance companies are an integral part. In fact insurance companies are designated as financial institutions under the money laundering (POCA & MLPA) legislation in each island as required internationally. They are therefore subject to all the requirements of this legislation and they would do well to ensure that they are familiar with the requirements as well as other Guidelines in force as greater attention will be placed here in the future.

Finally, we must note that it is not only in the Eastern Caribbean region is regulation changing. The financial crises in the US, which is now a global crisis, started in the non-banking financial sector. It started with sub prime mortgages in the mortgage lenders and the investment banks. Naturally regulation was called into question. The ACCA in a paper issued in October 2008 entitled “Climbing out of the Credit Crunch” examined five key areas which needed to change to avoid such future failures. These were corporate governance, remuneration and incentives, risk identification and management, accounting and financial reporting and regulation. The author of the Paper did not believe that inadequately implemented regulation was the main driver of the credit crunch but nonetheless he positioned that it must be a serious consideration.

While the Paper focused on the banking sector in the US there are two key sentences which I found to be very significant and these are ***“It is important that the public know what they are putting their money into.”*** and ***“Transparency is key”***. These are as important in insurance as in banking.

To summarize, the following are the main areas of the changing face of regulation in the Eastern Caribbean .

- (1) The formation of new single regulatory units
- (2) The enactment of new uniform legislation
- (3) The introduction of quarterly reporting requirements
- (4) Greater off-site and commencement of on-site supervision
- (5) Greater focus on compliance
- (6) Greater communication among regulators across the region
- (7) Greater focus on AML/CFT requirements

Regulators in all sectors worldwide and in the region are coming under increasing scrutiny as financial institutions fail in today's economic crises - in today's economic storms. It is therefore natural that authorities place focus on strengthening the supervisory framework. In addition to the above CARTAC has facilitated much training and development in the last few years for the staff of the single regulatory units. This has included courses in the area of basic insurance supervision and the IAIS Core Principles as well as reinsurance treaty analysis and pension supervision.

In conclusion, I must say that the Eastern Caribbean is not re-inventing the wheel. None of the above should be cause for concern for the well managed, compliant and forward thinking companies. The objective is simply to ensure the integrity of the financial system and the protection of investors and policyholders. The challenge for regulators across the Eastern Caribbean now is to make the above happen and happen effectively in accordance with international standards of best practice.

I thank you.