



**CAYMAN ISLANDS
LEGISLATIVE ASSEMBLY**

**OFFICIAL HANSARD REPORT
ELECTRONIC VERSION**

2016/17 SESSION

5 October 2016
*Second Sitting of the Second
Meeting*
(Pages 1-54)

**Hon. Juliana Y. O'Connor-Connolly, JP, MLA,
Speaker**

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PRESENT WERE:

SPEAKER

Hon Juliana Y O'Connor- Connolly, JP, MLA
Speaker of the Legislative Assembly

MINISTERS OF THE CABINET

Hon Alden McLaughlin, MBE, JP, MLA	<i>Premier</i> , Minister of Home Affairs, Health and Culture
Hon Moses I Kirkconnell, JP, MLA	<i>Deputy Premier</i> , Minister of District Administration, Tourism and Transport
Hon D Kurt Tibbetts, OBE, JP, MLA	Minister of Planning, Lands, Agriculture, Housing and Infrastructure
Hon Osbourne V Bodden, JP, MLA	Minister of Community Affairs, Youth and Sports
Hon Marco S Archer, JP, MLA	Minister of Finance and Economic Development
Hon G Wayne Panton, JP, MLA	Financial Services, Commerce and Environment
Hon Tara A Rivers, JP, MLA	Minister of Education, Employment and Gender Affairs

EX OFFICIO MEMBERS OF THE CABINET

Hon Stran Ashton Bodden	<i>Temporary Deputy Governor</i> , ex officio Member responsible for the Civil Service
Hon Samuel Bulgin, QC, JP	Attorney General, ex officio Member responsible for Legal Affairs

ELECTED MEMBERS

GOVERNMENT BACKBENCHERS

Mr Roy McTaggart, MLA	Second Elected Member for George Town
Mr Joseph X Hew, MLA	Sixth Elected Member for George Town

OPPOSITION MEMBERS

Hon. W. McKeeva Bush, OBE, JP, MLA	<i>Leader of the Opposition</i> , First Elected Member for West Bay
Mr Bernie A Bush, MLA	<i>Deputy Leader of the Opposition</i> , Third Elected Member for West Bay
Capt A Eugene Ebanks, JP, MLA	Fourth Elected Member for West Bay

INDEPENDENT MEMBERS

Mr Anthony S Eden, OBE, MLA	<i>Deputy Speaker</i> , First Elected Member for Bodden Town
Mr Winston C Connolly, Jr, MLA	Fifth Elected Member for George Town
Mr Alva H Suckoo, MLA	Fourth Elected Member for Bodden Town
Mr D Ezzard Miller, MLA	Elected Member for North Side
Mr V Arden McLean, JP, MLA	Elected Member for East End

OFFICIAL HANSARD REPORT
SECOND MEETING 2016/17 SESSION
WEDNESDAY
5 OCTOBER 2016
10:30 AM
Second Sitting

[Hon. Juliana Y. O'Connor-Connolly, Speaker, presiding]

The Speaker: Good morning.

I call on the Honourable Deputy Speaker to say prayers this morning.

PRAYERS

Hon. Anthony S. Eden, First Elected Member for Boddan Town: Let us pray.

Almighty God, from whom all wisdom and power are derived: We beseech Thee so to direct and prosper the deliberations of the Legislative Assembly now assembled, that all things may be ordered upon the best and surest foundations for the glory of Thy Name and for the safety, honour and welfare of the people of these Islands.

Bless our Sovereign Lady, Queen Elizabeth II; Philip, Duke of Edinburgh; Charles, Prince of Wales; and all the Royal Family. Give grace to all who exercise authority in our Commonwealth, that peace and happiness, truth and justice, religion and piety may be established among us. Especially we pray for the Governor of our Islands, the Premier, the Speaker of the Legislative Assembly, the Leader of the Opposition, Ministers of the Cabinet, ex-officio Members and Members of the Legislative Assembly, that we may be enabled faithfully to perform the responsible duties of our high office. All this we ask for Thy great Name's sake.

Let us say The Lord's Prayer together: *Our Father, who art in Heaven, Hallowed be Thy Name. Thy Kingdom come, Thy will be done on earth as it is in Heaven. Give us this day our daily bread, and forgive us our trespasses, as we forgive those who trespass against us. Lead us not into temptation but deliver us from evil. For Thine is the Kingdom, the power and the glory, forever and ever. Amen. And, as King David said, pray for peace in Jerusalem.*

The Lord bless us and keep us. The Lord make His face shine upon us and be gracious unto us. The Lord lift up the light of His countenance upon us and give us peace, now and always. Amen.

The Speaker: Please be seated.

The House is now resumed.

**ADMINISTRATION OF OATHS
OR AFFIRMATIONS**

The Speaker: There are no Oaths or Affirmations.

**READING BY THE HONOURABLE
SPEAKER OF MESSAGES
AND ANNOUNCEMENTS**

The Speaker: This morning, I wish to record grateful thanks and appreciation for the protection of the good Lord for sparing us from Hurricane Matthew. May we long remember it is the God of the land whom we serve, who has established these Islands, despite other competing currents.

PRESENTATION OF PETITIONS

The Speaker: There are none.

**PRESENTATION OF PAPERS
AND OF REPORTS**

**HEALTH INSURANCE (AMENDMENT) (NO. 2)
REGULATIONS 2016**

The Speaker: I recognise the Honourable Premier, Minister of Home Affairs, Health, and Culture, to lay a paper on the Health Insurance (Amendment) (No. 2) Regulations, 2016.

The Premier, Hon. Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, I beg to lay on the Table of this honourable House, the Health Insurance Law (2013 Revision), and the Health Insurance (Amendment) (No. 2) Regulations, 2016.

The Speaker: So ordered.

Does the Honourable Premier wish to speak thereto?

The Premier, Hon. Alden McLaughlin: No, Madam Speaker, not at this point. Thank you.

**IMMIGRATION (GRANT OF THE RIGHT
TO BE CAYMANIAN) ORDER, 2015**

The Speaker: I once again recognise the Honourable Premier.

The Premier, Hon. Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, I wish to lay on the Table of this honourable House, the Immigration (Grant of the Right to be Caymanian) Order, 2015, which relates to the grant of the right to be Caymanian to Mrs. Monique Hamaty-Simmonds and Mr. Fraser Roosevelt Gerard Wellon.

The Speaker: So ordered.

Does the Premier wish to expound thereon?

The Premier, Hon. Alden McLaughlin: Madam Speaker, there is a motion to follow when this will be spoken to. Essentially, these are two individuals who were recommended in accordance with the Immigration Law, and by the Immigration Board, or, I should say the Cayman Status and Permanent Residency Board, which were recommended to Cabinet as persons suitable to be granted Caymanian status and the Cabinet so did. And so, in accordance with the Law, based on orders being laid on the Table of the House, there is a motion to follow.

**REPORT OF THE STANDING BUSINESS
COMMITTEE – THRONE SPEECH AND
BUDGET ADDRESS – FIRST MEETING
OF THE 2016/2017 SESSION OF THE
LEGISLATIVE ASSEMBLY**

The Speaker: I recognise the Honourable Premier.

The Premier, Hon. Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, I beg to lay on the Table of this honourable House the Report of the Standing Business Committee of the Legislative Assembly with respect to the Throne Speech and Budget Address – First Meeting of the 2016/2017 Session of the Legislative Assembly.

The Speaker: So ordered.

Does the Honourable Premier wish to speak to this Report?

The Premier, Hon. Alden McLaughlin: No, thank you, Madam Speaker.

**MINISTRY OF FINANCIAL SERVICES,
COMMERCE AND ENVIRONMENT-
CAYMAN ISLANDS GOVERNMENT
2014/2015 ANNUAL REPORT**

The Speaker: I recognise the Honourable Minister of Financial Services, Commerce and Environment.

Hon. G. Wayne Panton, Minister of Financial Services, Commerce and Environment: Madam Speaker, I beg to lay on the Table of this honourable House the Annual Report and Audited Financial Statements for the Ministry of Financial Services, Commerce and Environment, for the year ended 30 June 2015.

The Speaker: So ordered.

Does the Honourable Minister wish to speak to the report?

Hon. G. Wayne Panton: Thank you very much, Madam Speaker; just very briefly.

Madam Speaker, as a relatively new Minister, I am pleased to present this Annual Report for the Ministry of Financial Services, Commerce and Environment. It goes beyond the typical financial statements and provides detail into the activities and accomplishments of the Ministry for the 2014/15 Financial Year.

Madam Speaker, the work of the Ministry had a major impact on our economy and this report provides a summary of this impact. Our analysis shows that financial services alone contributed to the region of 52 per cent to our GDP and 16 per cent to our employment in 2014.

Madam Speaker, the work that goes into these high-level numbers are significant and beyond what is shown merely in the financial statements. For instance, the annual report lists the 22 laws and regulations that were dealt with over the course of the year. It outlines our international engagements that support the success and growth of our local industries, and describes the environmental conservation that support our other industries and way of life in these Islands.

Just to mention a few of them, with your permission, Madam Speaker, that were accomplished during the 2014/15 year. The commencement of the Exempted Limited Partnership Law in August 2014 had an incredibly positive impact on the number of partnerships registered during the year with growth on that register at over 27 per cent. Cayman joined more than 50 countries in signing the Multilateral Company Authority Agreement (MCAA), which was in October, that set the global standard for automatic exchange of information among tax authorities. This was a significant boost to our international reputation and has helped us to deal effectively with more recent issues of, for example, blacklisting in relation to certain European Member States.

Additionally, through direct engagements with the UK's Financial Conduct Authority, Her Majesty's Treasury and the Foreign and Commonwealth Office (FCO), we were successful in explaining the strengths of our jurisdiction and convincing the Financial Conduct Authority to withdraw its publication of its high-risk countries' list.

Further, Madam Speaker, the commencement of several major parts of the National Conservation Law and the appointment of the National Conservation Council were key milestones in the protection and conservation of our natural environment.

Madam Speaker, those are just a few of the key accomplishments and achievements. As I said, this annual report is more than just statistics, more than just financial data; it represents a shift to greater transparency and accountability in a form that is more accessible to the public. I would encourage the public to obtain a copy and read it. Certainly, it will be available on our government website.

I understand, Madam Speaker, other ministries will be following a similar approach in terms to the format, in producing annual reports. Therefore, I am pleased to be one of the first to be able to present this information for the public's benefit in this format.

In relation to the financial statements, Madam Speaker, I would indicate that the Auditor General issued an unqualified opinion in relation to the Ministry and its financial statements for the year ended 30 June 2015. There are several other specific details in relation to financial data which I could mention, but in the interest of moving along and getting our significant agenda dealt with today, I will leave that as is, Madam Speaker, and encourage reading of the annual report. Thank you.

**CIDB CAYMAN ISLANDS DEVELOPMENT BANK
ANNUAL REPORT FOR THE YEAR ENDED
JUNE 30, 2015**

The Speaker: I recognise the Minister of Financial Services.

Hon. G. Wayne Panton: Thank you, Madam Speaker.

I beg to lay on the Table of this honourable House the Annual Report and Financial Statements for the Cayman Islands Development Bank (CIDB), for the year ended 30 June 2015.

The Speaker: So ordered.

Does the Honourable Minister wish to speak further to the report?

Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, in presenting these financial statements, I first would like to confirm that these are audited statements with a clean opinion or unqualified opinion, as it is known in the accounting parlance. I think the relevant details have been mentioned previously in relation to the activities of the Cayman Islands Development Bank.

Just very briefly, Madam Speaker, they have, for that year there was a significant loss recorded. I think I have previously detailed to this honourable

House that a significant part of the reason for that were loans that were made, which effectively ended up with a default rate prior to this administration, in the region of about 70 per cent. The financial position since then, has significantly improved and I think, Madam Speaker, the bank has also refinanced a significant part of its existing debt at extremely favourable rates which worked out to an interest rate of about three months LIBOR plus the spread of 1.125 per cent. So, that was the negotiation of one of the lowest refinancing rates ever achieved by the bank, Madam Speaker.

The bank is in a particularly good position moving forward to be able to save on its cost because of the very favourable interest rate on the refinancing. And to fulfil its mandate to continue to provide loan financing to small and medium size entities, as well as to continue to fulfil the programme that was initiated in relation to the refinancing of these high interest rate loans that Caymanian civil servants, have, in particular, been exposed to.

Madam Speaker, those programmes are expected to generate an additional \$400,000 in interest income, and I expect to be providing a better report, or whoever it is, will be providing a better report next time, demonstrating significant improvement in the financial performance of the Cayman Islands Development Bank for the 2015/16-year period.

With that, Madam Speaker, I commend reading of that report to the honourable House and to Members of the public. Thank you.

**ANNUAL REPORT OF OFFICE OF THE
COMPLAINTS COMMISSIONER FOR THE
2014-2015 FINANCIAL YEAR**

The Speaker: I recognise the Elected Member for North Side.

Mr. D. Ezzard Miller, Member for North Side: thank you, Madam Speaker.

I beg to lay on the Table of this honourable House the Annual Report of the Office of the Complaints Commissioner for the 2015-2015 Financial Year.

The Speaker: So ordered.

Does the honourable Member wish to speak to it?

Mr. D. Ezzard Miller: Just briefly, Madam Speaker.

Madam Speaker, that will be the final report that my committee will be privileged to Table in this House, because of the merger of the Office of the Complaints Commissioner under the super Ombudsman. I have made it quite clear in public forums that I do not support the merger that is taking place. I believe the role, function, and achievements of the Complaints Commissioner are going to be diminished

in that role. My fears are that they will not be allowed to function as independent as they have been doing. I have reason to believe that my fears are coming to fruition even before the merger takes place.

The report will demonstrate that the Office of the Complaints Commissioner has done a lot of good work. The 2015-2016 Report will probably be ready in the next couple of months or weeks. I do not know what role because one of the unfortunate things in this is that the project team or whomever is orchestrating these various mergers, did not, at any time, see fit to discuss any of this with the committee that I chair, or to ask for our input. I am not aware of how this is going to be done in relation to the constitutional or legislative positions; whether there is going to be a legislative oversight committee of the super Ombudsman.

I can tell you, Madam Speaker, that I informed the Committee at its last meeting, that in protest to the merger and the undefined role that the Legislative Committee will have in the future, I was going to resign as Chairman, and, I believe, Madam Speaker, you will have in your possession that resignation which will be effective on the adjournment of today's Sitting.

There were other members of the Committee, who decided to resign as well, and Madam Speaker, I believe you will have those resignations in hand today as well.

Madam Speaker, there was much fanfare and expectations by the public as to the benefits of the Complaints Commissioner. I believe that the Office of the Complaints Commissioner and the role of the Legislative Oversight Committee have, in the past, delivered on those expectations.

Madam Speaker, I invite Members to read the report, consider the good work that the Complaints Commissioner has done.

I wish to thank the Government for giving me the opportunity to chair the committee. I wish to thank the committee members for their support at the committee meetings. I believe that we endeavoured to offer as much support as we could, and also for oversight on behalf of this Legislative Assembly into the activities of the Office of the Complaints Commissioner.

Madam Speaker, with those few words, I invite Members to read the report and maybe they could keep it for posterity because it could well be the last one that will be tabled in this House by that Office.

Thank you, Madam Speaker.

ACKNOWLEDGEMENT AND CONFIRMATION OF RESIGNATIONS FROM MEMBERS OF THE COMMITTEE FOR THE OFFICE OF THE COMPLAINTS COMMISSIONER

The Speaker: The Chair confirms that the Speaker, as of today, is in receipt of resignations from the following persons of the Committee: The honourable

Member for North Side, the two honourable Members for West Bay, Capt. Eugene Ebanks and Mr. Bernie Bush, and the honourable Member for Bodden Town, MLA Alva Suckoo, Jr. I have passed them to the Clerk for onward submission to the appropriate persons.

PRESENTATION OF PAPERS AND OF REPORTS

WATER AUTHORITY OF THE CAYMAN ISLANDS ANNUAL REPORT FOR THE 2014/2015 FINANCIAL YEAR

The Speaker: I recognise the Honourable Minister of Planning, Lands, Agriculture, Housing and Infrastructure.

Hon. D. Kurt Tibbetts, Minister of Planning, Lands, Agriculture, Housing and Infrastructure: Thank you.

Madam Speaker, I beg to lay on the Table of this honourable House the Annual Report for the 2014/15 Financial Year for the Water Authority for the Cayman Islands.

The Speaker: So ordered.

Does the Honourable Minister wish to speak further to the report?

Hon. D. Kurt Tibbetts: Madam Speaker, the report is self-explanatory, but just to quickly say to your good self and honourable Members, that the opinion of the independent auditors reads: "In our opinion the financial statements present fairly. In all material respects the financial position of the Water Authority as of June 30, 2015, and its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards." [UNVERIFIED QUOTE]

Thank you, Madam Speaker.

INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY FINANCIAL STATEMENTS 30 JUNE 2015

The Speaker: I recognise the Honourable Minister of Planning, Lands, Agriculture, Housing, and Infrastructure.

Hon. D. Kurt Tibbetts: Thank you.

Madam Speaker, I beg to lay on the Table of this honorable House the Financial Statements for the Year ending 30 June, 2015 of the Information and Communications Technology Authority (ICTA).

The Speaker: So ordered.

Does the—

Hon. D. Kurt Tibbetts: Madam—

The Speaker: Please proceed.

Hon. D. Kurt Tibbetts: Madam Speaker, once again, (sorry, I didn't mean to pre-empt you) just to quickly say that in the Auditor General's Report the opinion proffered reads: "In my opinion, these financial statements present fairly, in all material respects, the financial position of the Information and Communications Technology Authority as of June 30, 2015, and of its financial performance and its cash flows for the year then ended in accordance with International Financial Reporting Standards." [UNVERIFIED QUOTE]
Thank you, Madam Speaker.

**GOVERNMENT OF THE CAYMAN ISLANDS
OFFICE OF THE DIRECTOR OF PUBLIC
PROSECUTIONS FINANCIAL STATEMENTS
30 JUNE 2015**

The Speaker: I recognise the Honourable Attorney General, ex-officio Member responsible for Legal Affairs.

Hon. Samuel W. Bulgin, Attorney General: Thank you, Madam Speaker.

Madam Speaker, I seek leave of the House to lay on the Table, the Financial Statements for the period ending 30 June 2015 for the Report of the Director of Public Prosecutions.

The Speaker: So ordered.

Does the Honourable Attorney General wish to speak to thereto?

Hon. Samuel W. Bulgin, Attorney General: Madam Speaker, just to point out that the Auditor General, in his opinion, opined as follows: that these financial statements present fairly. In all material respects the financial position the Office of the Director of Public Prosecutions as of 30 June 2015, and of its financial performance and cash flows for the year then ended in accordance with International Public Sector Accounting Standards.

Thank you.

**GOVERNMENT OF THE CAYMAN ISLANDS –
PORTFOLIO OF LEGAL AFFAIRS FINANCIAL
STATEMENTS - 30 JUNE 2015**

The Speaker: **The Speaker:** I recognise the Honourable Attorney General.

Hon. Samuel W. Bulgin, Attorney General: Thank you, Madam Speaker.

Madam Speaker, I seek leave of the House to lay on the Table, the Financial Statements of the Port-

folio of Legal Affairs for the period ending 30 June 2015.

The Speaker: So ordered.

Does the Honourable Attorney General wish to expound on it?

Hon. Samuel W. Bulgin, Attorney General: Madam Speaker, just to point out also, that like the previous report, the Auditor General opined that the financial statements present fairly in all material respects, the financial position of the Portfolio of Legal Affairs for the period 30 June 2015, and its financial performance and cash flows for the year then ended in accordance with the International Public Sector Accounting Standards.

Thank you.

**THE DEVELOPMENT AND PLANNING
(AMENDMENT) REGULATIONS 2016**

~and~

**THE BUILDING CODE (AMENDMENT)
REGULATIONS, 2016**

The Speaker: I recognise the Minister of Planning.

Hon. D. Kurt Tibbetts: Madam Speaker, both numbers 11 and 12 on this morning's Order Paper, I would humbly ask for these two items to be deferred until Friday's Order Paper, simply because the speaking notes are not actually completed yet and there are some important items within the regulations, and I certainly don't want to just lay them on the Table without being able to speak and explain exactly what the content is.

The Speaker: The question is that items 11 and 12 as they appear on today's Order Paper be deferred until Friday, 7 October 2016.

All those in favour, please say Aye. Those against, No.

AYES.

Agreed: Items number 11 and 12 on today's Order Paper deferred until Friday's Sitting, 7 October 2016.

**CAYMAN ISLANDS STOCK EXCHANGE
ANNUAL REPORT FOR THE YEAR ENDED
30 JUNE 2015**

The Speaker: I recognise the Honourable Minister of Financial Services.

Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, I beg to lay on the Table of this honourable House the Annual Report and Financial Statements for the Cayman Islands Stock Exchange for the Year ended 30th June 2015.

The Speaker: So ordered.

Does the Honourable Minister wish to speak further to the report?

Hon. G. Wayne Panton: Madam Speaker, I think the report speaks for itself. There is a clean unqualified opinion in respect of the audited financials for the Cayman Islands Stock Exchange. I would commend the report for the reading of the honourable Members of this House and of the public. Thank you very much.

QUESTIONS TO HONOURABLE MINISTERS AND MEMBERS OF THE CABINET

QUESTION NO. 13

CAYMANIANS OBTAINING A TOUR BUS AND A WATER SPORTS PERMIT UNDER THE PUBLIC TRANSPORT LICENSING REGIME

The Speaker: I recognise the Honourable Member for the District of East End.

Mr. V. Arden McLean, Member for East End: Thank you, Madam Speaker.

Question No. 13 asked in my name is to the Honourable Minister of Tourism: Can the Honourable Minister say whether Caymanians can obtain a tour bus and a water sports permit under the Public Transport Licensing regime?

Suspension of Standing Order 23(7) and (8)

The Speaker: I recognise the Honourable Premier to move the suspension of Standing Order 23(7) and (8), as we have reached the hour of 11:00 a.m., allowing question time to continue.

The Premier, Hon. Alden McLaughlin: Madam Speaker, I beg to move the suspension of Standing Order 23(7) and (8) in order that questions may be asked beyond the hour of 11:00 a.m.

The Speaker: The question is that Standing Order 23(7) and (8) be suspended to allow question time to go beyond the hour of 11:00 a.m.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: Standing Order 23(7) and (8) suspended.

The Speaker: I recognise the Honourable Deputy Premier.

The Deputy Premier, Hon. Moses I. Kirkconnell: Thank you, Madam Speaker.

Madam Speaker, the answer is: Yes, you are allowed to hold both the tour and water sports permit.

SUPPLEMENTARIES

The Speaker: I recognise the Member for East End for supplementaries.

Mr. V. Arden McLean: So, where is the answer? That is not what this answer says, Madam Speaker.

[Inaudible interjection]

Mr. V. Arden McLean: Madam Speaker, my answer says: Currently, local companies are not permitted to apply for and to operate a tour permit under the Public Transport regime.

[Inaudible interjection]

Mr. V. Arden McLean: Well, what is this one doing here?

[Inaudible interjection]

Mr. V. Arden McLean: Well, somebody needs to bring the right answer then.

I recognise, Madam Speaker, this is the one about the LCCL [Local Companies Control Law].

The Speaker: Mine also says number 13 but obviously there has been a scrivener's error which we will seek to correct, hopefully, momentarily.

[Inaudible interjection]

The Speaker: Serjeant, perhaps you can liaise with the Clerk so we can get the correct question to the Minister and the Member asking the question.

[Inaudible interjection]

The Speaker: Does that mean that there are no supplementaries?

Mr. V. Arden McLean: There are supplementaries, Madam Speaker, but because the answer is not here as per the procedure, I am just figuring that I can go ahead with supplementaries.

Madam Speaker, if that is so, that yes, Caymanians can do both, can the Minister explain the process that has to be undertaken to get both?

The Speaker: Honourable Minister.

The Deputy Premier, Hon. Moses I. Kirkconnell, Minister of District Administration, Tourism and Transport: Thank you for the supplementary question, and thank you, Madam Speaker.

I will do my best as the support staff are not here. The application would go to the Public Transport Board.

The Speaker: Are there any further supplementaries, Member for East End?

Mr. V. Arden McLean: Madam Speaker, I guess that would be the obvious answer but not the explanation.

[Laughter]

Mr. V. Arden McLean: It must go to the Transport Board, Madam Speaker. A little levity is good sometimes.

What I am trying to determine, Madam Speaker, is . . . and just let me explain. I beg your indulgence, Madam Speaker. This started with a constituent of mine, who wanted to develop a little business of going to the North Sound with the boat from the passenger liners or whatever. He applied for that licence and then recognised that he needed to get those people to the location of where the tour on the water would start, and so, he also applied for a transport licence to be efficient; the taxi licence (so to speak). He was told that he could only have one and that they do not deal with the other one.

The question under the Public Transport regime of which I am asking is: What is the process for my constituent to get both, if both are allowed? There are big developers here that have both and he is being told that he cannot have both, and that the Public Service Board does not deal with both.

Hon. D. Kurt Tibbetts: Public Transport.

Mr. V. Arden McLean: Transport—sorry—does not deal with both.

The Speaker: Honourable Deputy Premier.

The Deputy Premier, Hon. Moses I. Kirkconnell: Madam Speaker, I am quite happy to give the Member for East End my commitment to look at this specific situation that he has just mentioned. It is my understanding that the Transport Board does deal with both.

The Speaker: Member for East End.

Mr. V. Arden McLean: Madam Speaker, I thank the Minister for giving a commitment for this specific issue, but I do not want to be back here next year or next month asking about another one. So, what I would like to see is the processes made public and whether or not there are any restrictions on the number that can be issued to Caymanians, because they are saying they have the responsibility to ensure that there is a balance, that not too many people get into it as compared with the number of tourists we are getting here. They are reading that under the Traffic Law.

We need to know why it is that there is a control on the number of Caymanians that can get into this tour business. And that is the gist of this as well. But we need it and not only for this specific case but for all and sundry to know what those numbers are. They cannot be making commitments to go and do a little business on their own initiative to live in their country and then they are told that they can't do that because there are too many in it now.

The Speaker: Honourable Deputy Premier.

The Deputy Premier, Hon. Moses I. Kirkconnell: Madam Speaker, thank you.

Again, I give my commitment to look at it and I certainly agree with what the Member has said, in that there must be a balance. I think he did a good job when he asked his last supplementary to explain and bring out, that because of the growing tourism product that we now have, there are opportunities for more licences to be issues, and for more Caymanians to be involved. And that is why I give you my commitment that we will specifically find out for this person who made the application and will ask for it in writing to give to you as to whatever process is now in place.

The Speaker: If there are no supplementaries we will move on to the next question.

QUESTION NO. 14

COMPANIES INCORPORATED UNDER THE LOCAL COMPANIES (CONTROL) LAW ALLOWED TO APPLY FOR AND OPERATE TOUR LICENSING UNDER THE PUBLIC TRANSPORT REGIME

The Speaker: I recognise the honourable Member for East End.

Mr. V. Arden McLean: Thank you, Madam Speaker.

Madam Speaker, Question No. 14 in my name is being asked of the same Minister of Tourism: Can the Honourable Member say whether companies registered/incorporated under the Local Companies (Control) Law (LCCL) are allowed to apply for and operate tour licensing under the public transport regime?

The Speaker: Honourable Deputy Premier.

The Deputy Premier, Hon. Moses I. Kirkconnell: Thank you, Madam Speaker, and I thank the Member for the question.

The answer: Currently local companies are not permitted to apply for and operate a tour permit under the public transport regime.

SUPPLEMENTARIES

The Speaker: Are there any supplementaries?
Member for East End.

Mr. V. Arden McLean: Thank you, Madam Speaker.

Madam Speaker, I do not have at hand a newspaper and I did not know the question was on the Order Paper this morning. Usually, we get them early, but we did not yesterday. I read recently where a dive company was applying for Caymanian participation to start-up a dive business; that is the 51 per cent under the LCCL. The Minister has now said that that is not allowed. Under what conditions are foreign control companies allowed to go into the dive industry?

The Speaker: Honourable Deputy Premier.

The Deputy Premier, Hon. Moses I. Kirkconnell: Madam Speaker, I think he just explained how a foreign company would go into a business. They would go into business as a dive operation with an LCCL. As far as the transportation, the permits are not issued in a company's name. Permits are issued in a person's name for transport.

The Speaker: Member for East End.

Mr. V. Arden McLean: Thank you, Madam Speaker.

Madam Speaker, I see where this is going and the next thing I am going to be told is that it needs to be directed to the Minister of Financial Services.

Part of those advertisements for the participation include provisions for dive and transport of the explanation for that participation that is sought, goes into transporting passengers from the dock. That is the origin of this question, Madam Speaker. I know it is the Minister of Financial Services on the other one, as to how we deal with that LCCL, but that is a fact that people are coming here learning to be dive masters and then opening their own business to compete against the Caymanians under the LCCL. But a part of it includes transportation, so that is why I am asking that.

Can the Minister say whether individuals in that company would be applying to the transport board to have a licence in their own name to transport divers or clients or whatever the case may be?

The Speaker: Honourable Deputy Premier, I think you can respond to whether Members can, as opposed to whether Members will.

The Deputy Premier, Hon. Moses I. Kirkconnell: Thank you, Madam Speaker.

If you had an LCCL company that was operating as a dive company and they wanted to transport people from the hotel or from the cruise terminal, that licence would have to be issued in an individual's name. How that individual participated with that company, I would have no knowledge of that.

The Speaker: Honourable Member for East End, I will allow two more supplementaries.

Mr. V. Arden McLean: Thank you, Madam Speaker.

Madam Speaker, may I ask the Minister if he, as Minister, supports the provision of LCCL companies which require Caymanian participation? And we know most time they do not get the Caymanian participation. And I see it in the papers where they are talking \$400,000 and \$500,000 to start up a dive business; it nah so! Madam Speaker, the Minister and I know how much boats and those tanks cost.

Does the Minister support LCCLs getting into the dive business (this is tourism now) that he has constitutional responsibility for under the conditions I explained a while ago, where people come here and get established and then apply for LCCL? They are not Caymanian applying for LCCL.

Does the Minister support those companies pushing the small . . . well, getting (no, I cannot say that) . . . but getting permission to do work in the dive industry as dive operators?

The Speaker: Honourable Deputy Premier.

The Deputy Premier, Hon. Moses I. Kirkconnell: Thank you, Madam Speaker.

Madam Speaker, that question has gone all over the place. Let me categorically state that I do not support large companies coming and pushing Caymanians out, as was stated there. But I think that the way our industry has been set up with the LCCL licensing and law, my Ministry is responsible for Tourism and to grow tourism for the benefit of the Caymanian people and the country itself.

I believe that if the Member steps back and look at some of the important good work that we have done, we have proven that our message to this industry is that we want to create opportunity and empower Caymanians to be successful. The Hospitality School speaks to that. The scholarship programme speaks to that. So, the Member as I, are doing what we can to empower Caymanians in the tourism industry.

The Speaker: Member for East End.

Mr. V. Arden McLean: Madam Speaker, I laud my good friend for stating categorically that like me, he does not support companies (LCCLs). He said big companies but I take it that he meant LCCLs coming in here and doing that.

Will the Member give us a commitment that he will agitate his government to change some of the processes now-a-days that allow these LCCLs to get into that kind of industry which will allow his goals, ideals and dreams of Caymanians getting opportunities and open that door up for them?

The Speaker: Honourable Deputy Premier.

The Deputy Premier, Hon. Moses I. Kirkconnell: Madam Speaker, I think that exactly what he said, I tried to articulate in my last answer. If there is a specific example, I am happy to talk to him about that and look into it with him.

The Speaker: Next question.

QUESTION NO. 15

AMOUNT OF MONEY BEING PAID BY GOVERNMENT TO DART REALTY TO BUILD ADDITIONAL LANES BETWEEN BUTTERFIELD ROUNDABOUT AND NEW ROUNDABOUT ON ESTERLEY TIBBETTS HIGHWAY

The Speaker: Member for East End.

Mr. V. Arden McLean: Madam Speaker, Question No. 15 in my name is asked of the Minister of Planning, Lands, Agriculture, Housing, and Infrastructure: Can the Honourable Minister say, how much money will the Government be paying to Dart Realty to build the additional lanes between Butterfield roundabout and the new roundabout on Esterley Tibbetts Highway?

The Speaker: I recognise the Honourable Minister of Planning, Lands, Agriculture, Housing and Infrastructure.

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker.

Madam Speaker, the answer: The cost of construction to build the additional lanes between Butterfield roundabout and the new roundabout on Esterley Tibbetts Highway is US\$5.032 million. I should note that not only was this figure checked by the NRA for accuracy, but that it was lower than the NRA's in-house estimate.

The Speaker: Member for East End, do you have a supplementary?

SUPPLEMENTARIES

Mr. V. Arden McLean: Thank you, Madam Speaker.

Obviously, they have upgraded their estimates since I have left there. I guess time has moved on and inflation has caused that increase too.

Madam Speaker, why was NRA not used to build this stretch of road?

The Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: Madam Speaker, I am happy that without going on my own volition to answer this question, I have this opportunity to answer it now because I can remember when my good friend, the Member for East End was on the radio and was telling the radio audience to ask me the same question. So, I can now answer it.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: That's fair enough. So now I am just answering it.

Madam Speaker, the NRA based on Planning for the Esterley Tibbetts Highway simply does not have the capacity to work on both roads at the same time. The Government, as a matter of policy, did not want for the Dart Group to finish their section of the road and still leave from the new roundabout where they will stop, up to the A.L. Thompson roundabout, to leave that section with just one lane each, because it would defeat the whole purpose of having all the rest way down, two lanes both sides and then having a bottleneck there. So, that is when, in speaking with the NRA and looking at continuity, we ended up where we are now.

Madam Speaker, let me just say, we would have preferred for the NRA to be building this, but the NRA themselves will tell anyone, as they told us, that if we tried to get them to do it, what was going to happen was that they were going to end up with a lot of temporary hires which would put them in the same position that it did before with increasing their numbers, and, after a certain period, have a lot of staff with nothing to do and not knowing what to do. And we know how that goes when it comes to government. So, that was a big part of it, and they certainly did not want to get there after getting where they are now, based on the numbers that they have with full employment. I hope that that is satisfactory.

The Speaker: Member for East End.

Mr. V. Arden McLean: Thank you, Madam Speaker.

That answer begs a question that I am not going to ask, as to whether NRA has any usefulness.

Oops, I did?

The Speaker: Member for East End that—

Mr. V. Arden McLean: Madam Speaker, I wonder if the Minister can tell us why the road has so many different engineering changes in it, or designs, such as, what appears to be an access under . . . across traffic, whether it is pedestrian or—

The Premier, Hon. Alden McLaughlin: Underpass.

Mr. V. Arden McLean: Since the Premier thinks that I don't know that it is an underpass, may I change it to suit his vocabulary? —underpass.

[Laughter]

The Premier, Hon. Alden McLaughlin: I am trying to be helpful.

Mr. V. Arden McLean: You are trying to be helpful? I know.

Madam Speaker, there is more than an underpass that appears to be going on there. There are other engineering designs that I have seen there that are not conducive with how other roads are being built.

The Speaker: Honourable Minister of Works.

Hon. D. Kurt Tibbetts: Madam Speaker, just to be specific regarding the underpass, my understanding is that that is simply to allow pedestrian traffic to go over to the other side of the road. I am going by memory now. We already have the National Gallery over that side. I am pretty sure that there is also going to be a rugby pitch. They are moving the rugby pitch from South Sound to that area. And I thought there was something else. I cannot remember right now. Anyway—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: I do not want to say what I do not know but I know there are some other activities which they plan and to construct and to have on that other side of the road. As I understood it, the whole intention of that underpass was so that there was no obstruction on the road by way of, instead of left-on, left-off and all of that kind of stuff, traffic on the Esterley Tibbetts Highway would not be impeded by any development on that other side. That is my understanding.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: As I understand it, the underpass is pedestrian, but the purpose of it was so that there were no impediments to the two lanes both sides of Esterley Tibbetts Highway in that vicinity by way of needing any access. As I understand it, they would provide the parking on the other side of the

road for those going there and don't have access elsewhere, so that no access was needed to be provided from the Esterley Tibbetts Highway itself, to these other activities.

The Speaker: Member for East End.

Mr. V. Arden McLean: Madam Speaker, I am not going to go into more of that because I still await a response on the engineering reason for the bridge along West Bay, which was two years ago.

Madam Speaker, I wonder if the Minister can tell us why the new roundabout location (and this is the other engineering part of it) was changed compared with the original plans which were for it to go right down the middle between the dump and the other properties there.

Hon. D. Kurt Tibbetts: The roundabout?

Mr. V. Arden McLean: The roundabout, Madam Speaker, and the airport connector which was designed to go on the boundaries of all the properties through there. Now it has been shifted back to the middle of, I think, Dart Realty land which is a large plot of land. But that would have been on one side and the dump, and the other properties would have been on the other side. I am wondering if he can tell us why it was changed.

The Speaker: Honourable Minister of Works.

Hon. D. Kurt Tibbetts: Madam Speaker, I would have to determine that. I do not know the answer to that. I certainly will give an undertaking to finding that out and to give the answer to that Member if he wants it in writing or if he wants it on the floor; it does not matter to me, but I do not know the answer to it myself.

The Speaker: Member for East End.

Mr. V. Arden McLean: Madam Speaker, I just want to thank him, but I would pray that he does not take as long as the one for the engineering reason for the bridge just below the new hotel, which is about two years now that I have waited for that.

The Speaker: I take it that you did not pray for the first one.

[Laughter]

The Speaker: Madam Clerk, if there are no more supplementaries...

QUESTION NO. 16**IMPLEMENTATION OF
SUSTAINABLE DEVELOPMENT GOALS (“SDG”)
RELATIVE TO ENERGY AND SUSTAINABILITY
IN THE CAYMAN ISLANDS BY GOVERNMENT**

The Speaker: I recognise the Third Elected Member for the District of West Bay.

Mr. Bernie A. Bush, Third Elected Member for West Bay: Madam Speaker, what is the Government doing to implement the sustainable Development Goals (“SDG”) relative to energy and sustainability in the Cayman Islands? And, is there an implementation strategy that the Government intends to pursue?

Thank you, Madam Speaker.

The Speaker: I recognise the Honourable Minister of Works.

Hon. D. Kurt Tibbetts: Madam Speaker, please allow me to provide some context to the Member’s question. These Sustainable Development Goals are often referred to as Global Goals that speak to the most recent attempt of the international community to set an agenda to tackle poverty, climate change and inequality for the entire world.

The global policy initiative began with the Millennium Development Goals which are the MDGs, which focus on human development in developing countries. These MDGs resulted from global policy debates which took place in 2000 and were agreed upon in 2001 by world leaders to address a plurality of social issues affecting the globe (that is, mainly tackling global poverty).

Arising from the MDGs are the Sustainable Development Goals (SDGs), its successor which was set by the UN General Assembly in 2015 as the MDGs term ended (that is post 2015).

So, the SDGs are goals for both the developed and developing countries and the high-level aim of is to achieve global economic development that is also sustainable while improving wider social inclusion.

In September 2015, 193 countries adopted the new global framework: “Transforming our World”, the 2030 agenda for global development. The agenda consists of 17 sustainable goals and 169 targets which commits all signatory countries to tackle the issues.

Numerous governments agreed to development policies to guide these efforts and to commit resources to buttress support for these goals by 2030. These goals were developed as part of the largest consultation effort ever launched by the UN (that is, 83 national door-to-door surveys and online surveys). And the result from the consultation were funnelled

into a UN working group which developed these goals by taking into consideration the most common concerns of the surveyed participants.

The Sustainable Development Goals came into force on January 1st of this year and countries are now expected to press on with implementing these goals. All countries are expected to work towards the SDGs. However, financing for achieving these goals is the main concern raised by most countries. The UN Committee stated that the public funding and aid would be central to supporting the implementation of these goals.

So, Madam Speaker, goal number 7 on the SDG agenda is affordable and clean energy to ensure access to affordable, reliable, sustainable and modern energy for all.

Currently, the Government is developing a framework for this SDG through its main policy document; that is, the National Energy Policy (NEP). This energy policy will be the preferred tool utilised to access or rather, Madam Speaker, to achieve affordable, reliable, sustainable energy for all citizens of the Cayman Islands.

As we meet here today, Madam Speaker, in this house, I wish to advise you and colleagues that a committee representative of a wide cross-section of stakeholders is now currently working on the draft NEP to make recommendations and develop the action plan for the Cayman Islands. As I understand it, one of the overarching goals of the NEP that is being developed is, and I quote: “The Cayman Islands will foster and promote the development and application of existing and new technologies practised in energy solutions and the development of a sustainable energy industry reflecting its commitment to the social economic wellbeing of its people and to its international and national obligations relating to climate change and environmental sustainability.

This goal captures the essence of the new global framework and expresses the Cayman Islands commitment to SDG number 7. Madam Speaker, the policy expresses the goal, but I am certain that the NEP implementation plan will provide the details of the how; that is, how we intend to achieve this goal. And I believe it is fair to say we will soon have in place a formal government position on energy and sustainable energy with directions to this key goal supported by this Government, as we are acutely aware that no modern economy can thrive in the future without a sustainable source of energy.

Madam Speaker, just to add, I do believe that it is the intention of this committee to have their work completed by December. Yes, I think I can safely say by December they will have their work completed.

I just want to remind Members also that there are initiatives, some achievements, and other proposed projects in relation to SDG No. 7. Of course, the Government continues to support renewables through its energy waiver or subsidy mechanism for

the consumer-owned renewable energy programme, more properly known as the CUC Core programme. And the SDG as it relates to energy, aims to address energy efficiency and renewable energy penetration globally.

In the Cayman Islands we have diversified our energy mixed with the recent addition of utility scale renewables.

Madam Speaker, as you and other Members may be aware, I am sure there is a 5 megawatts solar farm which was commissioned in Bodden Town in May of this year, and this project will produce electricity from Solar PV Panels to sell to the power company that will then distribute the clean energy to consumers. Also, the electricity regulator, the ERA [Electricity Regulatory Authority] will consider issuing an RFP for further utility scale solar, so there is progress towards these SDGs being made.

Additionally, as you may have noticed in the news recently, there is interest to develop a generation facility using the ocean. This particular technology is known as OTEC [Ocean Thermal Energy Conversion]. This is to say that the Government has been busy, as we are facilitators and play some role in most of these initiatives.

The NEP [National Energy Policy] will develop a long-term plan to guide the sector on the introduction of further renewable energy production across the Islands. And the NEP will also promote energy efficiency through programmes for homes and business that will help with the reduction of carbon emissions. The Government will consider additional energy conservation and environmental projects that will encourage its practice. For instance, in transportation, the civil service is now evaluating how it will transition its fleet to hybrid and electric vehicles. I have already instructed our fleet managers to undertake this assessment and awaiting their report.

The Government has also been in contact with the FCO [Foreign and Commonwealth Office] and some other routes to gather assistance for developing and raising our renewable energy profile. We have received technical assistance from the Economic Commission of Latin America and the Caribbean (ECLAC). The Government has also visited the state of Vermont in the United States of America to study their renewable energy development to understand what portion is adaptable or transferrable to the Cayman Islands. And we have recently signed up to the Carbon War Room Rocky Mountain Institute which is known to most as the Ten Islands Challenge.

So, Madam Speaker, energy is a dynamic subject, and right now we are doing a fair amount as the Government, to keep abreast of all these changes taking place.

Madam Speaker, just to add one more thing— I had a meeting with Mr. James Whittaker last week, who heads up the organisation known as CREA [Cayman Renewable Energy Association] and who is

also a stakeholder member of the National Energy Policy Committee, and there is a conference planned for, I think, April next year and I have given him commitment on behalf of the Ministry, that we certainly wish to play our part in participating in this conference. And he left that meeting, Madam Speaker, going to prepare a presentation to the caucus which will be forwarded to the Cabinet, and I am confident that it will be approved. Certainly, that will also assist in the awareness countrywide, once we have such a conference which might well end up being annual or perhaps bi-annual.

Finally, although it is not in the written answer, Madam Speaker, we are in the process of seeking from our good neighbours across the pond (that is, the Foreign and Commonwealth Office) to see if there are any agencies which may have any funds available for us to progress, not only the National Energy Policy, but all matters relating to sustainable energy which will serve the people of the Cayman Islands better.

Thank you.

The Speaker: Are there any supplementaries?

I recognise the Fifth Elected Member for the District of George Town followed by the Member for East End.

SUPPLEMENTARIES

Mr. Winston C. Connolly, Jr., Fifth Elected Member for George Town: Madam Speaker, thank you for allowing this supplementary question. I understand from that lengthy answer why the Minister would be a bit worn out, but I promise I won't ask one that will expect an answer that long.

How much interaction has there been with the Commonwealth Parliamentary Association (CPA) UK where three members have been approved by the CPA Executive here to attend several conferences that they put on, on this topic? They are a very valuable resource for information, introduction—

[Inaudible interjection]

Mr. Winston C. Connolly, Jr.: In the past in December 2015 and in March 2015, either two or three of us, East End, George Town have gone on—

Hon. D. Kurt Tibbetts: Interaction with whom?

Mr. Winston C. Connolly, Jr.: With the CPA, UK.

The Speaker: Commonwealth Parliamentary Association.

Mr. Winston C. Connolly, Jr.: Commonwealth Parliamentary Association, UK.

Hon. D. Kurt Tibbetts: Who are you asking that have any...

Mr. Winston C. Connolly, Jr.: You. I am asking if there has been any dialogue with them seeing that we have gone off and gotten and made some inroads with them.

The Speaker: Honourable Minister of Works.

Hon. D. Kurt Tibbetts: Forgive me, Madam Speaker, and if the Member will forgive me, I just wanted to make sure that I understood exactly what the Member was asking.

I will have to check with staff in the Ministry. I do not know the answer to that right off the bat. As the Member will appreciate, it is a bit difficult for me to keep my hands on everything all the time, but I certainly will find out. I did hear discussion about it. I did mention about ECLAC [Economic Commission for Latin America and the Caribbean]. I know there were some meetings recently and I am not so sure whether that had anything to do with the people you were asking about, but I certainly can find that out in short order and let you know. I just do not know it right off hand.

The Speaker: Member for East End.

Mr. V. Arden McLean: Madam Speaker, I was going to ask a question similar to that, and maybe I can give the Minister some clarity.

Madam Speaker, your good self insisted that we go to Trinidad in December 2015?

[Inaudible interjection]

Mr. V. Arden McLean: In 2015 the Member for George Town, the Deputy Leader of the Opposition and myself, and then two months later I was to chair a meeting in England and could not go and the Member for George Town chaired that meeting in England on my behalf.

I just this morning received an email from the UK CPA on the review of the International Parliamentary Project on Sustainable Energy and Development, in that I need to call them as there are questions that we need to fulfil. But just for the purposes of this exercise, it is an international . . . they did one in Asia, one in Europe, one in the Caribbean and Americas was the one in Trinidad. And then we all came together in England which I could not get to.

Madam Speaker, what is important is that this far exceeds this energy. I know the Member for West Bay asked about a specific one relative to energy and sustainability in the Cayman Islands, but there are several other things that it addresses like the Minister said in his preamble about tackling poverty and climate change and the likes. I do not know if the Minis-

ter knows, but who is dealing with the other parts of it? I think this is quite instructive, the answer, albeit long. I am wondering if the Minister could inform the House on how these other SDGs are going to be addressed because, Madam, Speaker, it is about education, about water, about telecoms; it is the whole breath of it. So, I am wondering if the Minister can tell us maybe who else is dealing with those.

Madam Speaker, there is an e-report on energy by the CPA UK as well and I do not know if your people are dealing with that and seeing, because it can enlighten them.

The Speaker: Honourable Minister.

Hon. D. Kurt Tibbetts: Madam Speaker, I certainly agree with the Member for East End. The only thing that I need to know because I really need some help here, like in attending these conferences when those of—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Okay. That is what I wanted to find out because those reports that would have been received, I would ask if they could be passed on to the Ministry because I have not seen them. So, perhaps, Madam Speaker, I could get some assistance from your good self with those reports. If those reports could be passed on to the Ministry, then I would be much better equipped, not only to answer the questions that are being asked now as supplementaries, but also to be able to look at those reports and perhaps at least pass them on for the immediate, pass what is relevant on to the National Energy Policy Committee so that—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: You have done that already? Okay, well, once I can get them in my hands, I will know what else to do and I can perhaps answer the other questions.

The Speaker: Just for clarity, Honourable Minister, the CPA local executive for the Cayman jurisdiction has an Executive Committee chaired by several Members from this Parliament. From time to time, we get various invitations to attend various conferences and the Committee Ex-co will send various members based on their interest and wanting to go. Members go and they are all supposed to file reports back at which time they are to be circulated by the Clerk to all Honourable Members of the House. So, if this is not happening, then it needs to be brought to my attention and/or the Clerk, so that all Members can be beneficiaries of this important information; not just for this conference but other important conferences that are attended.

The procedure to access them is through the local Ex-co if there is a particular expertise that is necessary. The Madam President of the Committee will then contact the CPA Headquarters and ask for facilitation as is required.

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker, and that is very instructive. And just to wind it up, I am happy to hear the Member for George Town say that he has already passed on the stuff to the Energy Policy Committee. So, that will assist. But certainly, I would like to see the rest of it to make sure of whatever is relevant.

To the questions of the Member for East End about the other SDGs and who else is dealing with them, I do not know the answers to those, but I can certainly find that out also, because—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: No, no, no, no, I appreciate exactly what the Member is saying.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: I respect that. What we need is to make sure of is that the left hand knows what the right hand is doing, and all the stuff is passed in the right direction, because the truth of the matter is, some countries will want to shy away from these matters because there is always a financial cost related to any goal that is being sought.

What I think we have a responsibility to do is to look at what they are. Look at our own situation and be able to . . . I do not want to say “cherry pick” because if there are 193 of them, then certainly, for a country of our size and everything else, it perhaps is not sensible for us to be taking all of them on board, because we can take on too much and achieve nothing. We need to prioritise those things, but what we really need to do is to be looking at them and I do take that on board and certainly I will follow up. Thank you.

The Speaker: Member for East End.

Madam Speaker, let me assure the Minister, that because we subscribe to these SDGs, we are a million miles ahead of who they were trying to target in these, such as free education, providing monies to people who are poor. We need to put them altogether so that we do not get classified in the other ones

Madam Speaker, my last thing is that I would ask the Minister, whenever these things are going on, especially about energy, which is very topical now, whilst it is the CPA Members who are invited to go to these things, and it just so happens that the three of us are over on this side, maybe we need to look at introducing and send someone from that side. And if not, then, from your Ministry who can come with one two of us. We could take them as secretaries to the

delegation and they could be a part of all the discussions, especially the little guy Miguel and those young kids in the Ministry. I think at least one of them should come on these trips.

[Inaudible interjections]

The Speaker: Next question.

Mr. Alva H. Suckoo, Jr., Fourth Elected Member for Bodden Town: Madam Speaker, I just have one.

The Speaker: Sorry, I did not see you. I beg your pardon.

The Fourth Elected Member for Bodden Town with a supplementary.

Mr. Alva H. Suckoo, Jr.: Thank you, Madam Speaker.

Just considering that Government is one of the country's largest consumers of energy, I just wondered if the Minister could state whether an energy audit has been commissioned for government properties, because I think that is an area where, obviously, government can reduce significantly on their operating cost in terms of energy consumption.

The Speaker: Honourable Minister of Works.

Hon. D. Kurt Tibbetts: Madam Speaker, sometimes the words that are used by others are not the same words used by me, but I do understand what the Member is asking, and Facilities Management is preparing a report for me on that matter.

One of the things that I have been trying to achieve for the last three years and a few months is to try to get the Government Administration Building to the point where all is cleared that we could look at the roof, because the roof is constructed to be able to accommodate solar power, but there has been some question in the air for probably . . . well, from the time the building was occupied about the roof and being able to sign off with the contractors. I am not casting aspersions on anyone or any entity, but that matter I hope will be resolved very shortly as that is the reason why we can't do anything on the roof because retention fees aren't all cleared up. There was some initial problems with the roof and they just haven't gotten that cleared away.

The Member for East End speaks a lot about molasses rolling up a hill. I say no more.

QUESTION NO. 17**CURRENT PLAN
FOR 100 PER CENT FIBRE OPTIC
CABLING FOR INTERNET AVAILABLE
TO ALL HOUSEHOLDS AND BUSINESSES
AND MANDATED ICT AUTHORITY TO
TELECOMMUNICATION PROVIDERS
WITH RESPECT THERETO**

The Speaker: I recognise the honourable Fifth Elected Member for the District of George Town.

Mr. Winston C. Connolly, Jr.: Thank you, Madam Speaker.

I rise to ask Question No. 17 in my name to the Honourable Minister of Planning, Lands, Agriculture, Housing and Infrastructure: Can the Honourable Minister advise what is the current plan for the Cayman Islands regarding when the island will have 100% fibre optic cabling for internet available to all households and businesses and what is mandated by Information Communication Technology Authority (ICTA) to telecommunications providers with respect thereto?

The Speaker: Honourable Minister for Works.

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker.

Madam Speaker, many of the Telecommunication companies in the Cayman Islands have ICT licences with specific requirements to build their networks to serve the entire community. They were granted those licences with specific obligation to provide one or more services via fibre to all customers. The intention of that obligation was to ensure that all citizens would benefit from the liberalized telecommunications marketplace, not just wealthy or densely populated areas.

Dates were included in the licences by which time the telecom licensees were supposed to have completed their fibre rollout to all districts. Each of these licensees has now failed to meet their respective deadlines. It has become clear to ICTA that licensees are not likely to voluntarily build out their networks to serve sparsely populated districts such as East End, North Side or the Sister Islands—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: I said, “such as”. I did not exclude but if the Member would like me to say “Bodden Town” I certainly will say Bodden Town.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: I know; Northward. I listen to my wife every day—

[Inaudible interjection and laughter]

Hon. D. Kurt Tibbetts:—despite the fact that they have all agreed to a licence obligation to do so.

In other countries the problem of serving sparsely populated areas with the equivalent services as you may find in larger towns and cities is sometimes resolved by creating a fund which is used to subsidise the cost of delivering services or to build completely new networks in those areas. Such a fund called the Universal Service Fund is provided for under the ICTA Law.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Rather than imposing fines on licensees, the Authority seeks a proactive solution. To that end, Madam Speaker, the Authority is in discussions with licensees to explore the concept of building a single fibre network for the eastern districts funded by a specific universal service fund.

The Speaker: The House will take a suspension for five minutes.

Proceedings suspended at 12:08 p.m.

Proceedings resumed at 12:21 p.m.

**QUESTIONS TO HONOURABLE
MINISTERS AND MEMBERS
OF THE CABINET**

The Speaker: Please be seated.

Honourable Minister of Works continuing with the resumption of the House.

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker.

To continue, rather than imposing fines on licensees, the Authority seeks a proactive solution. To that end, the Authority is in discussions with licensees to explore the concept of building a single fibre network for the eastern districts funded by a special universal service fund.

The network, the Eastern Districts Fibre Network (EDFN) would deliver services to residents and businesses from Bodden Town to East End and North Side. Residents in those areas would be able to choose their service provider and have these services delivered to their homes over fibre using EDFN without any additional costs and without having to wait for the provider to build their own network. I am told by the ICTA, Madam Speaker, that we are with expectation to complete the discussions with licensees by the end of the year and begin implementation the way forward in 2017.

Madam Speaker, let me just say that I do know that there are some disgruntled (I'm not talking about the customers now because we have many of

them) service providers themselves, because they believe they could do better and there is some ongoing dispute about costs and prices about datalink which is a subsidiary of CUC. They are the ones who deal with the service providers about space on the poles.

Madam Speaker, let me just say that while I have had discussions with the Managing Director of ICTA on this matter, I certainly believe that I need to have some more discussions to see if we can speed this process up, because even if we deal with a universal service fund, we still have to get to the point where datalink and the service providers are able to work together without a continuous battle about prices. Thank you.

The Speaker: The Third Elected Member for the District of West Bay.

Do you have a follow-up, Member for Bodden Town?

[Inaudible interjection]

The Speaker: Would you give way?

[Inaudible interjection]

The Speaker: I recognise the Fourth Elected Member for Bodden Town.

SUPPLEMENTARIES

Mr. Alva H. Suckoo, Jr.: Thank you, Madam Speaker.

As a follow-up, could the Minister state how the Universal Service Fund would be funded?

The Speaker: Honourable Minister responsible for Works.

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker.

Madam Speaker, that Universal Service Fund will be part and parcel once it is all agreed of the licence fees to be paid. If I may just make a comparison—the Environmental Protection Fund, a certain amount of fees collected goes into that fund. That is how it will be, and we certainly would then have to adjust the funds that are being collected from the licensees to accommodate that.

The Speaker: Member for Bodden Town, the Fourth Elected Member.

Mr. Alva H. Suckoo, Jr.: So just to clarify: it would be existing revenue that the ICTA earns and some of that would then be set aside to fund this. My concern is that if the licensees are expected to pay into this fund, are they going to pass that on to the consumers and in effect increase the cost of telecoms?

The Speaker: Honourable Minister of Works.

Hon. D. Kurt Tibbetts: Madam Speaker, we are very conscious of that, hence the reason why it is not quite cut and dried. And that is part of the discussions that are taking place to ensure to protect the consumers. The licences which these licensees have, by law, they are supposed to provide these services to the customers. When some of them say they simply cannot afford it, based on profitability of the companies, they bring their books to show. And then there is the other, more than one that say, it is not that; it is because we cannot get an agreement out of datalink.

We have, I will not say a real myriad of reasons being put forward by the service providers, but various reasons from various other entities, and that is part of the sit-down discussions which are now taking place to ensure that we can get a way forward. And while I have been given assurances that by January of 2017 there will be an agreed way forward, I certainly am going to be keeping tabs on it, not with the view to just jumping up and causing interventions because of my own anxieties, but if I have to I will. On occasion I have had to do so before. Remember the fines that we approved in this honourable House? Those fines can be levied. But as of right now we do not think that levying those fines for this specific reason is going to make it happen any faster. In fact, it might hold it up because of the expense that is involved in this. For other infractions, fines are worthwhile which they can fix quite easily. This is a pretty big-ticket item to get the whole thing done and get the fibre optic rolled out throughout those eastern districts and the Sister Islands.

So, it is not quite cut and dried, and I understand what the Member has asked because we don't just want to add another layer to what customers are going to have to pay. Okay?

The Speaker: The Third Elected Member for West Bay.

Mr. Bernie A. Bush: Madam Speaker, through you to the Minister: It says: "It has become clear to the Authority that licensees are not likely to voluntarily build out their network to serve sparsely populated districts, such as East End, North Side or the Sister Islands, despite the fact that they have all agreed to a licence obligation to do so." [UNVERIFIED QUOTE]

They are using sparsely populated areas as an excuse. Between Northwest Point Road and Watercourse Road there are over 1500 people. Why every time I approach these people, I see fibre optics on the road, and I call different people and they are all saying the same thing.

Hon. D. Kurt Tibbetts: Which is?

Mr. Bernie A. Bush: That they cannot do it. But it is in the contract, and these are not sparsely populated areas

Hon. D. Kurt Tibbetts: They are saying they cannot do it, why?

Mr. Bernie A. Bush: You just said because they are saying it is not ah—

Hon. D. Kurt Tibbetts: No, you are talking about that specific area.

Mr. Bernie A. Bush: Yeah. That is not sparsely populated, that is a highly populated area: Northwest Point Road, Watercourse Road. It is like over 1,500 people in those areas and the contract is there for them.

Hon. D. Kurt Tibbetts: I cannot get up while you are standing.

Mr. Bernie A. Bush: I know, sir.

The Speaker: Honourable Minister of Works.

Hon. D. Kurt Tibbetts: Thank you.

Madam Speaker, what the Member for West Bay is bringing to my attention is new to me. If the Member would simply pass it on to me in writing by way of email, I certainly give an undertaking to investigate it and to see what it is to make sure to not only provide an answer, but a solution to the matter.

The Speaker: I recognise the honourable Member for East End.

Mr. V. Arden McLean: Thank you, Madam Speaker.

Madam Speaker, I too question that phrase “sparsely developed” because I know we have always said that Bodden Town is the fastest growing district, and we don’t have it there. I live in Savannah and the Minister lives in Northward and the other Minister lives just up the road, and we pay for 10 gigabytes?

[Inaudible interjection]

Mr. V. Arden McLean: Ten gigabytes and we are getting 1.5?

[Inaudible interjection]

Mr. V. Arden McLean: And it is hardwired, Madam Speaker. So, I do not want to hear that phrase again about “sparsely developed”.

[Inaudible interjection]

Mr. V. Arden McLean: That is not for the Minister, Madam Speaker, I am just saying.

Madam Speaker, the Minister says that the arguments are between one datalink and the other suppliers. This ICTA Law anticipated that, and in so doing, it has made provisions for it.

Madam Speaker, with your indulgence, the creation of the Universal Fund which, Madam Speaker, was during your government administration, is the last resort. The absolute last resort! And I can understand that being inland in East End or something like that where there are only a few homes, but not on our major arterial because that is where the development is, Madam Speaker, as you well know.

Madam Speaker, it goes on and this law says:

“The Office shall include a condition, licence of each licensee that provides an ICT service or an ICT network specified under section 61, that each licensee shall contribute to the Universal Service Fund or any one or more sub-funds of the Universal Service Fund.”

So, it is them to do it. Government must not contribute anything to that.

Madam Speaker, under section 65—**“Any interconnection provided by a licensee under this section shall be provided at reasonable rates, terms and conditions which are not less favourable than those provided to-**

- (a) a non-affiliated supplier;**
- (b) any subsidiary or affiliate of the licensee; or**
- (c) any other part of the licensee’s own business.”**

The Speaker: Member, can you start turning it into a question soon?

Mr. V. Arden McLean: Thank you, Madam Speaker.

“Without prejudice to subsection (5), the Authority shall prescribe the cost and pricing standards and any other guidelines on which the reasonableness of the rates, terms and conditions of the interconnection will be determined.” Madam Speaker, what that says to us is that—

[Inaudible interjection]

Mr. V. Arden McLean: You stay out of this.

—it is the Authority’s responsibility to set those rates. So, I do not know what the Minister is talking about, the arguments between these licensees. The Authority must now step in, in the interest of this country and provide services. If they are not going to bill it out, the Authority must force whoever is in that area to provide the services that they have there in the interconnectivity.

The Speaker: Honourable Minister responsible for Works.

Hon. D. Kurt Tibbetts: Madam Speaker, in a perfect world such legislation makes life amazingly simple. but the world is not perfect and has not been for some time, to my recollection. And I understand exactly what the Member for East End is saying, and I understand what the law provides for. I understood that for quite a while back actually. But when we have such things as JRs [judicial reviews] in legal aids and all those kinds of things—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: I know. I know what a JR is. But all I am saying is that when we speak to judicial reviews and all like that, Madam Speaker, no matter what decisions are made, the way the world works nowadays is that there is some redress and all these things people use or entities use to drag out stuff for years and years and years and years.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: I know and understand that. So, we are trying to bring resolution to the matter and sometimes—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Yeah. But the moment you do what the law provides for now, that is when you step into that realm and then you do not know how it is going to end up and how long that is going to take, so—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Well, that is what we are doing now. And I will tell you, the two times that I know of, where this Legislative Assembly authorised the fines to be made, the two times that I know it was used, the licensees were really jolted and that got their attention.

In answering the question, Madam Speaker, let me say this: I, as the Minister, am acutely aware of the points that have been brought out, not only by the substantive question, but by the supplementaries that have been asked by Members.

I also know that the Manging Director and the Board of Directors of the ICTA are acutely aware of this. And the now Managing Director of ICTA, if I was (and I am just being truthful or my truthfulness) having to live with a situation like this with the previous managing director, I would have given up hope. But I do believe that the now Managing Director is enthusiastic, capable and all those good things. And I certainly believe that he will bring the resolution that we need and will certainly follow it up the best I can to ensure that it happens within a timely fashion. Thank you.

The Speaker: Next question, Madam Clerk.

QUESTION NO. 18

CONSUMERS WITH SOLAR AND BATTERY BACK-UP BEING IGNORED AND CONDONED BY THE ELECTRICITY REGULATORY AUTHORITY

The Speaker: I recognise the honourable Fifth Elected Member for George Town.

Mr. Winston C. Connolly, Jr.: Thank you, Madam Speaker.

I rise to ask Question No. 18 standing in my name to the Honourable Minister of Planning: Can the Honourable Minister advise why section 3, and in particular sections 3.1 and 3.6, of the Caribbean Utility Company (CUC) Transmission and Distribution Agreement of 2008, which obliges CUC to supply any consumer, in any location, who applies for the supply of electricity, notwithstanding it is for back up electricity supply or standby connectivity because they have solar and battery back-up as well, are being ignored and condoned by the Electricity Regulatory Authority?

The Speaker: Honourable Minister of Works.

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker.

Madam Speaker with regards to section 3.1 of CUC's transmission and distribution licence, the ERA has not received any complaint, formal or informal alleging that CUC has refused to provide electrical service to a person in the service territory.

Further, the ERA notes that service is not a defined term in the licence or the ERA Law and that in this section of the licence, service may be intended to mean "electrical service of the type generally provided to the majority of consumers". It may not be intended to incorporate specialised services of any type or nature that any consumer might desire. If the Member has an example to the contrary of such a refusal, as perhaps can be inferred from the question, the ERA would be happy to take the issue up.

Regarding section 3.6 of CUC's Transmission and Distribution Licence, the ERA has not received any complaint, formal or informal alleging that CUC has refused to provide backup electricity supply, standby connection and interconnection to any person requiring such service in accordance with the provision of the ERA Law.

Again, if the Member has an example to the contrary of such refusal, as perhaps can be inferred from the question, the ERA would be happy to take up the issue.

Nevertheless, the ERA has been advised by CUC, that they have received a request for backups supply and/or standby connection from a single large commercial consumer and from a single residential consumer. To address this question, CUC hired a consultant to develop standby rates, which as indicat-

ed by this section of their transmission and distribution licence, would be required, and CUC has submitted the proposed rates to the ERA for approval.

The proposed standby rates utilised demand charges plus energy charges rather than the current energy only charges to recover the cost of service. These rates are being reviewed by the ERA with assistance from its consultants. To date, the ERA has not found any unresolved issue with the rates as presented but has made approval subject to CUC complying with one or more conditions. The prerequisites revolve around the concept of demand charges which are quite different from energy charges and would be new to consumers. The ERA wishes to ensure that consumers are properly educated about these rates before they are introduced. Moreover, it is important to agree on the type of customer who can qualify for standby rates.

Backup electricity supply is defined in the ERA Law as meaning the provision of electricity supplied by a generator or a T&D licensee to another person which is temporarily unable to satisfy its system demand with the generation resources normally available to it. The ERA and CUC are in discussions to determine how this provision should be interpreted. The ERA is of the view that when this section of the law was being drafted, it is likely that the type of generation resources that were being contemplated were of a firm power variety that would not normally be connected to the grid but advances in technology may have made this definition in need of being updated or made more precise. Specifically, the ERA and CUC are considering how generators with solar PV and battery storage should be treated. One key issue is whether the inherent intermittency of solar PV, even if firmed with significant storage and able to operate off grid, would add to the operating cost of the grid over and above the cost captured by the proposed standby rates as designed.

There are many possible answers to this question and the ERA is seeking to ensure that not only is CUC able to recover its cost of service to those customers but will do so without increasing cost to other consumers, but that equally the potential standby consumers do not face unnecessary hurdles and are able to obtain a fair rate agreement.

At this time, the ERA is working on addressing the applicable conditions, if any, that must be attached to the interconnection agreement. The ERA is addressing this issue as a priority and anticipates early resolution in order that CUC will be able to offer the requested backup supply and or standby connection or interconnection. It is acknowledged that this process has already taken a significant amount of time to resolve. The rate proposals have gone through a second and now possibly a third iteration which the ERA's consultants have yet to review.

SUPPLEMENTARY

The Speaker: I recognise the Fifth Elected Member for George Town for a supplementary.

Mr. Winston C. Connolly, Jr.: Thank you, Madam Speaker.

I can supply that source or one of the people because, as the person who brought the Renewable Energy Private Member's Motion, I have been now sought out with these examples. I will be happy to pass that on, but what I understood from that is that there has never been any written response, they just refused it verbally. They raised it with the ERA and the ERA will not act because there is no written proof. I will get you the names et cetera, and we can do some further investigation.

[Inaudible interjection]

Mr. Winston C. Connolly, Jr.: Thank you.

The Speaker: If there are no further supplementaries we will move to the next question.

QUESTION NO. 19

UPDATE OF NATIONAL DEVELOPMENT PLAN OF THE CAYMAN ISLANDS TO COMPLY WITH THE DEVELOPMENT AND PLANNING LAW

The Speaker: I recognise the honourable Fifth Elected Member for the district of George Town.

Mr. Winston C. Connolly, Jr.: Thank you, Madam Speaker.

I rise to ask Question 19 standing in my name to the same Minister. I assure him I am going to spread it out to everyone, so I am not singling him out. Can the Honourable Minister advise, what has been done or is being done to update the National Development Plan of the Cayman Islands to comply with the Development and Planning Law?

The Speaker: Honourable Minister responsible for Planning.

Hon. D. Kurt Tibbetts: Thank you.

Madam Speaker, the National Development Plan was last updated in 1997. There have been several discussions over the years to consider updating again. And I must interject, Madam Speaker, that during one of my times in Cabinet or Executive Council at the time, I made a profoundly serious attempt to get the Development Plan updated. And while this Government recognises the importance of such an update, we also had to consider the Island's physical position over the past several years. This has led to this Government exercising restraint and prudent management, and as such, we were faced with priori-

tising our commitments to alleviate these financial constraints.

Having said that, while there are currently no allocations in this current budget to update the National Development Plan, the Ministry is looking at ways to begin the process in a feasible and prudent manner to address this concern in the next fiscal year.

Now, Madam Speaker, might I just add that funds are one thing but short of doing something out of the ordinary, any such exercise which is not something that can be completed in any short period of time would have to be conducted utilising the resources of the Planning Department.

Madam Speaker, as the Minister responsible and knowing the situation from the very beginning (and we talked about this as to whether this should have been one of our priorities or not) had I taken this on, the challenges that face the Planning Department right now, would have multiplied themselves one hundred times over if the meagre resources that are there, had I started that at the very beginning, I don't know what would be the state of affairs within that department now. Thank God there are funds in this budget to hire five new personnel which will make a world of a difference, and that is in train as we speak, and advertisements have been placed and interviews are taken place.

I am not saying all of this to make any excuses, I am simply saying that we deemed it not physically possible to achieve that because of the sacrifices that would have had to be made. To achieve that, those sacrifices were far greater a detriment to not only the Government and its operations, but to the people of this country.

SUPPLEMENTARIES

The Speaker: I recognise the Fifth Elected Member for George Town.

Mr. Winston C. Connolly, Jr.: Thank you, Madam Speaker.

I rise to ask a supplementary question to that initial question: Does the Honourable Minister believe that the lack of a plan stunts future development and does not give surety to potential developers?

The Speaker: Honourable Minister of Planning.

Hon. D. Kurt Tibbetts: Madam Speaker, there is a certain ring of truth in what the Member has just stated, although he asked it in a question. I do not for one minute, not subscribe to the thought. It is just that sometimes you find yourselves in situations where there is nothing that you can do to do everything that is right, and you simply must choose what is less wrong than something else.

The fact is, Madam Speaker . . . well, I should not say the fact, I should say my opinion, and every-

body knows how long I have been here, so I am long in the tooth in a lot of things and perhaps time to be put to pasture. But my personal belief is that this is something that some form or fashion should be made to begin at the beginning of a term because if you get anything more than a year into an election cycle, there is no government (and history has proven that so far and that is why I can make the statement) that is going to start it.

However, I want to say that while I make that statement because I believe that to be true, the reason why we did not start it at the beginning was not because we did not want to do it, but when we looked at the priorities we thought (and I especially thought) that to attempt that during the term that began after the 2013 elections, was doing more harm than any possible good it might achieve. Plus, if it was derailed that would really have been the worst disaster we could have thought about, not only having it derailed but causing all of the other problems that it would have had.

What I am saying is that I believe the country will be in a much better position next time around because . . . and I am not saying this more so than it simply is a fact that the financial position is much better now than it was when we took office in 2013. So, the outlook can be different. There can be external resources that can be used to assist the process. I think that it should be a priority for the next administration, and I believe that I can commit this Government, as I believe this Government will be the next administration, that they will get it done.

The Speaker: I recognise the Member for East End.

Mr. V. Arden McLean: Thank you, Madam Speaker. Wishful thinking over there!

Madam Speaker, we have gone through so many amendments to the current Development Plan. I wonder if the Minister can tell us why is it that we have not consolidated them, at the very least that, if we do not have a review. Why is it that those changes have not been put onto the Development Plan itself? We make amendments, change this zone, and change that zone and the likes. And why is it that that has not been done because that is not very costly to put that on the plan; is it?

The Speaker: Honourable Minister of Planning.

Hon. D. Kurt Tibbetts: Madam Speaker, it is my understanding that that is being done and set up in such a way that it can be updated each time it needs to be updated.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: I understand that, but it is part of the whole upgrade of the LNS [Linux Network Sys-

tems] with their computer systems and everything else.

[Inaudible crosstalk]

Hon. D. Kurt Tibbetts: I understand.

[Inaudible crosstalk]

Hon. D. Kurt Tibbetts: Yes.

[Inaudible crosstalk]

Hon. D. Kurt Tibbetts: I will chase it up to make sure. That is a very valid point, Madam Speaker.

The Speaker: Next item of business.

STATEMENTS BY HONOURABLE MEMBERS AND MINISTERS OF THE CABINET

The Speaker: There are no statements.

PERSONAL EXPLANATIONS

The Speaker: None.

OBITUARY AND OTHER CEREMONIAL SPEECHES

The Speaker: Just want to on behalf of all Honourable Members to convey condolences to the Fifth Elected Member of George Town and the Serjeant for the tragic loss of their family member.

We will now take the luncheon break and reconvene at 2:15 pm.

Proceedings suspended at 12:57 pm

Proceedings resumed at 2:39 pm

The Speaker: Please be seated.
Proceedings are resumed.

RAISING OF MATTERS OF PRIVILEGES

The Speaker: None

GOVERNMENT BUSINESS

BILLS

FIRST READINGS

COMPANIES MANAGEMENT (AMENDMENT) Bill, 2016

The Clerk: The Companies Management (Amendment) Bill, 2016.

The Speaker: The Bill is deemed to have been read the first time and is set down for the Second Reading.

PROPERTY (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL, 2016

The Clerk: The Property (Miscellaneous Provisions) Bill, 2016.

The Speaker: The Bill is deemed to have been read the first time and is set down for the Second Reading.

TRUSTS (AMENDMENT) BILL, 2016

The Clerk: The Trusts (Amendment) Bill, 2016.

The Speaker: The Bill is deemed to have been read the first time and is set down for the Second Reading.

MONETARY AUTHORITY (AMENDMENT) BILL, 2016

The Clerk: The Monetary Authority (Amendment) Bill, 2016.

The Speaker: The Bill is deemed to have been read the first time and is set down for the Second Reading.

AUDITORS OVERSIGHT (AMENDMENT) BILL, 2016

The Clerk: The Auditors Oversight (Amendment) Bill, 2016.

The Speaker: The Bill is deemed to have been read the first time and is set down for the Second Reading.

DESIGN RIGHTS REGISTRATION BILL, 2016

The Clerk: The Design Rights (Amendment) Bill, 2016.

The Speaker: The Bill is deemed to have been read the first time and is set down for the Second Reading.

PATENTS AND TRADE MARKS (AMENDMENT) BILL, 2016

The Clerk: The Patents and Trade Marks (Amendment) Bill, 2016.

The Speaker: The Bill is deemed to have been read the first time and is set down for the Second Reading.

TRADE MARKS BILL, 2016

The Clerk: The Trade Marks Bill, 2016.

The Speaker: The Bill is deemed to have been read the first time and is set down for the Second Reading

NON-PROFIT ORGANISATIONS BILL, 2016

The Clerk: The Non-Profit Organisations Bill, 2016

The Speaker: The Bill is deemed to have been read the first time and is set down for the Second Reading.

CUSTOMS (AMENDMENT) BILL, 2016

The Clerk: The Customs (Amendment) Bill, 2016

The Speaker: The Bill is deemed to have been read the first time and is set down for the Second Reading.

SECOND READINGS

COMPANIES MANAGEMENT (AMENDMENT) Bill, 2016

The Clerk: The Companies Management (Amendment) Bill, 2016.

The Speaker: I recognise the Honourable Minister responsible for Financial Services.

Hon. G. Wayne Panton, Minister of Financial Services Commerce and Environment: Thank you, Madam Speaker.

Madam Speaker, I rise to move the Second Reading of a Bill entitled The Companies Management (Amendment) Bill, 2016.

The Speaker: The Bill has been duly moved. Does the Honourable Minister wish to speak thereto?

Hon. G. Wayne Panton: Yes, thank you, Madam Speaker.

Madam Speaker, I am rising on behalf of the Government to move this short Bill which seeks to amend The Companies Management Law (2003 Revision), in order to delete the definition of “bearer shares” and to delete “references to bearer shares” in the definition of “custodian” in the Companies Management Law.

Madam Speaker, honourable Members will recall that earlier this year we dealt with an amendment to the Companies Law through the Companies (Amendment) Bill, 2016, to address the issue of bearer shares and deleting references therein. This Bill

therefore seeks to clean up some additional references that were identified . . . or not identified (I should say) at that point in time. So, we are seeking to make these amendments to the Companies Management Law (2003 Revision) currently.

Madam Speaker, the Bill has two clauses. The first sets out the short title and the second one amends section 2 of the Companies Management Law (2003 Revision). That clause 2 seeks to delete the definition of the words “bearer shares” and in the definition of the word “custodian” specifically, by deleting the words in the definition which references approval by the Cayman Islands Monetary Authority to act as a custodian for bearer shares.

Madam Speaker, that is some total of the amendments sought by this very short Bill, as I said, in order to finally clean up the position which the Government adopted through its Companies (Amendment) Bill, 2016, seeking to remove the bearer share regime within the Cayman Islands Companies Law.

I commend the Bill to my honourable colleagues in this House. Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? Last call—does any other Member wish to speak?

If not, I will once again recognise the Honourable Minister of Financial Services.

Hon. G. Wayne Panton: Thank you, Madam Speaker; just to thank honourable Members for their tacit support.

The Speaker: The question is that a Bill shortly entitled the Companies Management (Amendment) Bill, 2016 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Companies Management (Amendment) Bill, 2016 given a second reading.

PROPERTY (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL, 2016

The Clerk: The Property (Miscellaneous Provisions) (Amendment) Bill, 2016.

The Speaker: Honourable Minister responsible for Financial Services.

Hon. G. Wayne Panton: Madam Speaker, I wish to move the Second Reading of a Bill entitled the Prop-

erty (Miscellaneous Provisions) (Amendment) Bill, 2016.

The Speaker: The Bill has been duly moved. Does the Honourable Minister wish to speak further to it?

Hon. G. Wayne Panton: I do indeed and thank you very much, Madam Speaker.

Madam Speaker, I rise to present the Bill on behalf of the Government. It is a Bill which seeks to amend The Property (Miscellaneous Provisions) (Amendment) Law (2011 Revision), to correct several historical deficiencies and technical errors which have existed in our laws for some time.

Madam Speaker, there is a further Bill to be dealt with subsequently, which is the Trust (Amendment) Bill, 2016, and the rationale in respect of that is very similar to this. These are essentially two sort of tandem bills that are being done for the same reason, to address related issues or follow-on issues.

Madam Speaker, when the Cayman Islands adopted English trust legislation, apart from some English conveyancing legislation, coupled with the applicability of a 17th Century UK Statute, some technically necessary aspects of trust related legislation had not been enacted or appropriately adapted for the Cayman Islands. So, we have had these historical deficiencies and issues and what some might regard as technical errors for some 40-odd years in the Cayman Islands Trust Law. Trust practitioners have effectively found workarounds to many of these issues. But, in fact, certainly more recently, competitive jurisdictions have sought to identify these as deficiencies, and as areas where they could identify some sort of competitive advantage for themselves and perhaps disadvantage for the Cayman Islands.

So, Madam Speaker, the Society of Trust and Estate Practitioners, otherwise known as STEP, Cayman Islands Branch, via the Financial Services Legislative Committee, put forth several recommendations and proposals to amend the Law. These have been under discussion for some time to essentially find a way to sweep away the historical deficiencies and deal with these technical issues, and effectively to bring the Cayman Islands Trust Law in line with what is regarded as Modern Trust Principles and Legislation in competitor jurisdictions.

Madam Speaker, the Bill does not introduce a significant change of policy or new product or new concept for the Cayman Islands Trust Sector, rather it simply addresses these little (what we might call) nits and issues that have been a thorn in the sides of trust practitioners for some time here. There is truly clear feeling amongst STEP and other practitioners that doing so will effectively clarify these issues and make the Cayman Islands completely attractive within this sort of international trust fear.

As I started to mention earlier, we have had competitive jurisdictions that have drawn these

longstanding issues into the marketplace and to try to benefit from those by highlighting them and comparing the position *vis á vis* their own jurisdictions where they have addressed some of these issues previously.

This Bill, Madam Speaker, seeks to make changes which, as I said, STEP has been asking for, for some time. They regard it as very significant and overdue enhancements to the Cayman Islands Trust Law. And it will grant significant relief from the cumbersome and outdated provisions, as well as some of the cumbersome and difficult sort of workaround scenarios and processes that have been implemented to try to address some of the shortcomings.

Madam Speaker, overall, this will significantly improve the attractiveness of the sector.

Madam Speaker, the Bill is arranged in 8 clauses: Clause 1 is the short title.

Clause 2 amends section 5 to permit agents lawfully appointed in writing to execute legal assignments of things in action for their principles.

Clause 3 inserts a New Section 5A which will require assignments of equitable interest to be made in writing or by a Will.

Clause 4 amends section 6 to delete a redundant to bearer shares (again, clearing that one up).

Clause 5 inserts a New Section 6A which will provide for the construction of commonly understood terms in deeds, contracts, wills, orders, and other instruments.

Clause 6 amends section 8 to insert a new subsection 6, and that subsection will provide, that existing section 8(4) shall not affect the Electronic Transactions Law (2003 Revision) from applying to other provisions of the Law, including those which are being inserted.

Clause 7 inserts a New Section 8A, B, and C. Section 8A will enable a power to be disclaimed by deed. Section 8B will facilitate the exercise of powers by deed or another type of non-testamentary instrument. Section 8C will repeal Section 9 of the Statute of Frauds 1677 of the UK Parliament, as it applies to the Cayman Islands.

Clause 8, inserts a New Section 10 which merely contains transitional provisions.

So, Madam Speaker, this is another Bill which is significant as it addresses several issues and technical deficiencies. It is not a very significant Bill, but it is important, nevertheless, and this effectively concludes my presentation on the Bill.

I commend this Bill to honourable Members of this honourable House. Thank you.

The Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Final call—does any other Member wish to speak?

If not, I recognise the Honourable Minister responsible for Financial Services.

Hon. G. Wayne Panton: Once again, Madam Speaker, just to thank honourable Members for their tacit support.

The Speaker: The question is that a Bill shortly entitled the Property (Miscellaneous Provision) (Amendment) Bill, 2016, be given a second reading.

All those in favour please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Property (Miscellaneous Provision) (Amendment) Bill, 2016, given a second reading.

TRUSTS (AMENDMENT) BILL, 2016

The Clerk: The Trusts (Amendment) Bill, 2016

The Speaker: I recognise the Honourable Minister responsible for Financial Services.

Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, I beg to move the Second Reading of a Bill entitled the Trust (Amendment) Bill, 2016.

The Speaker: The Bill has been duly moved, does the Honourable Minister wish to speak to the Bill?

Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, the introduction which I provided in relation to the Property (Miscellaneous Provision) (Amendment) Bill, 2016, a short time ago, applies very much in terms of a background to this particular Bill. Of course, I mentioned that in the presentation, so, I am not going to go into too much detail on that. What I propose to do is to simply go into the clauses of the Bill to provide some detail in respect to those just by way of highlighting them.

Madam Speaker, this particular Bill again, not very significant in terms of size but very significant in terms of the impact it has on the issue of Trust Law within the Cayman Islands and clarifying a number of these outstanding historical issues.

Madam Speaker, the Bill is arranged into 12 clauses: Clause one sets out the short title.

Clause 2 amends section 4(1) to remove the power to replace a trustee, merely because the trustee has left the Island for more than 12 months.

Clause 3 amends section 6(c) to include a corrected transitional provision for amendments under the Trust (Amendment) Law, 1998. The 1998 amendments regarding supplemental provisions as to the appointment of trustees made under section 6(c),

only applies to a trust if it was created on or after the 11th of May 1998. The replacement section 6(c) resolves this conflict in a way that it achieves the original intent of that amendment.

Clause 4 inserts New sub-section 8(3) which removes the requirement under sub-section 8(1) for there to be a trust corporation or at least two individuals to act as trustees in specific circumstances

Clause 5 amends section 14 to allow settlors of trust to reserve powers to appoint both income and capital. Under inserted section 113(3)(a), the amendment will apply to all trusts whenever created.

Clause 6 proposes to amend section 21 so that the power under that section to compound trust liabilities may be exercised by just a single trustee.

Clause 7 inserts a new section 23A. Section 23 A inserts a new section 23 A. Section 23A will reflect section 158 of Law of the Property Act 1925 in the UK ((validation of appointments if objects are excluded or take illusory shares). This section will overturn an old rule of equity that requires the trustee of a discretionary trust (but not for a discretionary power) to appoint at least something to every object of the power.

Clause 8, amends section 25 so that a trustee's power to ensure the trust property may be for any adverse event and not just for fire.

Clause 9 amends section 71 which was inserted after the 1998 amending Law, so that a charitable trust may benefit the public or a section of the public outside the Islands, wholly as well as just partly.

Clause 10 amends section 105 to correct a technical defect for provisions about trusteeship of "STAR" (Special Trust Alternative Regime) law, which is a Cayman Islands Law, under Part VIII, which was inserted on 7th August 2008. The Correction will allow controlled subsidiaries to be the trustee of such a trust as well as a registered private trust company itself. Under inserted section 113(5), the amendment to section 105 will be deemed to have had effect on and from 7th August 2008.

Clause 11 repeals section 110(4) and makes consequential amendment to the marginal note. Section 110(4) was a transitional provision for the 1998 amending Law. Inserted section 112 corrects and reenacts that provision in light of the amendments to section 6(c) and 71.

Clause 12 inserts a new Part X for transitional provisions other than for the Law's original enactment and the transitional provisions inserted into section 6(c) under clause 3.

Madam Speaker, those are the descriptions of the various clauses in the Bill. Some of them are fairly somewhat technical in nature, but I think it has clearly set out what we are seeking to achieve, particularly in light of the introduction provided by way of background in relation to the previous Property (Miscellaneous Provisions) (Amendment) Bill. With that, Mad-

am Speaker, I complete my presentation of this short Bill and I commend this Bill to honourable Members of this House. Thank you.

The Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Final call—does any other Member wish to speak?

If not, I will call again on the Honourable Minister responsible for Financial Services if he wishes to exercise his right of reply.

Hon. G. Wayne Panton: Madam Speaker, just to thank honourable Members for their support in relation to the Bill.

The Speaker: The question is that a Bill shortly entitled Trust (Amendment) Bill, 2016, be given a second reading.

All those in favour please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Trust (Amendment) Bill, 2016, given a second reading.

MONETARY AUTHORITY (AMENDMENT) BILL, 2016

The Clerk: The Monetary Authority (Amendment) Bill, 2016.

The Speaker: I recognise the Honourable Minister responsible for Financial Services.

Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, I beg to move the Second Reading of a Bill entitled Monetary Authority (Amendment) Bill, 2016.

The Speaker: The Bill has been duly moved. Does the Honourable Minister wish to speak to the Bill?

Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, this Bill is brought to amend the Monetary Authority Law (2016 Revision) in order to establish a system by which the Cayman Islands Monetary Authority can administer a regime of administrative fines for breaches of regulatory law regulations; CIMA Rules and the Money Laundering Regulations (2015 Revision).

Madam Speaker, at the moment, apart from in the context of CIMA Rules, CIMA does not have the power to impose administrative fines. And the view is that this is a necessary and an effective tool which

bolsters CIMA's enforcement powers and international reputation. It bolsters their ability to ensure that the licensees that they regulate can be more effectively managed and regulated and any shortcomings appropriately addressed in an effective way.

Madam Speaker, in accordance with recommendation 30 of the Financial Action Task Force (FATF) recommendations on international standards on combating money laundering and combating the financing of terrorism and proliferation financing, which is effectively financing in relation to weapons of mass destruction, the Cayman Islands is required to ensure that there is a range of effective proportionate and dissuasive sanctions, whether criminal, civil or administrative, available to deal with natural or legal persons covered by recommendation 6 of the FATF and recommendations 8-23 of the FATF that fail to comply with the AML [Anti-Money Laundering] and CFT [Combating the Financing of Terrorism] requirements.

So, Madam Speaker, in addition to seeking to bolster CIMA's ability to manage those licensees and carry out its duties, this is an additional element which is underpinning the need to bring this Bill and these amendments more effectively.

In addition to the FATF recommendations, Madam Speaker, upon completion of the initial assessment by ESMA (European Securities in Markets Authority) which they carried out of the Cayman Islands in relation to the proposed extension of the Alternative Investment Fund Managers Directive (AIFMD) passporting mechanism, ESMA issued a public opinion on the 18th of July 2016, regarding results of the Cayman Islands in addition to other applicants.

Their July 2016 opinion confirms, Madam Speaker, very clear and expressed terms, that in order for the Cayman Islands to be favourably assessed by ESMA in the context of the AFMD passporting mechanism application, we are required to have in place among two other items, legislation to enable CIMA to impose administrative fines. So, this is the third underlying justification, Madam Speaker, for the Bill being brought.

Madam Speaker, this Bill seeks to establish and implement non-discretionary as well as discretionary administrative fines for breaches of regulatory laws, regulations and CIMA rules and requirements together with any other legally permissible deemed necessary or desirable. An example of where these sorts of administrative fines are useful might be a previous HSBC matter with the Mexican Branch which was eventually fined billions—several billions—by the US authorities, but CIMA was incapable and unable to address any sort of administrative fine without these sorts of powers. So, the Cayman Islands got a black eye and a jurisdiction which fined them, collected significant amounts of funds as compensation.

Madam Speaker, there are fines, of course, in the Monetary Authority Law. There are provisions for breaches of the law, but most of these provisions require prosecution; require court a matter and successful conviction before any fines in accordance with the law could be levied. This Bill seeks to create a mechanism through which CIMA has the ability to issue these administrative fines which, in most cases, are going to be more effective in ensuring compliance than having to go through the difficulties of a prosecution.

I should also say, Madam Speaker, that, this Bill is a Bill that seeks to create the framework essential for these fines to be put in place and it is not one which seeks to detail the types of fines and the circumstances in which they may be applicable. It creates a framework under which subsequent regulations can be issued which addresses all of these details.

Madam Speaker, in relation to the Bill itself, in summary clause 1 provides for the short title and commencement.

Clause 2 amends the definition of “regulatory laws” to include the Development Bank Law (2004 Revision) and the Directors Registration and Licensing Law, 2014. The clause also inserts the new definitions of “breach”, “fine”, “prescribed provision” and “rules”.

Clause 3 inserts a new section 2A. New section 2A will provide that a reference to the Law or a provision of the Law includes regulations and rules made under the Law or the provision.

Clause 4 replaces section 34(7). Replacement of section 34(7) will provide for the relationship with banks and other financial institutions.

Clause 5 inserts a new Part VIA entitled “administrative fines” which deals with the Authority’s power to find the fine amounts declaratory provisions for power to find the limitation period, the relationship of the offence with penalties, the criteria for making a fine decision, CIMA’s rule making power and other regulation-making powers.

Clause 6 inserts a new Part VIII, which consists of New section 53. This New section 53 will provide that the Authority cannot impose a fine for a breach that happened before the commencement of new Part VIA.

So, Madam Speaker, the Bill seeks to put in place this framework for administrative fines. The fines will be distinguished between non-discretionary; those are fines with a small amount which relate directly to breaches that are not regarded as serious, they are minor breaches. And there will be other breaches which are regarded as serious or very serious, and in relation to those, the administrative fine will be discretionary, up to a significant amount depending on where they assess the particular breach in terms of whether it is serious or very serious.

Madam Speaker, that completes my presentation in relation to this Monetary Authority (Amend-

ment) Bill and I commend it to this honorable House for passage. Thank you.

The Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Last call—does any other Member wish to speak?

If not, I call on the mover of the Bill.

Hon. G. Wayne Panton: Thank you, Madam Speaker, and I just wish to acknowledge the support of Members of this House.

The Speaker: The question is that the Monetary Authority (Amendment) Bill, 2016, be given a second reading. All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Monetary Authority (Amendment) Bill, 2016, given a second reading.

AUDITORS OVERSIGHT (AMENDMENT) BILL, 2016

The Clerk: The Auditors Oversight (Amendment) Bill, 2016.

The Speaker: Honourable Minister of Financial Services.

Hon. G. Wayne Panton: Madam Speaker, I beg to move the Second Reading of the Bill entitled The Auditors Oversight (Amendment) Bill, 2016.

The Speaker: The Bill has been duly moved. Does the Honourable Minister wish to speak thereto?

Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, I rise to present this Bill on behalf of the Government. It is a Bill which seeks to amend the Auditors Oversight Authority Law, 2011, to enhance the operations of the Auditors Oversight Authority. Madam Speaker, the original Auditors Oversight Authority Law, 2011, was passed specifically in response to the European Commission’s Eighth Directive which is known as the Statutory Audit Directive, and in summary, the Directive required that auditors and audits of certain public interest entities should be subject to a system of independent public oversight, quality assurance, investigation and penalties. The Directive envisaged co-operation between member states and third countries regarding auditor oversight based on mutual reliance of each other’s oversight systems, and provided that the third country

system, importantly, is addressed to have equivalent status.

Madam Speaker, the Authority will be having its assessment of equivalent status in the near future, and therefore the Bill is being brought to address some deficiencies which have been identified in the framing of the original Law in 2011, and have been identified through the Authority and its Board working through the operating framework established by the Law.

Specifically, Madam Speaker, the changes contemplated by the Bill can be described in three broad categories. Firstly, the Bill will implement two new categories of audits falling under the Auditors Oversight Authority oversight. Specifically, these are audits in respect of what is described as an authority specified company, or for what is separately described as a designated company, and these definitions are set out in the Bill.

Madam Speaker, the Law presently, only deals with the audit of financial statements of certain companies which are described as market traded companies, and, as I said, that definition is in the law. So, this will seek to add two new definitions of two new types of companies against which the financial statements can be audited and covered by this particular law and the Authority.

Secondly, in terms of a broad category of changes, Madam Speaker, the Bill will clarify the power of the Authority to co-operate with other equivalent overseas authorities.

Thirdly, in terms of the broad categories, Madam Speaker, the Bill provides for further administrative matters, including a provision for the establishment of an administrative penalties regime to be set out in regulations.

Madam Speaker, the Bill is needed. It is necessary to ensure that the Authority will pass this equivalency status assessment which it will be undergoing. And if it does, it will obtain its third country equivalent status. And this is very important and necessary for the Authority and the jurisdiction to achieve, because we have a lot of Cayman Islands based auditors auditing the financial statements of entities which fall within the scope of the European Commission Eighth Directive. So, if our auditors, our local auditors were to lose the ability to carry out those audits, those businesses go elsewhere.

Madam Speaker, in terms of greater detail the Bill is arranged in 17 clauses: Clause 1 sets out the short title.

Clause 2 amends the long title of the Auditors Oversight Law (2011 Revision) which is Law 23 of 2011, so that the law also applies to authority specified companies and to what are called designated companies. And I am referring to the original Law as the principal Law, Madam Speaker.

Clause 3 provides that section 2 of the principal Law is amended to provide definitions for the

terms "Authority specified company"; for the term "designated company"; and for the term "overseas auditor oversight body".

Clause 4 amends section 3 of the principal Law which deals with the establishment and functions of the Authority. This clause expands the functions of the Authority, so that the Authority specified companies and designated companies are subject to the oversight of the Authority. The clause also makes provision for the Authority to provide assistance to overseas auditor oversight bodies.

Clause 5 of the Bill amends section 8 of the principal Law which sets out the functions of the Managing Director. This clause amends subsection (4) so that the Managing Director may render services outside the parameters set by the Board but only at the discretion of the Board.

Clause 6 proposes to amend section 10 of the principal Law which makes provision for the manner in which meetings of the Board are to be conducted. This clause specifically lowers the quorum requirement for meetings from five to four directors.

Clause 7 of the Bill amends section 17 of the principal Law which makes provision for the qualifications necessary for an auditor prior to appointment. This clause allows that the requirements for the appointment of an auditor in respect of a market traded company, also apply with respect to a designated company.

Clause 8 of the Bill proposes to amend section 18 of the principal Law by inserting a New Section 17A which makes provision for the voluntary registration of auditors. So, they can effectively opt in.

Clause 9 amends section 18 of the principal Law which makes provision for the registration of recognised auditors. This clause amends section 18(2), so that the provisions relating to deregistration of a recognised auditor in respect of a market traded company, may also apply with respect to a designated company and an Authority specific company.

Clause 10 of the Bill amends section 19 of the principal Law so that the requirements regarding eligibility for entry onto the register in respect of a market traded company also apply with respect to a designated company and an Authority specified company.

Clause 11 amends section 20 of the principal Law which specifies a time period in which auditors are to ensure that they are in compliance with provisions of the principal Law that previously did not apply to auditors. This clause specifies a new time period in which auditors must become compliant with respect to designated companies.

Clause 12 amends section 26 which provides that documents prepared by the Authority are to be kept confidential. This clause prevents this confidentiality from being extended to documents the Authority is required to disclose pursuant to a Memorandum of Understanding (MOU). This clause further amends section 26 so that documents protected by this section

are not subject to the Freedom of Information Law (2015 Revision).

Clause 13 proposes to amend section 29 of the principal Law so that the Rules made pursuant to the principal Law extend to recognised Auditors who audit designated companies or Authority specified companies. This clause also removes the creation of penalties from within the ambit of the Rules.

Clause 14 amends section 30 of the principal Law so that compliance under the Rules made pursuant to the principal Law extends to monitoring accounts of designated companies and Authority specified companies.

Clause 15 amends section 31 of the principal Law so that the obligations of recognised auditors regarding matters related to compliance also extends to designated companies and Authority specified companies.

Clause 16 inserts new sections 32A, B and C, which respectively make provision for—

- (a) the Authority to enter into memoranda of understanding with overseas auditor oversight bodies to facilitate their respective regulatory oversight functions;
- (b) the protection of persons to whom functions of the Authority have been delegated with respect to the disclosure of information in accordance with those delegated functions; and
- (c) regarding the factors to be considered by the Authority before it undertakes to provide assistance to an overseas oversight body.

Finally, Madam Speaker, clause 17 of the Bill seeks to amend section 33 of the principal Law so that an administrative penalty regime with a maximum penalty of \$5,000 may be prescribed.

Madam Speaker, thank you for the opportunity to lay out the content, details, and background to the Bill. And with that I commend this Bill to honourable Members of this House for passage. I thank you.

The Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Last call—does any other Member wish to speak?

If not, I will call upon the Honourable Minister of Financial Services to reply.

Hon. G. Wayne Panton: Madam Speaker, just to thank Members for their support of this Bill.

The Speaker: The question is that a Bill shortly entitled the Auditors Oversight (Amendment) Bill, 2016 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Auditors Oversight (Amendment) Bill, 2016, given a second reading.

DESIGN RIGHTS REGISTRATION BILL, 2016

The Clerk: The Design Rights Registration Bill, 2016.

The Speaker: Honourable Minister of Financial Services.

Hon. G. Wayne Panton: Madam Speaker, I beg to move the Second Reading of the Bill entitled Design Rights Registration Bill, 2016.

The Speaker: The Bill has been duly moved. Does the Honourable Minister wish to speak to the Bill?

Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, I present the Bill on behalf of the Government. It is a Bill which seeks to introduce protection for design rights in the Cayman Islands through a system that allows design rights to be registered in the UK or the European community and extended to the Cayman Islands.

Madam Speaker, we have an existing similar regime in relation to trademarks, and, of course, we have a bill to come which seeks to address that and make that a local registration process. For these purposes at this point we are seeking to put in place an extension system because it is the most convenient to get a system in place for design rights. And the registry that the Bill seeks to create will be composed of a design right register and a registered agents register which is similar to the patent registry that is also currently in place to extend patents granted in the United Kingdom to the Cayman Islands.

Madam Speaker, currently under the Cayman Islands Law, design rights are not recognised. But this is the fourth leg of the major intellectual property or IP rights. It is one which protects the designs of the shape and configuration of objects. It is different from copyright which has a focus on literary dramatic musical and artistic works. The other two rights, of course, are in relation to patents and trademarks.

Now, Madam Speaker, Members are familiar with the Government's initiative to modernise intellectual property rights in the Cayman Islands during this term, and we have certainly done that for copyrights. And we are working to accomplish the others which include trademarks and patents. And design rights were something which we thought we would be looking to do later on. There was not an initial feeling that there was a need to address this urgently, but following discussions with the UK Intellectual Property Of-

fice and based on feedback which we received from law firms in the UK in particular, which specialised in intellectual property rights earlier this year, it is clear that there has been a very marked increase in the interest in the registration of design rights in recent years. So, it was our view that we should ensure that we complete the full four legs of modernisation of intellectual property law in Cayman as soon as possible, since this fourth leg showed significant promise in terms of interest and potential business for the Cayman Islands.

Madam Speaker, it was during our attendance at the International Trademark Association's annual meeting this year, at which there were several requests for design rights protection to be introduced in this jurisdiction. Based on the feedback we had from these requests, from the intellectual property firms in the UK, from the intellectual property office in the UK indicating the significant level of interest in increasing business, which they were seeing in relation to design rights, the decision was made to accelerate our original plans, as I said, and to introduce design rights.

Now, Madam Speaker, this register once active, will also obviously generate additional revenue to the Islands, and will not have public service implications as there will be no need for additional staff members in the registry. It is proposed that the mechanism for the introduction Cayman of protection for design rights is through the extension system as I have mentioned. This will allow rights holders who can demonstrate that they own a design registered in the UK or the European Union, to extend this protection within the Cayman Islands.

The effect of the recording of an extension of a design right is to afford to the owner of the right, all the equivalent rights and remedies available to the owner in respect of such design rights in the United Kingdom or the EC (European Community), as the case may be. And the registration process will require that all extensions be dealt with by local agents who have been registered to provide these services. So, Madam Speaker, we are seeking to ensure that those who are involved in intellectual property rights and registration within our economy are those agents who will be capable of registering these rights on behalf of clients. This proposed approach mirrors the system that is currently in place with patents registered in the UK which are also registered in Cayman by extension.

Madam Speaker, in terms of the Bill, in summary, clause 3 provides that the current registrar of trademarks and patents will be the registrar of design rights. So, it is the same office with an additional role.

Clause 4 of the Bill sets out the duties of the registrar in respect of the design rights provisions of this Bill.

Clause 5 requires the owners of design rights to appoint registered agents and establishes the eligibility and procedures for applicants to apply to be reg-

istered agents. It also sets the fees that are payable by registered agents.

Clause 6 provides the procedure for the owner of a design right to have it extended to the Islands and for the recording of design rights in the register by the registrar.

Clause 7 provides for the issuance and replacement of certificates of registration by the registrar.

Clause 8 gives the registrar the power to correct errors in the register.

Clause 9 sets out the legal protections that flow from recording a design right in the register and the date of coming into force of those protections.

Clause 10 gives the Grand Court jurisdiction over all matters respecting design rights.

Clause 11 provides for the annual fee to be paid by owners of design rights and for the consequences of non-payment of the fee.

Clause 12 provides for changes respecting design rights recorded in the United Kingdom to be notified to the registrar and for the consequences of failure to notify the registrar.

Clause 13 provides for the renewal of design rights that have been renewed in the United Kingdom.

Clause 14 requires the owner of a design right that has been abandoned to notify the registrar.

Clause 15 provides for the cancellation of a design right by reason of a default in payment of annual fees or resignation or the registered agent.

Clause 16 requires publication in the *Gazette* of all recordings and cancellations of design rights.

Clause 17 provides for the search of the register by members of the public, on payment of a fee.

Clause 18 provides for the issuance of a certificate of good standing by the registrar on payment of a fee.

Clause 19 provides for the offence of recording a false entry in the register or producing false writing or evidence relating to such an entry and provides the penalty for that offence.

Clause 20 provides for the offence of falsely representing a design right as registered and provides the penalty for that offence.

Clause 21 provides authority for Cabinet to make any regulations necessary for giving effect to the Law.

Clause 22 provides for the amendment of the Schedule by Order of the Cabinet.

Madam Speaker, with that outline of the provisions of the Bill and the reasons for bringing this Bill at this time, I would commend this Bill to honourable Members of this House for passage. I thank you for the opportunity for doing so.

The Speaker: Does any other Member wish to speak?

I recognise the honourable Member for North Side.

Mr. D. Ezzard Miller, Member for North Side: Thank you, Madam Speaker.

Madam Speaker, I have a few comments on this Bill and most of what I am going to say without anticipating the next two, the Patents Bill and Trade Marks Bill, may be the Minister can clarify my concerns on all three of them.

One of the concerns that I have about the three of these Bills is that I do not see what is in it for Caymanians. I do not see how Caymanians, if there is no corridor for Caymanians, can go through the registrar to register patents or design here. As I understand the Bill, they would have to first get it registered in England and then get it extended here. Even if we accept that we might not have the technology or the staff to determine whether a patent or a design is registered or not, I think at a minimum the Bill should provide a corridor through the local registrar which Caymanians could utilise in order to register a design or a patent or a trade mark.

If we are just doing this for lawyers to get more fees, I cannot support it.

I have some concerns with clause 5 which says that **“Subject to clause 17, only a registered agent may transact business with the Registry under this Law.”** When we look at clause 17 it does not really deal with what I would assume would be qualifications to be an agent. Clause 17 says: **“Any member of the public may cause the Registrar to search the Register for particulars of any recording of a design right contained in it and, on payment of the fees specified in the Schedule, the Registrar shall cause such search to be made and supply the applicant with the particulars requested.”** So, I do not know whether that reference to clause 17 or not is the correct one.

Clause 5(2) says: **“A person legally and ordinarily resident in the resident in the Islands or a firm of attorneys-at-law desirous of being recognised as a registered agent may apply in writing to the Registrar and the Registrar shall determine the application in accordance with the regulations made under section 21.”**

Does this mean that only lawyers will only be able to be agents in that the only qualification applied to the ordinary resident is a law firm? I would assume and think that the proposed Legal Practitioners Bill, which we hope will be buried soon, says that only lawyers can be attorneys-at-law at law firms. And the reason I say that is because, Madam Speaker, here again, I believe we have an opportunity for young Caymanian entrepreneurs who may want to provide management services because all of these fees are annuals and stuff like that. If you don't have to be a lawyer (because I don't think you need to be a lawyer to fill out the form and pay the fee), I believe that we are missing an opportunity here on all three of these laws to give Caymanians that opportunity to be a specialist or a manager of these registrations.

[Inaudible interjection]

Mr. D. Ezzard Miller: Yeah, right.

I am concerned that the way I read the legislation in all of this, is that there is only going to be allowed to be done by law firms or lawyers, and I have concerns about that.

Also, in clause 11(1) it says: **“The owner of a design right recorded in the Registry shall, by the owner's duly authorised registered agent, in January of each year after the year of the initial recording, pay to the revenues of the Islands the annual fee specified in the Schedule.”** Why are we going back to all fees being paid in January? Why is not it an annual? If it is paid in March, it is due in March the next year. The problem we have had in the past with company registration and a few others is that there are so many coming in January that the civil servants cannot manage it. They cannot even get the receipts out. If we do it on an annual basis based on the anniversary of the date it was first granted, I think we would then spread out the workforce and may not need to hire additional people.

The biggest concern I have with this legislation, Madam Speaker, is the schedule of fees. I want the Minister to assure me that a proper cost analysis to provide these services have been done, because application fee for extension of design rights to the Islands is \$150. I do not even believe that can pay for the clerk receiving the envelope downstairs, much less all of the other things that go into processing an application. I can bet you that the law firms are going to be charging thousands if not tens and thousands of dollars to do this same thing. And we always seen that it is the Government that does not get what it is costing them but everybody else makes a profit on these kinds of transactions.

I would like to hear how the Government arrived at these fees as listed in Part 1-Design Rights:

Annual fee for the extension of design rights to the Islands	\$150
Late payment of design right annual fee (for each year of default)	\$100
Application fee to record a change of particulars of a design right recorded in the registry or a change of registered agent	\$150
Application fee to record renewal of a design right recorded in the Registry	\$150
Penalty for late filing of a renewal	\$150

Now, penalty for late filing, somebody in Government is going to have to determine it was late and send out an invoice of some sort. And what we pay civil servants today in pension and healthcare and

salaries and the kind of office that we provide for them has to cost more than \$100.

In Part 2 – General, the fees as listed are:

Search fee	\$50
Non-refundable processing fee accompanying an application to be recognised by the Registrar as a registered agent	\$200
Registered agent annual fee: number of registered design rights as at 31 st December	Under 10 - \$200 10-99 - \$500 100+ -\$2,000
Issue of a Certificate of Good Standing in relation to a design right	\$100

Based on what limited knowledge I have of the financial industry in terms of companies, for instance, the company fee might be \$150 to government but the law firm for managing it, gets thousands of dollars.

So, Madam Speaker, I would like to hear what the cost analysis done to arrive at these fees and be given the assurance that we are not once again putting government in the hole where government is losing money on the very transactions that we are allowing other people to make fortunes on. Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Last call—does any other Member wish to speak?

If not, I will call on the Honourable Minister of Financial Services.

Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, firstly, let me thank the Member for his observations and comments. I think I have a note of all of his comments, but I am sure he will tell me if I've missed any.

In terms of the Bill providing a corridor, as he called it, for Caymanians to register, Madam Speaker, it is correct that what we are proposing here at this point is a law which will operate by extension as I have detailed. It is an extension of the design rights registered in the UK and in the European community. Now, Madam Speaker, this is the same approach that we took in relation to patents and in effect it is the same approach that we took in relation to the trade marks. The reason, Madam Speaker, is that we do not have the resources immediately to address all of the mechanisms and all of the detailed and technical knowledge and skills that are required in order to provide an initial registry for design marks in Cayman. That is why we did not end up with the trade marks, because we did not have a trade marks examiner in

the past. Patents are a whole thing again which requires a lot of technical knowledge and understanding of many laws in order to ascertain whether something is appropriate to be registered.

We simply do not have and have not allocated the resources to address this need in relation to design marks. So, the quickest way for us to get a design mark register in place was to adopt the same extension process that we have done in the past.

Now, as the Member noted, we are also proposing to deal with trademarks. We have a Trademarks Bill, 2016. You will see, Madam Speaker, that with that Bill we are moving from an extension regime or mechanism to a registration mechanism within the Cayman Islands. The current value of trademarks, for example, is somewhere in the region of \$1.8 million. By way of example, we estimate that a standalone registry with the resources necessary to address it, which we are putting in place, will be able to generate over a period of time, somewhere in the region of [\$]7 million-plus in additional fees and revenue for the Cayman Islands. In order to get this started and in order to take advantage of the immediate and rising popularity of the registration of design marks, the quickest way for us to address this was through an extension revision.

Madam Speaker, I think the Member also referred to [clause] 5 and reference in [clause] 5 is subject to [clause] 17. Madam Speaker, clause 5(1) reads: **“Subject to section 17, only a registered agent may transact business with the Registry under this Law.”** So, that means to do anything in connection with the registrar or the registry under this particular law, you would have to be a registered agent.

The reason it says, “Subject to section 17 . . .” is simply as the Member noted, that section 17 allows any member of the public. No, you do not have to be a registered agent. So, it is any member of the public “may cause the registrar to search the register.” So, we go from section 5 which says that only registered agents can interact with the registrar and this Law to section 17 which says, in this case in relation to searches, the public can do it.

Mr. D. Ezzard Miller: You are locking it down to the attorneys; that is my point.

Hon. G. Wayne Panton: Madam Speaker, I hear the Member's point in relation to whether registered agents should be more or broader than just lawyers or those with the technical expertise and knowledge which we would normally find.

Madam Speaker, I think our position initially in respect to this, is that we were proceeding on the basis that we would get this law in place, and if this developed into something significant, we have the ability to expand it out. I think in the UK and other places they have people who are not lawyers who have rele-

vant expertise in these areas, because these are very technical things; it is not just, you know, you don't just go and hold your hand up and say, *I can do this*. You have got to demonstrate some expertise.

[Inaudible interjection]

Hon. G. Wayne Panton: Well, I'm saying you don't have to be a lawyer, but you do have to have technical expertise. And if we have that technical expertise, then we can look at broadening who can be a registered agent.

Madam Speaker, I am certainly willing to consider an amendment to broaden it at this point. Certainly, we could bring a committee stage amendment in respect to this. There is no reluctance. Contrary to what the Members may suggest, there is no reluctance and no intention of locking this down for any particular group. It is simply that this Bill was brought about through the work of a committee that did a tremendous amount of work on this. Yes, there were a number of lawyers on it, but we also had members of the civil service. We had members of what is going to be the registrar's office. And some of the constituents of the Member for North Side were engaged, so he can certainly follow up and clarify whether there was any attempt.

[Inaudible interjection]

Hon. G. Wayne Panton: So, Madam Speaker, in respect to that, we can certainly consider that. However, as I said, the rationale was really to get something in place which reflected the necessary degree of expertise and probity around this.

Now, this started off in the UK with the requirement to have registered agents who have that expertise, and are typically lawyers or legally qualified in some way in this respect. But, as I said, they have subsequently broadened that very recently, so we are certainly willing to consider that.

[Inaudible crosstalk]

Hon. G. Wayne Panton: The feeling is that we do need time to assess this, but we can talk about this if the feeling is that we should broaden it at this point. We can certainly consider doing that.

[Inaudible crosstalk]

Hon. G. Wayne Panton: Madam Speaker, in relation to the questions on annual fees and the timing, I think it is always going to be appropriate to specify a point in time by which fees are to be paid, irrespective of when they are initially paid. Now, the Member's point was, why January and why not at any point in time?

Mr. D. Ezzard Miller: If I pay something in March and I have paid for one year, then it is due next year March.

Hon. G. Wayne Panton: Madam Speaker, I think it is—

Mr. D. Ezzard Miller: Or next year February.

Hon. G. Wayne Panton: The Member's comment is that fees should be paid on an annual basis starting from the point of which they are first paid, but then that means a significant increase in the administrative burden of tracking each of these payments and each of these registrations to see when they are due. It is much easier to say that you make the payment, and it is due at a certain single point in every year. It is administratively much easier to do that.

[Inaudible interjections]

Hon. G. Wayne Panton: I do not think that that is a point that we will consider taking on board, Madam Speaker.

I think his final point, Madam Speaker, is the issue in relation to the Schedule of Fees. We have to recognise that this is a proposed extension regime. It is not one in which there is an attempt to sit and assess and work out whether this contravenes other designs. We do not have people who are working through the technical details. We are effectively taking the registration process as it exists in the UK and the European Community registers and re-registering them here in Cayman.

[Inaudible interjection]

Hon. G. Wayne Panton: So, these fees, Madam Speaker, have been considered to reflect first of all that there will be a volume of these things and second of all, that there is no technical assessment in relation to registration of the fees being done. There has been a comparison versus, for example, the fees under other extension regimes that we had in place, and they are not dissimilar to this. So, Madam Speaker, the view is that these fees fairly and accurately reflect what is appropriate. I can assure the Members that the fee levels indicated in this Schedule are not a huge contrast to fees that registered agents, for example, would be getting.

[Inaudible interjection]

Hon. G. Wayne Panton: Madam Speaker, the Member is asking whether a cost benefit analysis was done along these lines: I can't tell you that that was done. What I can tell you is that it was considered by the committee which has in place people who understand the fee levels that are relevant, including the

civil servants from the existing Registrar General who will be or who is a part of the Cayman Islands Intellectual Property Office. So, in their considered view, these fee ranges are relevant and appropriate for this type of registration.

[Inaudible interjection]

Hon. G. Wayne Panton: Madam Speaker, this Bill seeks to put in place this Design Rights extension regime so that we have a full complement of modern intellectual property rights in place for all the reasons we have discussed in the past. I think the Member suggested or queried as to how this helps the country, how it helps Cayman. Well, these Bills increase the level of fees the country collects. It increases the attraction of the country for the registration of these types of intellectual property rights and it increases the level of protections that are available to rights holders. It increases the perception that the country is a country that is serious about protecting intellectual property rights.

Intellectual property rights today, Madam Speaker, are rights which are viewed as highly valuable and if we do not have a jurisdiction in which these rights are modern and can be appropriately reflecting the value which international business gives to these rights, then we are going to be losing out. If we don't have the necessary framework in place to underpin a new digital economy, we are going to be losing out. Today's economy is not going to be built on the bricks and mortar economies of the past. They are not going to be built on the industrial economies of the past. They are going to be built on the digital economy and with a digital economy we need strong intellectual property rights regimes in place to underpin and support that.

With that, Madam Speaker, I thank you very much. Again, I thank the Member for his comments. We will consider this one comment in particular in relation to expanding the registered agent rights.

The Speaker: The question is that the Design Rights Registration Bill, 2016, be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Design Rights Registration Bill, 2016, given a second reading.

PATENTS AND TRADE MARKS (AMENDMENT) BILL, 2016

The Speaker: Honourable Minister of Financial Services.

Hon. G. Wayne Panton: Thank you, Madam Speaker.

I rise to move the Second Reading of a Bill entitled The Patents and Trade Marks (Amendment) Bill, 2016.

The Speaker: The Bill has been duly moved and is open for debate. Does the Honourable Minister wish to speak thereto?

Hon. G. Wayne Panton: Thank you, Madam Speaker.

Madam Speaker, I am presenting the Bill on behalf of the Government which seeks to amend the Patents and Trade Marks Law, 2011, for the purpose of repealing the provisions relating to trademarks. The repeal is in light of the proposed legislation which will provide a new regime for the registration of trademarks in the Islands.

Madam Speaker, the introduction of new trademarks legislation necessitates the amendment of the current Patents and Trade Marks Law, so that there are no conflicting provisions in that law relating to trademarks. Now, I will, of course, deal with the (and I have hinted around earlier, considerations of the Design Rights Bill) reasons for the Trade Marks Bill. But I will detail those separately when we deal specifically with that Bill.

Madam Speaker, other than the changes to remove terms and definitions and references to trademarks, the Bill also seeks to introduce new provisions relating to what are called patent trolls. A patent troll is defined as a person, company or similar, that holds and enforces patents in an aggressive and opportunistic manner, often with no intention of marketing or promoting the subject of the patent.

I would like to highlight two cases in particular in relation to the Bill, Madam Speaker: clause 18 amends the principal Law to insert a New Section 15A. The section prohibits the assertion of patent infringement claims in bad faith; and clause 23 of the Bill amends section 20 of the principal Law to empower the Cabinet to make regulations providing for, amongst other things, the prohibition of assertions of patent infringement which are made in bad faith and the bringing of actions in the Grand Court by aggrieved parties, and for the recognition of persons as registered agents.

Madam Speaker, further to representations made by local service providers, the Government has been assured by these provisions to tackle what are called patent trolls will be welcomed by international investors and businesses seeking to benefit from the improvements to Cayman's intellectual property framework.

Madam Speaker, that is really the substance of the Bill. I do not think it helps to go through any further details of the clauses because broadly speaking, we are stripping out references to trademarks.

[Inaudible interjections]

Hon. G. Wayne Panton: Madam Speaker, while it is tempting to sometimes let these gentlemen have a go at each other, I tend to like to talk over them just to keep going.

Madam Speaker, I think that really concludes my presentation in respect of this Bill. I think it is clear what the Bill is designed to achieve, and I commend this Bill to this honourable House for passage in light of the proposal to bring the Trade Marks Bill subsequently. So, thank you very much for the opportunity, Madam Speaker.

The Speaker: I recognise the honourable Member for North Side.

Mr. D. Ezzard Miller: Madam Speaker, again, I only have a couple of queries.

I just want to make sure I understand what the Government is doing. We currently have a Patents and Trade Marks Law, 2011. Is it that what you are trying to achieve with these two laws is to separate the two so that we will have specific legislation for patents and specific legislation for trademarks?

[No audible reply]

Mr. D. Ezzard Miller: Okay.

I would caution the Government on the patent aspect when it comes to . . . I don't know whether it is possible or not but when it comes to medications and drugs that the HSA are using, you may want to be careful that all of the generic drugs that they are currently using, the patents have actually expired, otherwise we could be opening the Government for a very serious lawsuit and destroy everything that we are trying to do because the Government itself would be breaking the very laws that it is trying to get other people to obey.

I know from the industry that there are take-offs of medications prior to registered patents being expired in the jurisdictions that we are dealing with like the UK and Europe, US, and Canada. There are countries and we want to make sure that the HSA and to a certain extent, the private sector, are not importing those medications prior to the patents being properly expired and that the companies that they are importing it from, do in fact have the required permission to manufacture the drugs under licence before we allow them to be brought into this country and particularly sold at the HSA.

[Inaudible interjection]

Mr. D. Ezzard Miller: No, they use a completely different name. But they are using the generic component, the effective medication in the medication. Well, if it is patented. . . right? I don't know, I'm not a lawyer.

You just got through telling me that. If we are bringing in medication that is patented in the UK and the patent is not expired, we are offering protections to that company to register their patent here. But at the same time, it is possible that the HSA is importing it from Costa Rica or Panama or somewhere else where that medication is being manufactured without proper licence prior to the patent being expired.

[Inaudible interjection]

Mr. D. Ezzard Miller: It's just a word of caution. It might not be happening. I know that I have gone to the pharmacy and asked them for the leaflet because they put my mother on a different medication and they told me that they hope I can speak Spanish because all they have are leaflets in Spanish because it is imported from a Spanish country.

[Inaudible interjection]

Mr. D. Ezzard Miller: Yes, it is just a caution I am putting out there.

I don't understand why we are taking, in this case, the fees out of a Schedule and putting in the regulations, which I assume is so that you can change them. In the previous Law, which is a new law, we did the same thing. We put the fees as a Schedule instead of the regulations. So, if you want to put the fees in this Law into the regulations so that you can change them in Cabinet, then I think you might want to amend the one that we just passed which establishes the fees on the Schedule.

The Speaker: I recognise the Fifth Elected Member for George Town.

Mr. Winston C. Connolly, Jr.: Thank you, Madam Speaker.

I just rise to make that similar request that the Member for North Side did under Part VIII where it talks about the requirements of the registered agent, et cetera. I think that we should try to make that as wide as possible. I guess the registrar would set out what the technical and other experience would be. But we should try to ensure that we don't ring-fence it so tightly that managers of companies or other people, where Caymanians are employed, can't get access to doing some of this work. Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Final call—does any other Member wish to speak?

If not, I will recognise the Honourable Minister of Financial Services.

Hon. G. Wayne Panton: Thank you, Madam Speaker.

Again, Madam Speaker, I thank both Members for their comments in respect of this Bill.

Madam Speaker, on the point brought by the Member for North Side, let me just be clear here that the objective of this Bill is simply to amend the Patents and Trade Marks Law by removing the references to trademarks because the proposal is to put in place a new trademarks regime under a new standalone bespoke Trade Marks Law. So, Madam Speaker, whether or not a patent has been registered by extension from the UK in the Cayman Islands by virtue of the Patents and Trade Marks Law in respect of the patent element, will not be changed. That is either the case or it is not. That is either the fact or it is not. I understand the Member's point in terms of the potential for other generic versions of a particular drug to be manufactured elsewhere. Perhaps those might be cheaper.

If that particular drug is already protected by virtue of the patent extension from the UK, I do not know exactly what the impact would be. I would seem to me that they would have an action to be able to protect their right. But I certainly understand the Member's point. I just don't think that the point is necessarily relevant to what we are doing here in this context. I wish I could say that there was a way to make some changes which might help that. I am not sure that there is.

[Inaudible interjection]

Hon. G. Wayne Panton: Madam Speaker, the point made by the Fifth Elected Member for George Town, which, as he noted, reflected the same kind of comment made on the previous Bill by the Member for North Side. We will certainly look at that and take that into account to see whether or not it would be appropriate to extend or broaden the qualifications for registered agents in this respect; happy to do that.

With that, Madam Speaker, I thank you and the Members for their comments.

The Speaker: The question is that a Bill shortly entitled the Patents and Trade Marks (Amendment) Bill, 2016 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Patents and Trade Marks (Amendment) Bill, 2016 has been given a second reading.

TRADE MARKS BILL, 2016

The Speaker: Honourable Minister of Financial Services.

Hon. G. Wayne Panton: Thank you, Madam Speaker.

I move the Second Reading of a Bill entitled the Trade Marks Bill, 2016.

The Speaker: The Bill has been duly moved. Does the Honourable Minister wish to speak to the Bill?

Hon. G. Wayne Panton: Madam Speaker, thank you very much. I almost feel like we have been speaking to the elements of this Bill for the last 20 minutes.

Madam Speaker, I am—

The Speaker: The Chair is not forcing you to speak Minister. In fact, it would expedite the matter.

Hon. G. Wayne Panton: Indeed not, Madam Speaker, but it would be wise for me to do so.

Madam Speaker, the purpose of this Bill is to seek to make provision for the registration of trade marks through the establishment of a trade mark registry in the Cayman Islands. As we have clarified for the past half hour, at least, the mechanism that we have in place today in respect of trade marks is that they are registered in the UK and extended to the Cayman Islands by way of registration of that existing UK mark in the UK.

The proposals in respect of this Bill, Madam Speaker, were born of the wider proposals and initiatives that we have been taking in respect of modernising aspects of intellectual property law in the Cayman Islands.

This Bill will put in place a mechanism for the registration of trade marks in the Cayman Islands without the need for the applicant for the registration of a trade mark to first have a trade mark registered in the United Kingdom. As I said, that is the way the provision is today. We are seeking to make it a standalone registry where you come to Cayman to register your trademark; a number of good reasons for this, Madam Speaker, apart from just additional business for the Cayman Islands.

Madam Speaker, as I said, the current owners of trademarks are not required to take steps to register their trade marks in Cayman because they cannot, and it is already registered in the UK. With this new Bill the proprietor of the trademark who intends to licence the use of their trademark in the Cayman Islands to a local franchise owner, needs to register them in Cayman. In addition, if there is a concern regarding the likelihood of a local infringement, there is currently little to be gained by registration in the Cayman Islands once the United Kingdom registration is secured. So, we wanted to do away with that, Madam Speaker.

Madam Speaker, a business wishing to protect its trademark in the Cayman Islands would only incur the expense of first applying for and obtaining a United Kingdom trademark. However, the UK Law

makes registration of such trademarks intended for local use in the Cayman Islands subject to a potential challenge by a third party in the event that an owner cannot prove in the United Kingdom within five years of obtaining the United Kingdom registration, that they have used it.

This is one of the reasons that I alluded to earlier, that particularly those, someone located in Cayman would want to be able to register a trademark locally for protection, because there is a vulnerability in which they would have to prove that they have used that trademark in the United Kingdom within the five years in order to ensure that they have protection. If they do not do that, they would lose the registration in the UK and that would subsequently mean that they lose the extension registration in the Cayman Islands.

In addition, Madam Speaker, it has been observed that the word "Cayman" has been registered as a specific trade mark and this has resulted in businesses based in Cayman, having a challenge in securing UK trade mark registrations where the trade mark includes the word "Cayman". A regime which provides for a system of local registration which prevents any one person having the exclusive right to the use of such words as "Cayman" would address this matter. And this is one of the effects that the Bill seeks to achieve.

Now, Madam Speaker, as industry focus shifts, as mentioned earlier, from the tangible to more intangible assets like intellectual property rights, there has been an increase importance in branding and increase importance in the tangible economic value of branding of today's economy. Trade Mark Law has therefore never been more important in the global economy. Trade marks play an essential role in promoting global economic growth with a stronger IP system. Both foreign and domestic investors will be interested in investing in the new economic opportunities presented by the introduction of this Bill.

Now, Madam Speaker, statistics show that the region has had significant growth in the area of intellectual property, including trade mark filings. With the introduction of direct trade mark filings in Cayman, we can expect to see an increase in trade mark applications in Cayman and in revenues derived from those trade mark applications and ultimately registrations.

I mentioned earlier, Madam Speaker, that the current revenues from the existing trade mark extension regime, extension of the UK trade mark to the Cayman Islands, in 2015-16 from a registry of 4,900 marks was somewhere in the region of CI\$1.8 million. And based on registration in other Caribbean jurisdictions, if we were doing the registration of those types of volumes ourselves here in Cayman, that would suggest a potential revenue increase for the Cayman Islands of approximately CI\$7 million, again over a four- or five-year period after implementation of the new Law. And that would obviously give time for the transition and re-registration.

Now, Madam Speaker, having just been recently accepted as a member of INTA [International Trade Mark Association] which boasts a membership of 6,700 organisations from 190 countries, the Cayman Islands has been invited to attend the 2016 Leadership Meeting of INTA and this really underscores the potential and significant role that the Cayman Islands is playing in the context of the intellectual property industry. There is a tremendous amount of interest and respect attributed to the Cayman Islands for the work that we have been doing in intellectual property modernisation.

Madam Speaker, the Bill is quite long, and it details obviously some of the existing provisions of the but it goes much further in the sense that, as I said, we are not talking about an extension regime; we are talking about a standalone registry in respect of trade marks. So, what I will do is to try to go through a couple of the salient broad points rather than taking us through significant details of the Bill.

The Speaker: Honourable Minister, can I interrupt you to recognise the Honourable Premier to move the suspension of Standing Order 10(2) to allow the business of the House to continue beyond the hour of 4:30 pm?

**Moment of interruption—4:30 pm
(Suspension of Standing Order 10(2))**

The Hon. Premier, Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, I beg to move the suspension of Standing Order 10(2) in order that the business of the House may continue beyond the hour of interruption and, as indicated to Members previously, we propose to continue until we finish the business on the Order Paper or until 7 o'clock, whichever comes first.

The Speaker: The question is that Standing Order 10(2) be hereby suspended to allow the business on the Order paper to be completed or until 7 pm, whichever comes first.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: Standing Order 10(2) suspended.

The Speaker: Honourable Minister of Financial Services, please continue.

Hon. G. Wayne Panton: Thank you very much, Madam Speaker.

Madam Speaker, as I was saying just before the break, I think it best if I broadly summarise salient details of the Bill. Firstly, Madam Speaker, let me say that the Bill provides for the appointment of the registrar, the establishment of the register and the procedure for making an application for the registration of a trade mark. A trade mark shall not be registered where it is identical with an earlier trade mark and the goods and services for which a trade mark is applied for, are identical with the goods and services for the earlier trade mark is protected.

The Bill sets out the rights that are conferred by way of a registered trade mark. The proprietor of a registered trade mark has exclusive rights in the trade mark. The exclusive rights are infringed by the use of the trade mark in the Islands without the proprietor's consent. The acts that constitute the infringement of a trade mark are set out in the legislation. The Bill provides that an action for infringement of a registered trade mark is actionable by the proprietor or a registered licensee. All relief by way of damages, injunctions or otherwise, is available to the applicant under this Law, as is available in respect of the infringement of any other property right.

Madam Speaker, a number of offences under the legislation is outlined and the Bill bestows power to police officers, as well as to trade officers in the Department of Commerce and Investment to undertake enforcement actions.

The Bill also establishes an Appeals Tribunal, the members of which will be appointed by Cabinet, and provides for appeals from decisions of the registrar.

Madam Speaker, that very succinctly and broadly gives out a clear indication of the content of the Bill. And I think it would be remiss of me if I did not thank the members of the committee who have been working on this Trade Mark Bill for some time. And I would specifically like to mention Huw Moses, Abraham Topple, Sophie Davies, Anthea Matthews, Candice Wespe and Donnie Dixon. And, of course, Madam Speaker, Candice Wespe and Donnie Dixon are members of the Cayman Islands Intellectual Property Office. So, I want to thank them very much for all the work that they have done in getting this Bill prepared. It has been some time in coming.

So, Madam Speaker, I think with that, I will close my presentation in respect of this Bill and simply say that I commend it to this honourable House and look forward to the support.

The Speaker: Honourable Minister did I hear you say legal draftspersons as well?

Hon. G. Wayne Panton: Oh yes, Madam Speaker, I think I must have overlooked that. Yes, indeed, Madam Speaker, absolutely the Government Legal Department deserves a tremendous amount of credit (as they do always) with the effort that they put in to get-

ting a lot of these Bills completed and down to this honourable House. I think oftentimes the work that they put in and the changes that they have to put up with are sometimes greatly undervalued.

You are absolutely right, Madam Speaker, we must, at every opportunity, thank them for the work that they do, and I think they do a tremendous job under the auspices of the Honourable Attorney General's office. So, I thank them for all the contributions they have made, as I will thank them for all the other contributions they make in relation to any other Bill that I deal with, Madam Speaker. Thank you very much.

The Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Last call—does any other Member wish to speak?

If not, I call on the mover if he wishes to exercise his right of reply.

Hon. G. Wayne Panton: Thank you, Madam Speaker.

As a follow on to comments made by other Members on previous Bills, I would note that in this case the registered agents in respect of trademarks do not indeed have to be legally qualified or lawyers. So, aside from relevant intellectual property experience or qualifications, the registrar will effectively assess whether an applicant is a fit and proper person by looking at the honesty, integrity, and reputation, assessing competence and capability from some objective perspective, as well as financial soundness.

Madam Speaker, perhaps that is the answer to some of the comments made earlier in respect to the other two Bills. But let me say, Madam Speaker, with that clarification, I would like to thank Members of this honourable House for their support in respect of this important Bill which I think will make a significant change and improvement in our trademark registration regime and benefits to the Cayman Islands. Thank you.

The Speaker: The question is that The Trade Marks Bill, 2016 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Trade Marks Bill, 2016, has been given a second reading.

NON-PROFIT ORGANISATIONS BILL, 2016

The Speaker: I recognise the Honourable Minister responsible for Financial Services.

Hon. G. Wayne Panton: Madam Speaker, thank you.

I beg to move the Second Reading of a Bill entitled the Non-Profit Organisation Bill, 2016.

The Speaker: The Bill has been duly moved. Does the Honourable Minister wish to speak thereto?

Hon. G. Wayne Panton: Madam Speaker, I am presenting this Bill on behalf of the Government for a law to establish a registration system which will deal with a regulation and monitoring of non-profit organisations which I will refer to as NPOs.

Madam Speaker, as Cayman prepares for our fourth-round evaluation of our Anti-Money Laundering and Combating the Financing of Terrorism (AMLCFT as we typically refer to it) regime by the Caribbean Financial Action Task Force (CFATF), it was noted in previous assessments in 2007 that enhancements to our laws were required so that the framework of our laws dealing with AMLCFT provisions were in line with the International FATF standards. Madam Speaker, one such matter identified was the need to enact legislation that would regulate the entities that are otherwise established to do good works in the community whilst mitigating the risk or perceived risk of those types of institutions being misused in the context of terrorist financing.

Madam Speaker, we may stand here today and think that there is little risk and that is probably right. Madam Speaker, it is a fact that charitable institutions and non-profit organisations have been used in the past for that very reason because they have the perception of being institutions that do good within the community and really would not normally get a second glance, which makes them susceptible to being abused. So, that is why the Global Standards promulgated through the FATF require us to put in place a mechanism to regulate what perhaps we see here as a minor risk but have been demonstrated elsewhere to be a greater risk.

Madam Speaker, the Cayman Islands underwent its Second Bi-annual Report conducted by the CFATF on the 27th of November 2014. The report concluded that the Cayman Islands Authorities should implement structures to efficiently regulate the NPOs sector. Additionally, under the Special Recommendation 8 of this report, it is stated that the Cayman Islands Authorities should undertake an outreach programme to the Non-Profit Organisations sector with the view to protecting the sector from terrorist financing abuse.

A supervisory programme for NPOs should be developed to identify non-compliance and violations and systems and procedures should be established to allow information on NPOs to be publicly available. And points of contact or respond to international requires regarding terrorism relating activities of NPOs should also be put in place.

Madam Speaker, there have been comments in various media houses suggesting that this NPO Bill is unnecessary. I think with the greatest respect that it is very clear why the Bill is necessary. The requirements proposed in the Bill are straightforward. They are not difficult to comply with, and based on stakeholder consultations, they are in the main very much supported.

Madam Speaker, Members will recall that a version of this Bill was tabled a few months ago in this honourable House. That Bill received much attention from stakeholders prior to it actually getting on the agenda. As a result, that Bill was withdrawn for a new Bill to be discussed, and for various input from stakeholders to be brought into play. Hence we have ended up with this new Bill being dealt with today and that previous version withdrawn.

Madam Speaker, I think if I can recall, there was something like 25 or 30 what we would regard as NPOs operating in the Cayman Islands that were invited to a stakeholder meeting. I think somewhere in the region of 10 of those institutions attended and 90 per cent of those were completely supportive in respect of the Bill. I think one of those took the view that they were representing a well-known international organisation which did not need regulation. I suspect that that well-known international organisation was similarly subjected to regulation in other jurisdictions in which they operate. I do not think that they should have expected that some degree of regulation might not exist in Cayman.

Madam Speaker, to ensure that as a jurisdiction we are found to be in compliance with the standards set out in the FATF recommendations, by way of the coming CFATF assessment in May 2017 and to provide better regulation of the NPO sector in the Cayman Islands for all the reasons mentioned earlier. I certainly am standing here proposing that the Non-Profit Organisation Bill, 2016 be given support.

Madam Speaker, the Bill is arranged in 8 parts: Part 1 contains the preliminary provisions.

Part 2 contains clauses 3 and 4 which deal with the appointment and functions of the Registrar of Non-Profit Organisations.

Part 3 has clauses 5 through 9 and deals with the registration of non-profit organisations.

Part 4 deals with the power of the Attorney General to institute inquiries into the activities of non-profit organisations and that is split between clauses 10 and 11.

Part 5 of the Bill, Madam Speaker, comprises of clauses 12 to 15 and that provides for the maintenance of financial statements.

Part 6 is clauses 16 to 20 and deals with the imposition of administrative penalties for breaches or failure to comply with provisions of the law.

Part 7 deals with clause 21 which deals with exemptions of NPOs.

Part 8 deals with miscellaneous provisions and comprises of clauses 22 to 24.

Madam Speaker, I have even today seen an article in the local *Cayman Compass* newspaper which, despite the fact that it is not a lengthy Bill, demonstrates some of the misunderstandings that continue in respect of this Bill. There is a reference, for example, Madam Speaker, to entities with gross annual revenues of at least \$250,000 that receive at least 30 per cent of their earnings in charitable contributions, must be audited and report the results to Government. That is not correct.

Madam Speaker, the Bill provides that entities are required to maintain proper accounts, but it is only if they receive or earn more than \$250,000 and 30 per cent of that is paid outside of the country, that they should attract specific attention in the way of being required to provide audited financials. And, obviously, Madam Speaker, that is a clear indication of the rationale behind these types of regulatory requirements for NPOs.

Any entity, any NPO within a particular territory that is collecting funds in and paying funds out to another jurisdiction, is regarded as entities or institutions which could be potentially abused for terrorism purposes. So, that is a red flag, Madam Speaker, in respect of the necessity to have audited accounts, but otherwise, they do not require audited accounts.

Madam Speaker, I anticipate that Members of this House will have questions or comments in respect of this Bill, and I will certainly be in a position to provide additional information in respect of those. I look forward to receiving their comments.

At this point I will close my presentation of the Bill, to simply say that this is a necessary Bill. It minimises the level of inconvenience. It does not have onerous requirements; it is, in fact, fairly very straightforward. I do not understand why some of the media houses feel that it is the worst thing. Perhaps they are going back to the original versions of the Charity Law which certainly proposed far more onerous provisions than this does. This is quite straightforward, so I look forward to Members support in respect of this. Thank you.

The Speaker: Does any other Member wish to speak?

I recognise the Fourth Elected Member for Bodden Town.

Mr. Alva H. Suckoo, Jr.: Thank you, Madam Speaker.

Madam Speaker, I rise to give a contribution on the debate with regards to the Non-Profit Organisations Bill. I quite actually agree with the Minister that this legislation is important and significant in terms of boosting our reputation when it comes to events such as terrorist financing and so forth.

I do understand the need to regulate and monitor non-profit organisations or, as the Minister referred to them as NPOs, and I do understand we are under certain obligations to tighten up against incidents such as terrorist financing. But I do have some concerns about how this may impact existing non-profit organisations, in particular those who have behaved themselves quite well and have been upstanding and transparent in their operation.

I recall, Madam Speaker, the Premier mentioning in a recent documentary about the important role charities in particular play in this country, and the social benefits some of those charities bring in the absence of the Government being able to actually play the role that they play, and how they work hand in hand with the Government to provide social benefits. So, I am concerned somewhat about the future of some of our existing non-profit organisations. But we have to balance that, as the Minister said, with the risks. I do agree that legislation is needed.

I am concerned that some of the clauses in the Bill may actually clash with the intention of the Bill. I would like to actually step through some of those clauses so that I can clearly identify what my concerns are, and perhaps when the Minister responds he can provide some explanations.

Clause 4(f) of the Bill . . . well, clause 4 sets out the function of the Bill and I do note that subsection 4(1)(f) says:

“The functions of the Registrar include – Investigating or authorising the investigation of a non-profit organisation that is suspected of operating illegally;”

That I think makes it quite clear what the role of the Registrar is.

However, when we get over to clause 6(2), it states: **“A non-profit organisation shall not solicit or cause to be solicited contributions from the public, or any section of the public, within the Islands or elsewhere, unless the non-profit organisation is registered or exempt from the obligation to register under this Law.”**

Immediately that jumped out at me because, Madam Speaker, there is an ability to exempt certain entities from falling under this Law.

Moving forward to clause 14 where there has been a request from the Registrar for a review of the entity, clause 14(1) says: **“A non-profit organisation may appeal to the Cabinet against a decision of the Registrar to request a review in accordance with section 13(2) and (3).”** Again, Madam Speaker, I think this is getting into dangerous territory because it is giving Cabinet the ability to circumvent the regulatory regime that this Law is creating. I think it is a bit dangerous. We trust our government and we trust our Cabinet but to give Cabinet that much power, I think it is contrary to what we are trying to achieve in terms of international obligations and trying to become more restrictive in terms of people who want to use charities

to break the Law. I would say the Courts should have that power, not Cabinet.

Now, I do understand that the decisions made by Cabinet can be appealed through the courts. However, in the case of Cabinet deciding who can be exempted, Cabinet overriding the Registrar in some cases and deciding what the penalty should be for breaking the law, I think that again goes beyond the role of what Cabinet should be doing.

In the case of clause 17(3)(b):

**“The Registrar, in deciding whether to impose a penalty on a controller, shall take into account the following matters –
(d) the ability of the controller to pay the penalty;”**

Again, I have an objection to that because if there is a prescribed penalty I don't see why it is so important to take into account the ability to pay it, because everybody is going to make a case and say, *well, I can't afford to pay it*. But if Cabinet's decision is appealed through the courts, it can be a case where this is one of the prerequisites, this is one of the requirements that you have to look at in deciding whether or not to fine them or how much to fine them. And the ability to pay is going to become a deciding factor. So, again, I think that does not even need to be in the Bill.

Madam Speaker, looking at clause 21(2) which states: “This Law does not apply to – and there is a subsection (c). There are subsections (a), (b) and (c) and it lists different entities that it may not apply to but subsection (c) says: **“any other entity that Cabinet may, by Order, exempt.”** Again, I think that that really is putting too much power in the hands of Cabinet, and it goes way beyond policy making. I think this basically allows Cabinet to play judge and jury and I do not think that it should be in the Bill.

I understand there may be a rationale for having that there, Madam Speaker, because as I mentioned earlier, there are good charities and NPOs out there that Cabinet may want to exempt for being good corporate citizens and not falling fowl of the law. But I think that giving Cabinet that decision making ability is dangerous because a lot of these organisations are also very influential politically and we don't want to get into a case where Cabinet can be accused of granting favours. I see that being in the Bill as an ability of Cabinet too, to play politics with some of these non-profit organisations. We are all politicians. I think we all want to strive to ensure that we are not being accused of anything like that., and I don't think that that should be in the law.

What we should do is to probably just amend the law to state outright and upfront who is exempt; existing churches or service clubs or what-have-you. I really would not want that each individual organisation has to apply to Cabinet to be exempt. In my mind, it

opens the door to suspicion and accusations that Cabinet would not want to be a part of.

Madam Speaker, in summing up, those clauses of the Bill, I think, allows Cabinet to override the system. While we are saying that we setting up a regulatory regime that is set up for the purpose of regulating non-profits and monitoring non-profits, by having these escape clauses, I think it weakens the legislation and the regulatory regime that we are trying to create. I would ask the Minister and maybe he has very good reasons for those clauses being written that way, but I would ask him to consider amending those clauses so that Cabinet is not the end-all and be-all in the case of especially exemptions or fines and penalties. I think that that is the courts responsibility and not Cabinet.

[Inaudible interjection]

Mr. Alva H. Suckoo, Jr.: So, Madam Speaker, with those brief comments I will wait for the Minister to respond. Thank you.

The Speaker: Does any other Member wish to speak?

I recognise the honourable Member for the District of East End.

Mr. V. Arden McLean: Thank you, Madam Speaker.

Madam Speaker, I rise to briefly make some comments on the Bill that is for the regulation of non-profit organisations.

Firstly, let me say that the Minister said that non-profit organisations may be viewed as low risk for wrongdoing. Many of them we have known and witnessed much wrongdoing amongst them.

I recall, whilst being a member of Cabinet, every couple of weeks there were a number of section 80 companies coming, and one of those times I recognised the name but I could not place it (or I thought I had recognised the name), so I asked my colleagues to defer it for me to gather my thoughts on it. Madam Speaker, within a week, a gentleman came to me, whom I had met a year earlier, and asked me if I had seen his non-profit organisation and when I asked him the name he gave me that name. He was starting a Church and, Madam Speaker, I proceeded to question him on his parishioners. He said it was growing, it had grown very well. In the last six months it had gone from 6 to 12; that is 100 per cent growth. That is growth. Of course, you know, Madam Speaker, I went back to my colleagues and told them that I was not supporting that one.

Madam Speaker, there are many stories other than that, of the preachers building apartments off of the importation of materials under a section 80 company. Now, Madam Speaker, I know those collection pans do not collect all of that on Sundays. Madam Speaker, where does that money come from? And I

ain't talking about a duplex or something, you know, Madam Speaker; 30, 40 apartments. I do not know where that money comes from but I know the collection pan can't hold all of that on Sundays. You could have a lifetime of Sundays and you can't hold it, even if they did what I was told that one preacher does, and that is that after collection in church he would go out in the yard and throw the collection in the air and would say, *Anything that comes down is mine, the rest is God's*.

Madam Speaker, I do not want to be disrespectful. I am merely describing what I have heard and seen. Whatever goes up and don't come down is for God. What comes down is his.

Madam Speaker, I know we are a Christian society. I know there are many institutions in this country; churches, non-profit organisations, but Madam Speaker, they are sprouting up like maiden plum. Donkey weed does not come as quick as them. All you need is a little rain and the maiden plum is as bright as it can be.

Madam Speaker, maybe I am of the traditional protestant denomination but I have my concerns. I have concerns because there is not one plaza in this country that does not have a church.

Madam Speaker, I notice the Lions which made many of those over there become good men. Madam Speaker, I see the Rotary making some of those good young men too. They . . . Madam Speaker, maybe I am of the traditional Cayman where the churches were a few and the non-profit organisations that have international recognition and organisations like the Lions and Outreach and Rotary and Kiwanis; those people have been on the ground for a very long time. For instance, Kiwanis jointly with Leos did the West Bay Beach and those types of things. So, they have contributed. And maybe I trust them a little more. That is my choice I guess.

What I can say for them, Madam Speaker, is that over the years they brought Charlie Pride and this pride and that pride and raffled off Mercedes, but all of that money went back directly into our communities.

Mr. D. Ezzard Miller: We hope so.

Mr. V. Arden McLean: Or that is what we assume.

Madam Speaker, nowadays we hear them collecting money for this one, for that one, for that country and the next country and they are sending money to this country and that country. Madam Speaker, whilst we are not in that global market of (that is our country) providing aid to all of these countries like most developed countries do, we nevertheless seem to attract those who feel more attracted to those countries. And they are living here, collecting the money here from people here, but they don't do anything here. Lions, Rotary and Kiwanis, and we could name a few more that has been on the ground for a very long time. Madam Speaker, I see the need

to bring them into some kind of truncation. I see the need. I understand and it should have been done for a long time. But because we are of this Christian heritage and we believe that if we say something against this little organisation or that little organisation, if we walk across the road a truck is going to run over us. No truck is going to run over us, you know. Madam Speaker, I subscribe to some things in the Bible too, especially that one that speaks about wolf in sheep clothes. Yeah, Madam Speaker, wolves in sheep clothing.

Madam Speaker, no one can tell me that a country of 60,000 or less can have so many non-profit organisations for non-profit. It cannot be. Madam Speaker, my suspicions are mine and I am not trying to encourage anyone else to be suspicious of what I am. Something is not right with it. Every Friday evening, we see another non-profit and we must sit here and pat them on the shoulder.

The Minister is right, they are human beings too. Madam Speaker, we do not know who is funding these terrorists; it could be our next-door neighbour.

Madam Speaker, don't we see the Armenians (is that what they are?) —

An Hon Member: Some of them.

Mr. V. Arden McLean: —coming to this country and doing us all kinds of things and . . . Romanians . . . sorry. Madam Speaker, they prey on our good graces. That is what happens. They come and pat us on the back and make friends with us and we go out there and defend them while they are stealing our eyes from under us. That is what is happening. We have a responsibility to protect the people of this country and their faith in people, because some of those will take advantage of them. That is a fact!

Like my good friend, the Minister of Planning who wears his heart on his sleeve. They will pluck it off of us and we are unsuspecting and then when we recognise it, it is too late. The Minister of Planning will well remember when we were in Cabinet, how I was incensed with the same thing.

Madam Speaker, I welcome the opportunity for us to control this type of thing. Like I said, we do not know where, why, how these terrorists are being funded. And the kind of opportunities in this country to do so, we have to be very careful, because it could be somebody next to us, under the disguise of a non-profit organisation.

Madam Speaker, during the lunch period your good self, related a story to me that you learnt today or yesterday of some of our colleagues in our neighbouring countries. If it is reaching them, people we did not suspect it would ever reach, do you think we are immune from it? Do you think we are immune from them putting boundaries on us? If we are going to sit here and believe that everybody is our friend and we are the dentist for those bodies, that they show us

their teeth and they do not mean to bite you, we have to be very careful. Madam Speaker, we don't know who is next. We don't know who is amongst us.

They have infiltrated bigger countries than our; more suspicious countries than ours.

We love to be friendly. We love to brag of how inviting we are; how accommodating we are. And every now and again we see that that is to our own detriment. Yes, I am concerned, Madam Speaker, but I have a few . . . and I would invite all of us to be concerned; not only the 18 of us, but this entire country. I am not saying to go out there and suspect everybody who asks for donation, that they have some ill-intent. No, absolutely not, Madam Speaker. I am saying to be like Ronald Reagan— *"Trust but verify"*.

Madam Speaker, I have a few concerns that just do not gel, like the Member for Bodden Town said, with the intent, as I believe the intent of this Bill is. And besides, he is concerned about Cabinet being able to exempt people. Why are we going to make Cabinet do that so Cabinet can say, *Oh boy, you don't worry about it, we will exempt you*. UH-uh. Oh no.

Madam Speaker, the Minister seems to be shaking his head saying that is not going to happen. He thinks he is going to be there forever or what?

[Inaudible interjection]

Mr. V. Arden McLean: Pardon me?

[Inaudible interjection]

Mr. V. Arden McLean: No, you were shaking it.

No, Madam Speaker, whatever we do must be for the long haul eh? And whoever comes behind us, they will have to come here in front of the people and change it and the people will be their masters then. That is how this works.

Madam Speaker, I hope those young people who did this are listening so that they can look into it. Under clause 8 it says:

"The Registrar shall cancel or suspend the registration of a non-profit organisation if—
(b) after an investigation, it is proven that the non-profit organisation –
(i) engaged in or is engaging in wrongdoing;"

Also, Madam Speaker, it then says in clause 8(2):

"Where the Registrar or the Attorney General determines that an inquiry into the operations of a non-profit organisation is required, the Registrar may suspend the registration of the non-profit organisation during the period of that inquiry."

[Inaudible interjection]

Mr. V. Arden McLean: In subsection (4) it says:

"In circumstances where the registration of a non-profit organisation has been cancelled or suspended, the Registrar shall, as soon as is practicable, notify the Attorney General of that cancellation or suspension and –

(i) in the case of a cancellation, the Registrar may make a recommendation to the Attorney General for the money or other property received by the non-profit organisation to be dealt with in accordance with section 10 . . ."

Now, I do not understand how that investigation can be done and recommended to the Attorney General that a further investigation be done, when subsection (2) says that that they determine that an inquiry into the operations of a non-profit organisation is required. Now, I can understand the Registrar looking at the case according to clause 8(1):

"(ii) failed, without reasonable cause, to maintain proper financial statements reflecting all monies received and expended;
(iii) failed, without reasonable cause, to submit annual returns; or
(iv) failed, without reasonable cause, to pay any prescribed fees required for registration."

That is administrative stuff that the Registrar would know about. But if there is a suspicion of wrongdoing, I believe that should go immediately to the Attorney General without the Registrar having to do any investigation. And this Bill does not clearly lay out those requirements, Madam Speaker.

Now, 10(1) says:

"The Attorney General may, either independently or pursuant to a referral from the Registrar, inquire into any issue concerning the operations of a non-profit organisation including – (a) its purposes, administration and management; and (b) its value and source or application of money or other property received or distributed."

Madam Speaker, it is somewhat confusing. What I do not want is for any possibility of there being wrongdoing and somebody slips through the net. I do not know if this fits it entirely to administer that. I do not see where the Registrar should have the authority to do those types of investigations. If there is suspicion, of course, the Registrar, Madam Speaker, can be suspicious of wrongdoing. I believe the responsibility to conduct that investigation should go to the Attorney General or whoever he or she choose to have it investigated, whether it is the police department, FRU {Financial Reporting Unit}, whatever the case may be.

[Inaudible interjection]

Mr. V. Arden McLean: FRU?

[Inaudible interjection]

Mr. V. Arden McLean: FI?

[Inaudible interjection]

Mr. V. Arden McLean: I just said FRU and he is confusing me about FRU.

[Inaudible interjection]

Mr. V. Arden McLean: FRA (Financial Reporting Authority)?

[Inaudible interjection]

Mr. V. Arden McLean: I thought it was “Unit”.

[Inaudible interjection]

Mr. V. Arden McLean: Okay. That’s another Authority.

Then, Madam Speaker, I do not know why we are going to go to the point where we recognise that something is wrong, some wrongdoing is being carried out and the Attorney General can apply to the courts to put a controller in place. That means the non-profit organisation then has to pay for that controller to be put in place. Madam Speaker, that is under clause 11.

So, Madam Speaker, we recognise that it is probably not the organisation that is doing the wrongdoing because it has a number of members who are a part of the organisation, but it is probably the individual or one—an individual who is doing that wrongdoing. I am wondering if we cannot identify that person and take that person out of that organisation and somehow represent that that organisation can continue. Madam Speaker, why I am saying is because that organisation’s ability to operate has just been suspended.

If we have a Lion or a Rotary or a Kiwanis for that matter, I do not believe all of them are going to be doing wrongdoing.

[Inaudible interjection]

Mr. V. Arden McLean: Yes, but if there is a suspicion that there is wrongdoing like money laundering or something, it may be that individual is the one who has been doing that because he/she is the financial controller or accountant or whatever the case may be, or treasurer, I believe they are called.

Now, that behaviour or that conduct may have been carried on without the knowledge of even the executive. And we are going to punish the organisations, is where I have the concern. I am a little wary of

that, that maybe we . . . and the Attorney General, Madam Speaker, can say whether or not we can distinguish that. And I am not trying to keep the organisation out of it because it might be the organisation; a small group of people doing it too.

[Inaudible interjection]

Mr. V. Arden McLean: Right!

There could be circumstances. So, Madam Speaker, I am not trying to remove the suspension or cancellation of it because we could get an organisation with only three, four people in it and that is their intent, their purpose of trying to fund someplace, have money coming through to them and being sent on. We know what those things are called, cells and all of that kind of stuff, Madam Speaker—sympathisers to a cause and the likes.

Then, we could have a Lion—do not think them Lions are not human and can turn bad now. One or two of them could turn bad and get into that position and do it without the knowledge of the entire organisation.

[Inaudible interjection]

Mr. V. Arden McLean: You think so?

[Inaudible interjection]

Mr. V. Arden McLean: We see plenty people who are smarter than the Board. You nah see man waiting on sentencing now? You think Lions [Club] is any bigger than that Board? I say no more.

So, Madam Speaker, that is my concern.

I am also concerned with those fees that Cabinet can reverse fees, penalties as well. Cabinet should not be doing that. If the Registrar applies those fees, Cabinet should not override them. No! Let it ride and if they want to appeal it, they go and appeal it. But I believe an Attorney General should be able to direct the appeal to the court and they can appeal to the court.

[Inaudible interjection]

Mr. V. Arden McLean: Very onerous. I agree, Madam Speaker, it is very onerous but if that Cabinet is given too much authority, they will likely do anything too. Do not trust them either.

[Inaudible interjection]

Mr. V. Arden McLean: Not as long as you are there.

[Laughter and inaudible interjections]

Mr. V. Arden McLean: Madam Speaker, my good friend said that my colleague said he trusts “the Cabinet”.

Mr. D. Ezzard Miller: What is he doing over here then?

Mr. V. Arden McLean: “The Cabinet”. He did not say the people in the Cabinet. Thank you.

The Speaker: I recognise the Fifth Elected Member for the District of George Town.

Mr. Winston C. Connolly, Jr.: Thank you, Madam Speaker.

I rise to give my brief contribution to the debate on this Bill. In my opening I would say that absolutely, it is time that we have some sort of regulation on not for profits.

I understand the FATF [Financial Action Task Force] requirements, especially the requirement under terrorism financing and other things like that, but I think, like the previous speakers have said, we need to look at scale. We need to ensure that the jurisdiction is in compliance with the FATF requirements. We need to provide better regulation. The people that I have spoken to, some from my own service club, Rotary, some organisations like PTAs and churches, they are concerned about whether or not this Bill is proposing a mallet to crack a peanut in certain cases.

Madam Speaker, I also note, unless I missed it, that there are no international co-operation requirements in this Bill, meaning if there is an organisation that is multi-jurisdictional and registered somewhere else and they are registered as a non-profit entity, would we not, at some point in time, possibly have to exchange information on them externally?

if we look at the FATF Best Practice requirements paper, there is actually a section talking about extra territorial. We just cannot assume that the starting of non-profit organisations is contained, et cetera here. So, in the committee stage amendments, I would ask that the Minister and his team look for something with regard to that.

Madam Speaker, one of the concerns of some of the people who come to me, like I said, such as the PTA, have raised the fact that if they are registered as a non-profit entity and they give out things like clothing, food and other things to students, they are worried that they would be grouped into how bigger organisations are looked at, and wondered again whether that exemption under clause 21 could be something that they apply to Cabinet for.

The other organisation—and I have been involved in terms of being a participant since it came board—is the “Heroes for Hannah” St. Baldwin’s one-off charity once a year. And this year they have already raised over \$200,000. They could potentially raise the \$250,000 hurdle and a number of those

funds would be going overseas to the International St. Baldwin’s Foundation. If that is the case and they are again caught under this Bill, they might seek to limit the amount of money they are getting to because that is when they get into the audited financial statements and not just a financial statement requirement. Again, concern is, will it limit the scope and the amount of money that organisations bring in to supplement what is already a supplementary addition to what government does under Social Services and other charitable endeavours.

Some of the other Members spoke about the large organisations that are already subject to international requirements; that are highly scrutinised in other places, including (and I will state my conflict which is Rotary because I am a past president of Rotary and a current member), Kiwanis, Lions and others, as to whether or not it could be looked at to exclude them from the get-go, meaning not have to have them apply once, you know, the Registrar or whoever is comfortable that they are still registered. They still put in their bits but—

[Inaudible interjection]

Mr. Winston C. Connolly, Jr.: Sorry?

[Inaudible crosstalk]

Mr. Winston C. Connolly, Jr.: I don’t know where we would stop but I am saying under clause 21 it is saying Cabinet can exempt on certain terms.

[Inaudible crosstalk]

Mr. Winston C. Connolly, Jr.: Yes, but I am talking about the large organisations Minister. I am again representing what was asked by the people who came to me. And they are one ring in terms of the very large, very recognised, highly scrutinised, and regulated and respected bodies, that there is a carve out for those.

They all do financial statements but some of them that might do over \$250, and may end up submitting things in terms of international outreach and matching grants for different places and fall under that and then they have to go out and get an audited financial statement, et cetera.

[Inaudible interjection]

Mr. Winston C. Connolly, Jr.: No. This one would do it if they hit those thresholds. So, I am saying, you know, right now they are not at that stage but as populations grow and times change and people have more disposable income, they could, and I guess they are worried about that to a certain extent.

[Inaudible interjection]

Mr. Winston C. Connolly, Jr.: Also looking at the controller role in some of these organisations because a lot of times these people are volunteers. Some of them can, are or are not qualified accounts that are CPAs et cetera. They may be bookkeepers to a certain degree.

In terms of some of the fining of some of these controllers, up to \$3,000 for the non-compliance and possibly one year in prison, those things can be seen as something that would stop good people from taking some of these roles because they just do not want to fall outside even if it is inadvertently.

Again, in the bigger organisations there are boards, there are returns that need to be filed and documents sent overseas, et cetera, but for some of the smaller organisations those people might be put off by coming forward and taking some of these roles because of the five-year recordkeeping component, the \$3,000 fine for non-compliance, et cetera. They will not just trust on the exemption provisions that my colleagues spoke about that Cabinet has.

Madam Speaker, I don't have much more to add after what the fellow speakers have said, other than just to state that I think that this theme is caught up within the proposed Bill which is not a one-size-fits-all approach. I think some of the fear and concerns might have gone away if there had been more of an outreach in terms of, you know, especially the smaller mid-level groups, because a lot of them have said, *How am I going to fall outside of this? Can I comply with this?* And they just did not seem to know. So, when coming to people who represent them in the Legislature, there were a lot of questions where we had to stop and really dig down into the details and in some instances let them know that some of their concerns were unwarranted.

If we count the number of charitable organisations in Cayman, there are significant ones and we know some will abuse the situation, and we absolutely have to protect the public and that is where the public policy component of this comes in. Sometimes it is good if we have wide public meetings and really discussing what is going on or adding a bit more than the grouping that was added.

Madam Speaker, those are my few contributions to this Bill. I hope that when we get to Committee stage we can address some of those things that were raised, if they are relevant. And just for the record, a number of them are not my observations. These are observations that different groups have come to me with and it is my job to represent their views in this honourable House. Thank you, Madam Speaker.

The Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak?

I recognise the Honourable Attorney General.

Hon. Samuel W. Bulgin, Attorney General: Madam Speaker, I wish to make a contribution to the Bill and unfortunately it will not be brief.

Madam Speaker, the Honourable Minister did an admirable job in outlining the reasons for the Bill and why not doing anything is not an option. He quite rightly, in my view, expressed his—he never used the word disappointment—but his disappointment with some of the commentary that we have seen in some quarters about the necessity for the Bill.

Madam Speaker, I would like to add some further perspective into the genesis of this Bill.

The Government, in efforts to enact legislation to deal with charities and non-profit organisations that can be traced back to as far as 1994. It was from that period, Madam Speaker, that the Portfolio of Legal Affairs has been directly involved in the formulation of the various iterations of the legislative proposals to deal with charities and non-profit organisations.

[Hon. Anthony S. Eden, Deputy Speaker presiding]

Hon. Samuel W. Bulgin, Attorney General: Mr. Speaker, at that time a select committee of the Legislative Assembly was established in 1994. It was chaired by the then attorney general, Mr. Richard Coles. And it was established to review a private member's motion that was made for amendments to the 1958 Gambling Law to among other things, the accommodation of raffles. In its final report, Mr. Speaker, the committee determined that in order to deal with this issue it was more appropriate for a Charities Law to be formulated as opposed to the approach which relied on simply amending the Gambling Law at that time. Mr. Speaker, the introduction of a new law was recommended to include provisions for the establishment of a permanent Charities Register in which all charitable organisations, associations, clubs, and fraternities should be registered.

In relation to accountability for funds and donations, Mr. Speaker, the charitable organisations would be liable to maintain and present to the Registrar an account of all funds raised. Those proposals were subsequently incorporated into a draft Charities Bill in 2004. In 2006, I took the view that the matter should be referred to the Law Reform Commission for more in-depth research and consultation. At the time I felt that this approach was necessary because charities in these Islands are generally established as non-profit organisations under section 80 of the Companies Law and are also regulated by Cabinet policy directives. There was a need to formulate a more modern and comprehensive framework which would facilitate procedures dealing with effective registration, with oversight responsibility, a framework for review, a framework that deals with compliance and accountability of the entire charitable non-profit process, Mr. Speaker. To this end, the Law Reform Commission eventually formulated proposals dealing with charity.

Mr. Speaker, as the Honourable Minister mentioned in his presentation, in formulating this Bill the Government took into account several considerations, including the Financial Action Task Force recommendations. Such recommendations deal with the establishment and implementation of the legal framework to combat money laundering and terrorist financing activities. The objective behind the FATF recommendation is to ensure that non-profit organisations are not used by terrorists as a cover for, or means of furthering the financing of terrorist activities, Mr. Speaker.

It would be helpful if I read briefly just a portion of what recommendation 8 of the FATF recommendations says. And the heading is “Non-Profit Organisation”.

It reads, Mr. Speaker: **“Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable and countries should ensure that they cannot be misused: (a) by terrorist organisations posing as legitimate entities; (b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and (c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.”**

Mr. Speaker, if it is necessary and I am happy to lay on the Table of the House the relevant page.

The Deputy Speaker: So ordered.

Hon. Samuel W. Bulgin, Attorney General: Thank you.

[Document laid on the Table of the House]

Hon. Samuel W. Bulgin, Attorney General: In keeping with this trend, Mr. Speaker, in February 2013 the FATF also published its methodology for assessing technical compliance with the FATF Recommendations and the whole issue of defectiveness thereto. As is usual, the FATF published what is called interpreted notes or commentary to help to clarify exactly what is intended or expected of countries in dealing with, in this case, NPOs.

Mr. Speaker, some of those commentaries provide that countries should review the adequacy of the laws and regulations that relate to entities that can be abused for the financing of terrorism, including NPOs; that countries should undertake domestic review of the NPO sector or have the capacity to obtain timely information and its activities, its size and other relevant features using all available sources of information in order to identify the features and types of NPOs that are particularly at risk of being misused for terrorist financing or other forms of terrorist support by virtue of the activities or characteristics.

It goes on to say, Mr. Speaker, that countries should periodically reassess their NPO sector by reviewing new information and the sectors potential vulnerabilities to terrorist activities. Countries should conduct outreach to the NPO sectors concerning terrorist financing issues and they should have clear policies to promote transparency, integrity and public confidence in the administration and management of all NPOs.

It provides further, Mr. Speaker, that NPOs should maintain the following standards: information and the purpose and objectives of their stated activities; should be able to establish identity of person or persons who own, control, or direct their activities, including senior officers, board members and trustees, and this information should be publicly available either directly from the NPO or through the appropriate authorities. They should issue financial statements that provide detail breakdowns of income and expenditures and should have appropriate controls in place to ensure that all funds are fully accounted for and are spent in the manner that is consistent with the purpose and objectives of the NPO of the stated activities.

Mr. Speaker, we are all aware of stories or instances where funds have been raised, funds have been donated and it has been used for everything else other than charitable purposes. We just need to, as we speak, think about what is happening in Haiti. Years ago when they had that terrible earthquake, a lot of monies were raised all over the world and it was intended to help those poor victims and a lot of them still have not seen anything, and only to be hit again by another disaster.

They should have framework in place to know your beneficiaries and associated NPO rules. They should maintain for a period of at least five years, records of domestic and international transactions and information in (a) and (b) above and make these available to competent authorities upon the appropriate authority.

I think the Fifth Elected Member for George Town mentioned about the ability for international co-operation. I am sure the Minister will deal with that in his windup when he gets up, but in the usual course of things, there would be appropriate gateway for the exchange of information if, for example, there is an allegation of criminal conduct or some sort of regulatory transgression. Usually, the request would be made to the relevant competent authority in the Cayman Islands. Probably in this case it could be the Registrar of Companies or the Registrar of Charities—NPO, or if it is a criminal investigation it would be sent to the police who would then source the information from the Registrar or the other relevant entities.

Mr. Speaker, these are some of the requirements that have been spelled out by the FATF in regulating NPOs or charities as we like to call them. That is why in the context of the Cayman Islands we

are required and expected to put in place the necessary legislative framework so that we can demonstrate that as a jurisdiction we are in compliance with these requirements.

If I might just look at the Bill a bit, I will mention in further details my view of the Bill. The Bill seeks to introduce the legislative framework I mentioned, which would ensure that an entity representing itself as a non-profit organisation would meet all the specified legal requirements to existing and operating as such.

The Honourable Minister has indicated, Mr. Speaker, that it provides for the appointment of a registrar of a non-profit organisation who shall serve as an oversight authority for non-profit organisations. I will pause here because the Member for East End wandered aloud, if I may say so, about the construct where we have the Registrar as the initial gatekeeper, making referrals to the Attorney General in instances where there is a need for investigation. In my view, Mr. Speaker, that is a particular strength in the legislation itself, not a weakness. We have in effect two sets of oversights in the legislation and it is conceivable, if I may say so, that the Registrar might miss something which the Attorney General might pick up or vice versa. I think what the Bill contemplates is that the two entities will complement each other in terms of the oversight framework that is required.

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: No, he is not wrong. He is, as usual, very insightful—

[Laughter]

Mr. D. Ezzard Miller: Put that in your pipe Kurt. Put that in your pipe.

Mr. V. Arden McLean: That is fear; don't worry about that.

[Laughter and Inaudible interjections]

Hon. Samuel W. Bulgin, Attorney General: But the whole purpose of the current construct of the Bill, Mr. Speaker, is that it brings under one regulatory regime all persons and organisations conducting charitable, religious, cultural, educational, social or any fraternal related activities or programme for public benefit within these Islands or elsewhere. Those were involved in the ATO philanthropy.

The Bill provides for non-profit organisations register; the maintenance and review of financial statements and the submission of annual returns. Additionally, Mr. Speaker, and of equal importance, if I might say so, the Bill includes provisions for the detection of mismanagement or deliberate abuse of non-profit organisations, whether these relate to fraud or activities involved in money laundering or terrorist fi-

nancing, and in position of penalties for breach of the legislation.

All the Members who have spoken have quite correctly mentioned the fact that the charitable sector is a vital part of our development and that we need to protect it from any abuse.

Mr. Speaker, the importance of charity to an economy is not lost on the FATF when they formulated their recommendations to deal with charities.

With your leave, Mr. Speaker, if I might just mention briefly, the interpretative note again on Recommendation 8 which is —sorry.

[Hon. Juliana Y. O'Connor-Connolly, Speaker presiding]

The Speaker: Sorry.

Hon. Samuel W. Bulgin, Attorney General: Thank you, Madam Speaker.

With leave of the House if I might just refer again to the Interpretative Note on recommendation 8 as it relates to NPOs. Madam Speaker, the Interpretative Note reads as follows: **“Non-profit organisations play a vital role in the world economy and in many national economies and social systems. Their efforts complement the activity of the governmental and business sectors in providing essential services, comfort and hope to those in need around the world. The ongoing international campaign against terrorist financing has unfortunately demonstrated, however, that terrorist and terrorist organisations exploit the NPO sector to raise and move funds, provide logistical support, encourage terrorist recruitment, or other support terrorist organisations and operations.**

“This misuse not only facilitates terrorist activity, but also undermines donors’ confidence and jeopardises the very integrity of the NPOs. Therefore, protecting the NPO sector from terrorist abuse is both a critical component of the global fight against terrorism and a necessary step to preserve the integrity of the NPOs.”

Madam Speaker, I am happy to also table a copy of the Interpretative Note that I just read.

The Speaker: So ordered.

[Document laid on the Table of the House]

Hon. Samuel W. Bulgin, Attorney General: For the record, it is paragraph 1.

Madam Speaker, I am saying all of this to say that we should not be making a mistake about what we are trying to do. The threat of the misuse of non-profit organisations is real; it is not imaginary. It is real and is something that happens every day. It is true that we might have been flying out a new radar. So far, we are aware of mostly issues of fraud as it re-

lates to NPOs. However, Madam Speaker, we don't know what we don't know, and it is important and imperative that we have in place a framework to monitor activity that takes place in the NPO sector. Nobody - the Government is not trying to put the NPO sector out of business; they are not trying to make life difficult; they are trying to among other things, provide confidence to those who are good enough, willing, to make charitable donations and would want to know that it is being used for the purpose for which it is given; that is very critical.

Equally critical, Madam Speaker, is to ensure, that given the importance of our financial services industry, that we do not allow undesirable to abuse our system by funneling money or funds, or other things, to persons who are involved in atrocities across the world.

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: So, Madam Speaker, getting to the point where this Bill is now being debated, was not without challenges.

In 2010, Madam Speaker, you will recall, the then Cabinet had before it for consideration the final report of the Law Reform Commission entitled "The Review of the Law Regulating Charitable Organisations in the Cayman Islands". Included in that report, was a draft Charities Bill, 2010 which sought to provide for the holistic and comprehensive regulation of charities in a manner which would protect the sector while also balancing our international obligations.

The Bill was listed for debate in the Legislative Assembly in June 2010; however, a decision was taken by the Government to withdraw the Bill then, in order to facilitate for public consultation due to what was *[INAUDIBLE...]* general stakeholders concerns in relation to the possible adverse impact of the Bill and good will in the Islands and the view that the Government was using a sledgehammer to crack a nut.

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: That was the view then, Madam Speaker.

I can tell you that some of the concerns were reasonably held. Some of them were genuine concerns, but a lot of the concerns were also driven by sheer misunderstanding of what was being attempted at the time. I give an example: there was an article in one of the papers that was written by a gentleman who is still a journalist. He did a commentary on the Bill and some of the things that came out of that discussion was there was fear that if persons put on a function selling hot dogs to raise money for some charitable cause, that they were going to be required to give the name and address for recordkeeping. There were issues about persons who were trying to drop money in the drop box at the airport on the way

out. Madam Speaker, nothing of that sort is intended and nothing of that sort is expected.

If persons exiting the Cayman Islands wish to drop their coins in the box that they have for animal welfare or whatever it is,—

Mr. D. Ezzard Miller: Humane Society.

Hon. Samuel W. Bulgin, Attorney General: —they are not required to give any name or addresses. All that will be required is that whoever goes to clear that box will be required to make a record to say \$30 was raised from the drop box at the Owen Roberts International Airport; that is all that is required.

[Inaudible interjections]

Hon. Samuel W. Bulgin, Attorney General: It picked up on the 5th of October 2000.

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: That is all that was required but there were persons who were spinning the thing the other way and I don't think they were necessarily mischievous; I think they completely misunderstood what the Government was trying to do, and they are still those who are not quite clear what the Government is trying to do as we speak. And so, the Bill was withdrawn, and we had numerous consultations, Madam Speaker.

Let me just tell you some of the bodies that we met with during that period.

We met and were in consultation with several stakeholders such as the Cayman Islands Law Society (CILS); the Cayman Islands Bar Association (CIBA); the Cayman Islands Society of Professional Accountants (CISPA); the Society of Trust and Estate Practitioners (STEP); the Cayman Islands Chamber of Commerce (CICC); the Cayman Islands Bankers Association (CIBA); the Cayman Islands Compliance Association (CICA); the Cayman Islands Financial Services Association (CIFSA); Hospice Care (HC); the Cayman Islands National Recovery Fund (CINRF); the Cayman Islands Ministers' Association (CIMA); the Cayman Drama Society (CDS); the Cayman Islands Red Cross (CIRC); the Cayman Islands Humane Society (CIHS); the National Council of Voluntary Organisation (NCVO); the Rotary Club of Grand Cayman; the Kiwanis Club of Grand Cayman; the Lions Club of Grand Cayman; the Cayman Aids Foundation; the Cayman Wildlife Rescue; the National Trust for the Cayman Islands (CINT); the Estella Scott Roberts Foundation; the United World College Cayman Islands National Foundation Limited; the Cayman Islands Crisis Centre (CICC); the Cayman Islands National Trust (CINT); the Girls Brigade of the Cayman Islands; Pastor Alson Ebanks; the Cayman Islands Sailing Club; the Pink Ladies Volunteer Corp; the Na-

tional Gallery of the Cayman Islands; Cayman Islands Olympic Committee; Feed Our Future; the United Church Council; and the Pineapple Club, amongst others.

Mr. V. Arden McLean: The Pineapple Club?

Hon. Samuel W. Bulgin, Attorney General: The Pineapple Club.

Mr. V. Arden McLean: Are you calling the United Church the Pineapple Club?

Hon. Samuel W. Bulgin, Attorney General: No, there's such an organisation, Madam Speaker; the Pineapple Club.

[Inaudible interjections and laughter]

Hon. Samuel W. Bulgin, Attorney General: That is the extent of the consultation. Madam Speaker, as I stand here today, the Ministry of Financial Services had several meetings with other groups as well. And, as we stand here today, there are still those who are complaining that there has not been any consultation. It's difficult; very difficult but let the record show that that is the case.

Madam Speaker, during the period there have been several alterations of the Bill, to the point where it was eventually renamed the Non-profit Organisation Bill, just to reflect some of the concerns raised by others and to also reflect the position by the other overseas territories in dealing with their legislation to regulate the NPO sector.

We heard the Minister, Madam Speaker, speak about the fact that there was an earlier version of this Bill a couple of months ago, and it was withdrawn. The Government listened, took the view that well, there are still others that are complaining about not properly being consulted. The Bill was withdrawn to facilitate further consultation.

Madam Speaker, we agree that consultation is essential in any democratic process and the Government understandably felt that it was critically important that these proposals received the fullest consultation. However, Madam Speaker, we need to understand that with any consultation process, all viewpoints and recommendation of stakeholders will be considered. However, not all points of view can be reflected in a particular piece of legislation; it is impossible to do that in a democratic process.

There were useful recommendations which have found its way in this iteration of the Bill. There are other recommendations that we thought were inconsistent with the current objectives of what the Government is trying to achieve, and so, understandably, those were jettisoned.

Madam Speaker, I would personally like to, again, on behalf of the Government, the Minister who

did, thank all of those who took time to make recommendations and to express their views to the Government which have found its way into the current Bill before this House. We now, Madam Speaker, need this legislation.

We heard the Minister speak about the upcoming review. We also reference, I think, in 2007, the CFATF [Caribbean Financial Action Task Force] report of the Cayman Islands, which spoke to the inadequacy at the time of the framework to deal with the NPO. The report indicated at the time that there was no supervisory programme to identify non-compliance and violations of NPOs. There was no outreach to NPOs to protect the sector from terrorist financing and abuse. And there were no systems and procedures in place to publicly access information on NPOs. There was no formal designation of point of contacts or procedures in place to respond to international inquiries regarding terrorism related activity of NPOs.

Madam Speaker, you heard mentioned, the second Bi-Annual Report 2014 which also speaks to some of the other deficiencies. Madam Speaker, that is not the end of the concerns. In the 2016 International Narcotics Control Strategy Report, <https://bo.usembassy.gov/wp-content/uploads/sites/223/2017/05/Narcotics-Report-2016.pdf> referred to the Cayman Islands outdated AML/CFT Laws and regulations [Anti-money Laundering/Combating the Financing of Terrorism] and it speaks to weak supervision of NPOs and non-financial organisations and insufficient international co-operation.

Madam Speaker, when the NPO framework in the Cayman Islands finds its way into the US 2016 International Narcotics Control Strategy Report, to be forewarned is to be forearmed. It means that the CFATF picked it up, the US National Control Strategy or the State Department has picked it up, and it simply means that it is resonating internationally, and it is time for us to heed the call to do something about the sector.

In that respect, Madam Speaker, just about all of the other overseas territories have already enacted legislation to respond to potential threats posed by the NPO sector. These include the Isle of Man Charities Registration Act, 1989; it includes BVI under the Non-Profit Organisation Act, 2012; the Turks and Caicos Non-Profit Organisation Regulations, 2013; the Bermuda Charities Act, 2014; the Jersey's Charities Law, 2014. They are all ahead of us, Madam Speaker. We should have been way ahead of all these territories given the foresight that existed back in 1994.

Nonetheless, we are here today, we are formulating our legislative proposals and in a way, it sort of benefits us to probably hang back a bit because we would probably learn or may have learned a thing or two from their framework. But the important thing is that we are now at the stage where we need this

piece of legislation contrary to some of the views that are expressed in other quarters.

Madam Speaker, I just mentioned some of the observations and the Minister mentioned in his introduction to the Bill, some of what has been canvassed elsewhere. But, let me just say, I have seen where this Bill has been publicly described as, among other things, a disaster, and one which requires a decent burial; I have seen that mentioned somewhere. I can tell you what a disaster would be, Madam Speaker: it would be a disaster of monumental proportion if this legislation is not passed. If we, at the end of the day, having been reviewed, is the subject of an adverse finding, which would then cause us to end up on a list somewhere, those same people, those same publications will say, *You know what happened, the Government fell asleep at the switch*. That is what they would say. *How did the Government allow this to happen?* That is the first thing they would ask. So, it behooves us to get this done.

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: The Government recognises—

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: No, no, no. The Government, Madam Speaker, recognises the vital importance of the NPO in providing important services, as I mentioned before. There is also the need to balance that with promoting transparency within the operations of these entities.

So, Madam Speaker, while our fate will be left in the hands of the FATF of assessors, with respect to how they view the technical compliance and effectiveness of our legislative proposal, I think we are headed in the right direction from the perspective of formulating this sort of regime, and we will be on the right side of history when all is said and done with this initiative.

Madam Speaker, in wrapping up I just wish to make a few other observations:

Clause 13 of the Bill deals with the review of financial statements and this has been a contentious area in just about all the iterations. Some of the arguments raised was that sometimes, . . . well just as I be so sometimes, I would imagine, was that the conduct of an audit could adversely impact the scarce resources of the NPOs. The aim, therefore, Madam Speaker, seems to be to widen the category of persons who can provide an audit and instead of referring to the exercises of an audit, the legislation uses the term 'review'.

Some might say, Madam Speaker, it is a matter of semantics, but the recommendation, the obligation contemplates the fact that whatever expression we are using, it must be an internationally recognised exercise that can capture the information in the way

contemplated by the FATF of recommendation when dealing with the oversight of the NPO. There needs to be accountability, record keeping and audit trail; how much was received, how it was spent and the fact that it was spend for purposes of which it was intended.

Madam Speaker, there has also been some concerns you heard expressed about Cabinet having the power to override the Registrar or to exempt persons and entities from the application of the legislation. I will just briefly point out that the whole exercise here was not to vest the Cabinet with powers to use arbitrarily. What has been done here is for good reason. It is with prudence, Madam Speaker. There will be instances where a legitimate NPO may be seeking to assist the public, for example, in an emergency such as a natural disaster. In instances, time may be of the essence and, as such, it would be in the public interest for the Cabinet to be able to grant requisite permission expeditiously, as may be necessary to deal with these things.

I think, even in the wake of the concerns of the Member for Bodden Town, he quite rightly said that we must be able to trust the Cabinet. We all know the composition of the Cabinet and they are independent-minded people in that Cabinet; in every Cabinet, in a Cabinet; I'm not speaking about a particular Cabinet. Cabinets over the years have been given enormous responsibility. Under the Constitution they have the power to formulate policies.

Madam Speaker, this is all for the good of the public. It ought to be able to have the sort of flexibility to make policy decisions to suit the exigencies of the situation, and that is exactly what happened. What is vested in Cabinet is really no difference from the provision in the Trade and Business Law; Cabinet is the appellate body. It is the same Cabinet that is the appellate body for under the Firearms Law. I am not aware (and I stand corrected) of any instances where we have heard of abuse of power in dealing with firearms appeals.

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: I said, "a Cabinet".

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: No, "a Cabinet". I am not aware, Madam Speaker, of any instances where a Cabinet has been accused of arbitrariness in dealing with a firearm appeals;—

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: —a Cabinet that has been accused of arbitrariness in dealing with appeals of the Trade and Business Licensing Law. So, the provision here is well intended

and I understand the observation of the honourable Member, but I am seeking to reassure him that it was put in here after careful consideration, because there are going to be instances where the Cabinet ought to be able to exercise its discretion to facilitate the public interest as the exigencies of the situation arise.

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: Madam Speaker, I am, to say the least, elated of the fact that we have come this far and that this piece of legislation might very well see the light of day, and that when the review is conducted next year and the year after and so on, it can be said that the Cayman Islands as a jurisdiction is quite aware, quite alive, of the dangers . . . well, I might put it in context—is quite aware of the benefits of the NPO sector, but is equally aware of the potential for abuse by those who mean these Islands no good. So, I think it is an excellent initiative and I, like the Minister, commend the legislation to this honourable House. I thank you.

The Speaker: I recognise the Member for North Side.

Mr. D. Ezzard Miller: Thank you, Madam Speaker.

I just have a couple of questions, I guess, for the Minister. Nobody has mentioned foundations being covered under this, and, as I understand, there are several foundations established in the financial industry into which any funds that are left off from, as the SPVs [Special Purpose Vehicles] are placed into a foundation that is usually managed by the entity. I wonder whether these foundations will have to make these same submissions and dispense the funds as per the minutes of the foundation's decision on how they send it up.

I am aware of a specific instance where such a foundation decided to dispense some of their funds which included a donation to the Edna Moyle Primary School that the school has not received. I wonder what kind of checks and balances are going to be placed in this. As I understand it, there is a number of education institutions that should have received money from the HSBC foundation, and it has not been done. Therefore, I wonder whether the Government can do anything at this point.

Madam Speaker, I have an envelope that was placed on my windshield which includes the minutes—

[Inaudible interjections]

Mr. D. Ezzard Miller: This truck has a big windshield, Premier.

[Laughter]

Mr. D. Ezzard Miller: —and had I known that this Bill was going to be debated today, I intended to bring those and table them because the primary school in my district certainly needs the funds.

I would like some assurance from the Government that they are going to look into this to see that these funds are dispensed as per the decision made, and whether, in the future, these kinds of foundations are going to have to be accounted for. All of the primary schools in the Island were supposed to get money, including Cayman Brac too, so you had better check it out.

The Speaker: Does any other Member wish to speak? [pause] Does any other Member wish to speak? [pause] Final call, does any other Member wish to speak?

I recognise the Minister responsible for Financial Services to give his reply.

Honourable Minister.

Hon. G. Wayne Panton: Madam Speaker, thank you very much.

Let me say, Madam Speaker, that I am grateful for the contributions from Members. As I indicated when I was sitting down, I was sure that Members were going to have comments in relation to this Bill. And it was part of a strategy to perhaps give my leg a little break from having to stand and sit and stand here so often this afternoon.

I appreciate the comments made and particularly appreciate the contribution from the Honourable Attorney General who, I think, did such a great job in clarifying and elucidating the position in respect of the FATF. He went on very much into the degree of consultation that has occurred in relation to this Bill. He reinforced the necessity for the Bill, and he even dealt with a number of comments made by other Members. I could almost just sit and say nothing and feel that he has assisted me very adequately and clearly in finalising the presentation of this Bill.

Madam Speaker, just to add a little context. The Honourable Attorney General referred to the consultations that occurred in the past and he also referred to some of the consultations that have subsequently occurred. He read a very extensive list of people or organisations (I should say) that were consulted at the time. Of course, he subsequently recognised that changes have been made to this Bill which reflect a significant scaling back of requirements, such that, given the necessity for the Bill, it really is not something that should be regarded as objectionable at this point; it is something that we must have in place as a country.

Madam Speaker, as Minister with responsibility for Financial Services, I am particularly determined that we do not fail the upcoming CFATF assessment. I think the Honourable Attorney General referred to the US narcotics report of this year where they specifically

highlighted that. However, anything that we are bringing forward now in relation to Bills is designed to address the perceived risks and fill in any gaps that we have identified through the National Risk Assessment in connection with the preparations for the Caribbean Financial Action Task Force assessment which happens next year. This Government is not going to take a chance in having or being ill-prepared for the best possible assessment that we can have in respect to that.

This Bill is one of the critical bills and one of the significant elements of legislation that we need to have in place in order to ensure that we are best prepared for that. There are very real consequences if we do not do that. If we harm the reputation of this jurisdiction, if we harm the credibility of this jurisdiction, there are very real potential dollars and cents ramifications for us.

I've indicated previously the extent of the contribution of financial services to our economy and to our GDP [Gross Domestic Product], to government's revenues. These things pay some very real costs that we have to provide some very real and essential services for the people of this country that affects our quality of life, and I have Member Ministers who have responsibility for a number of these areas that they would certainly want to be in a position to continue to provide these services to the extent required by the people of this country.

Madam Speaker, this is a Bill which is just one of the important ones to bring forward. In connection with this, we have been trying to deal with this for so many years now and it is time to get it done. It is a Bill which does not create any undue burdens; it is quite straightforward. We are appointing a Registrar or we are creating a registry. We are requiring NPOs to register. And yes, to the Member for North Side, that does include all of the charitable organisations or foundations or however he wants to describe them, which are involved in taking in money and giving money to the entire public or to a segment of the public. The definition, definitely, of NPOs under the Law, covers that.

Madam Speaker, I think there were some comments made by the Fourth Elected Member for Bodden Town which perhaps the Honourable Attorney General did not address. I think the Fourth Elected Member for Bodden town started off by saying that he was concerned about how it impacts existing charities that behave themselves. Well, I think the point is that we must ensure that everyone, as far as possible, is covered unless there is a very good reason.

The Honourable Attorney General did respond to the comment from the Fourth Elected Member for Bodden Town in relation to the exemption provision in section 21 where it talks about an entity that Cabinet may, by order exempt. Madam Speaker, clearly, the rationale for that provision has been explained by the Honourable Attorney General and it is a very reason-

able plausible rationale. That is the kind of flexibility you would want in circumstances where there is an urgent need. It is not a situation as has been commented on in the press by the Fourth Elected Member for Bodden Town, which reflects Cabinet ability to exempt someone who has been registered under the Law and found to be in breach of the Law. It is not a provision which could be exercised to exempt that NPO from any wrong.

[Inaudible interjection]

Hon. G. Wayne Panton: That was when you said it in that context.

Madam Speaker, there were some comments made in relation to, I think, it was [clause] 19 which deals with appeals against the administrative penalty where:

“A controller who is dissatisfied with a decision of the Registrar in relation to the imposition of a penalty may, within fourteen days of receiving the penalty notice, appeal to Cabinet.”

I think perhaps it was the Member for East End who made that particular point. However, Madam Speaker, as the Honourable Attorney General said, in many other laws there are provisions which allow Cabinet to be the appellate body and there are good reasons for that sort of approach. Clearly, one is that it is going to be a lot less expensive for a party to appeal to Cabinet, to ask for a review of a decision of the Registrar who has imposed or proposes to impose a penalty on them than it is to make an application to court, seeking a review by the court. It is probably going to be a lot more efficient from a time perspective as well.

Madam Speaker, I will say that I did have some difficulty in following the comments from the Member for East End. I am not sure whether that was his fault or my fault, but it may have been both.

I think there was a comment made in relation to clause 14 talking again about the appeal against a review, and clause 14(1) provides:

“A non-profit organisation may appeal to the Cabinet against a decision of the Registrar to request a review in accordance with section 13(2) and (3).”

So, clause 13(2) and (3) provides a mechanism through which a review can be carried out by a duly qualified accountant or a licensed account. I say here, Madam Speaker, that there is a proposal to do a committee stage amendment to add some clarifying language around duly qualified accountant. I think there is a comment from the Cayman Islands Institute of Professional Accounts (CIIPA) which we have taken on board in connection of defining what an accountant means in that sense.

So, I am not sure if I followed that comment very specifically; I mean, the provision allows Cabinet to review the decision of the registrar and put that decision through the review process set out in clause 13(2) and (3). Therefore, in that case, it is not Cabinet that is doing the review and making the decision on that; they are just agreeing to initiate a review process as set out there.

Madam Speaker, I think in general, my colleague, the Honourable Attorney General dealt with the remainder of the specific points. However, I wanted to briefly outline that again. Firstly, they mentioned the people who were engaged in the latest working group in relation to this Bill and they included STEP, the Chamber of Commerce, the Special Olympics Committee, the people from General Registry, people from the Department of Financial Services' policy and legislation. In this case, I would say that STEP was effectively representing something like 30 NPOs in Cayman. Even though we have six, well, three members of the public outside of government or three organisations in the public outside of government represented there in that list I mentioned, STEP itself was representing 30 different organisations. So, there has been extensive consultation in respect, even of this final Bill.

As I said, Madam Speaker, we sent out 30 invitations to identify NPOs that were regarded as being interested and 10 of them showed up and basically 9 out of the 10 fully endorsed the need for the legislation and the provisions which are contained in the legislation. The only one was from Rotary that said they do not think it should apply to them because they are a big international organisation. I think with respect, Madam Speaker, any organisation, no matter how big, how well rooted, how wide they reach globally, can, on the ground in Cayman, be abused in some way, in ways which would cause concern. So, this Bill is designed to be fairly wide and cover the full ambit of the NPO activities in the country.

Madam Speaker, I think the Attorney General alluded to this as well; there is a significant public interest element here. We are talking about giving confidence to the public; basically, giving a seal of approval to an organisation which registers and complies with the requirements under this Law. It gives confidence and information to the public. It eliminates the potential for some bad actors, and we all know that we have had concerns from time to time with people standing on corners and making representations that they are representing certain organisations and charities and purporting to solicit funds for that.

I think this Bill will go a long way to addressing concerns of the public. I know I have seen lots of time people sending around messages saying, *I have been asked this, who are these people, and do you know them and are they legitimate*. Well, the list of registered NPOs will be publicly available and they can easily go and look at this list on the website and as-

certain whether or not they are properly registered and recognised NPOs within the Cayman Islands.

Madam Speaker, it also provides important information for the Government; data on the breadth and depth of the activities involved with NPOs in the Cayman Islands. That's important information for us to know as well because a government needs to understand and know the various parties that are engaged in doing good within the community and being able to assess the extent to which, for a variety of reasons, they're fulfilling these functions and providing these types of services.

Madam Speaker, there is an important point here as well and other Members have referred to it. We do have a lot of NPOs in the country. Anybody who has been in Cabinet will know that they frequently apply for section 80 registrations. A section 80 registration under the Companies Law as a not-for-profit is currently the only way any not-for-profit can have that sort of designation and title given to them. That process is not the clearest; there is a lot of policy issues around it, in addition to the essentials that are specified in the Law and there are significant costs associated with that as well.

This Bill will provide a mechanism through which these NPOs can register under the NPO Bill and get recognition for being a charitable organisation essentially, without having to go through the process of registering as a section 80 company. And they can also get some of the perceived benefits around that in relation to the existing sort of work permit and immigration related concessions that are available to section 80 companies, as well as those under the Trade and Business Licensing Law.

This Bill, Madam Speaker, actually provides a very streamline registration process and one which provides benefits without having all of the additional work that is engaged with going through a section 80. So, it is less time consuming; it is less cost intensive, and with the section 80 you have to have a company but with NPO under this Bill you can have different types of entities and different styles. So, it is not limited purely to companies.

Madam Speaker, I think that we have very clearly set out why this Bill is needed. I think we have outlined the facts that it is not burdensome, not difficult and is quite straightforward, and there should be no fear, no confusion, and no misunderstanding upon which people can base on reasonable perspectives. This is quite straightforward and something which this country needs and must have in place.

We would certainly love to live in a world where we do not have to deal with additional regulation. We would love to live in a world where we can trust everybody, and everything is being done right in the interest of the greater good. Unfortunately, we do not live in that perfect world, and we have to do the things that are required for us to do to demonstrate that we are taking a responsible approach to the glob-

al standards and engaging and demonstrating our effectiveness in a way which lends credibility to us and really enhances our reputation.

Madam Speaker, with that being said, I think I will take my seat. I thank you very much for the opportunity and thank Members for their comments and thank the Honourable Attorney General again for his very extensive contribution. I suppose I should also thank all of the NPOs that have been engaged in consultation on this process as well as the Ministry staff and the staff from the Registrar General that have put in a tremendous amount of time and effort. Of course, thanking the drafts people, the Honourable Attorney General's very capable drafting department in assisting with getting this through and making the many changes that were made in order to try to address the numbers of fears, in most cases, not based on any strong foundation but other concerns as well which we think we have addressed and satisfied in respect to this very necessary Bill. With that, Madam Speaker, I thank you very much.

The Speaker: The question is that a Bill shortly entitled the Non-Profit Organisation Bill, 2016 be given a second reading.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: The Ayes have it.

Agreed: The Non-Profit Organisation Bill, 2016, given a second reading.

ADJOURNMENT

The Speaker: Honourable Premier, we have reached the hour of 7 pm.

The Premier, Hon. Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, we have made really good progress today; much better than I expected with nine Bills completed, plus a whole range of questions and the laying of numerous reports. I think we deserve to adjourn.

I move the adjournment of this honourable House until 10 am tomorrow.

The Speaker: The question is that this honourable House be adjourned until 10 a.m. tomorrow.

All those in favour, please say Aye. Those against, No.

AYES.

The Speaker: This House now stands adjourned until 10 a.m. tomorrow.

At 7:06 p.m. the House stood adjourned until tomorrow, Thursday, 6th October 2016.