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29th April 2011

The Hon. Mrs. Kamla Persad-Bissessar
Prime Minister of the Republic of Trinidad and Tobago
Office of the Prime Minister
13-15 St. Clair Avenue, St. Clair
Trinidad

Dear Madam,

Re: UNLAWFUL CLICO POLICY OF GOVERNMENT

Please treat this letter as a pre-action protocol letter in accordance with the Pre-action Protocol Practice Directions relating to applications for administrative orders pursuant to the Civil Proceedings Rules 1998.

DEFENDANT

The Honourable Mrs. Kamla Persad-Bissessar, representing herself as Prime Minister and Head of the Cabinet of the government of Trinidad and Tobago and other members of the Cabinet

Office of the Prime Minister
13-15 St. Clair Avenue, St. Clair
Trinidad

CLAIMANTS

United Clico Policyholders Group representing itself and members of the said Group who are Trinidad and Tobago Policyholders of the Colonial Life Insurance Company (Trinidad) Limited ("CLICO") who purchased the Executive Flexible Premium Annuity ("EFPA") an insurance product offered by CLICO.

The address of the Claimant is:

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DETAILS OF THE MATTER BEING CHALLENGED

The Claimant challenges the policy currently under contemplation by the new government of Trinidad and Tobago ("the government"), first announced by the Minister of Finance, the Honourable Mr Winston Dookeran in his Budget Statement to the House of Representatives on 8th September 2010, under which "traditional" insurance policyholders in CLICO would be fully guaranteed by the government "backed by the statutory fund"; while EFPA policyholders whose principal balances exceed \$75,000.00 would have no such protection, but instead would receive the principal balances of their policies only over a period of 20 years, without interest ("the Dookeran plan").

THE ISSUES

1. It is our contention that if a decision were to be made to implement the Dookeran plan it would be unlawful for the following reasons:
 - i. it would be contrary to the provisions of the Insurance Act Chapter 84:01, because (a) it would cause CLICO not to make good, so far as possible, the deficit in the Statutory Fund which it is still bound to maintain for the equal benefit of all policyholders (including EFPA policyholders); and (b) it would cause the Trustees of that fund, in breach of trust, to apply it unequally, to the benefit of the traditional policyholders and detriment of the EFPA policyholders.
 - ii. it would frustrate the legitimate expectations of the Claimants arising out of the government's repeated promises to all CLICO policyholders, to the effect that: (a) CLICO's obligations to all of them would be honoured and all their funds in it would be guaranteed by the government; (b) the statutory deficit would be made good; or at least (c) all policyholders would be treated equally.
 - iii. it would amount to unfair and unequal treatment;
 - iv. it would be irrational.

2. Further, it would appear that over the past two years, the government, in the knowledge of the statutory deficit, has advanced to CLICO funds and assets amounting to \$5 billion (\$1.9 billion in the form of cash or repayment of loans, \$3.1 billion in the form of a transfer of interest-bearing government bonds which pay CLICO some \$200 million per annum in interest) without, it seems, requiring it to apply these assets to making good the deficit in the Statutory Fund, but instead allowing it to pay out certain other policyholders in full. This amounted to a breach of the Claimant's legitimate expectation that (save for certain specific exceptions) the government would require CLICO to apply any funds or assets it advanced to making good the statutory fund deficit in furtherance of its promise that all its obligations to policyholders would be met. This breach of legitimate expectation amounted to a breach of our clients' constitutional right to property protected by s.4(a) of the Constitution which (unless the promise is now made good) has caused them loss and damage for which they are entitled to constitutional relief.
3. We set out our arguments in support of this contention in more detail below, after first setting out the history of this matter.

HISTORY

The Background

4. CLICO is a company regulated by the Insurance Act Chapter 84:01. The EFPA was an insurance product of a type known as a deferred life annuity, falling within the definition of "ordinary long-term insurance business" in paragraph 1 of Schedule 1 of that Act. Successive versions of the EFPA were sold by CLICO following their approval for sale as insurance policies by the Central Bank (or before 2004, its predecessor the Office of the Supervisor of Insurance) under section 119 of the Act.
5. The Act provides for the establishment of a Statutory Fund by each insurance company to cover its liabilities to policyholders. In respect of long-term insurance business, section 37(4) requires every company carrying on such business to place in

trust in Trinidad and Tobago assets to match its liability and contingency reserves with respect to its Trinidad and Tobago policyholders.

6. The Insurance Act appoints the Central Bank as the supervisor and regulator of the insurance sector. Under section 65, the Central Bank may intervene in the affairs of an insurance company.
7. The Central Bank also has powers granted to it by section 44D of the Central Bank Act Chapter 79:02 (as amended by Act No. 4 of 2009) in certain circumstances (among other powers) to take control of and carry on the affairs and take over the property and undertakings of financial institutions, including insurance companies, where it is of the opinion that the financial system of Trinidad and Tobago is in danger.

The financial crisis in 2009

8. CLICO is a subsidiary of the CL Financial Group, as is the British American Insurance Company (BAICO). CLICO and CL Financial both held shares in another subsidiary, the CLICO Investment Bank.
9. In January 2009 the financial crisis led to a loss of confidence in and a run on the CLICO Investment Bank, that is, a rush of depositors seeking to withdraw assets.
10. As a result on 30th January 2009, the Central Bank took control of the CLICO Investment Bank pursuant to its powers under section 44D of the Central Bank Act and on the same day, CL Financial and the government came to an agreement set out in a Memorandum of Understanding ("the Memorandum") signed by Mr. Lawrence Duprey on behalf of CL Financial and Ms. Karen Nunez-Tesheira, the then Finance Minister, on behalf of the government.
11. The Memorandum recorded that CL Financial had asked for the government's intervention in the rehabilitation of CLICO Investment Bank, CLICO and BAICO

and that the parties had agreed steps to protect the interests of depositors, policyholders and creditors of these institutions. In particular:

- i. CL Financial agreed (amongst other things) to sell its shareholdings in a number of identified companies and to sell such other assets as might be necessary, and to apply the proceeds (a) to correct CLICO Investment Bank's financial position, and (b) to ensure that CLICO's and BAICO's statutory fund requirements were satisfied.
- ii. The government agreed to provide collateralized loan financing to CLICO and BAICO to meet any residual statutory fund deficit which might still exist after this sale of CL Financial's shareholdings and assets.

12. On the same day, 30th January 2009, the Minister of Finance and the Governor of the Central Bank, Mr. Ewart Williams, held a media conference to publicise these steps. The government and Central Bank issued a joint media release on that date which included the following statements:

"The key elements of the agreement between the Government and CL Financial are as follows:

...

3. CL Financial will sell, liquidate or collateralize its assets and allocate the proceeds to meeting in full all the requirements of the Statutory Fund for both CLICO and BAICO, thereby protecting in full all its insurance and pension fund clients.

4. The Government will provide funding support to fully back CLICO and BAICO to meet any Statutory Fund deficits that might emerge after the company has made all possible arrangements to place satisfactory levels of cash and other assets into the Statutory Fund ...

...

The Government has taken these steps to assure the investing public in Trinidad and Tobago, including depositors and policy holders of the affected companies of the safety of their investments and the requirements for stability and order in the market place." [Emphasis added.]

13. The Finance Minister's public remarks to the media conference of the same date included the following statement:

"I wish to reiterate this Government's commitment to ensure that depositor's assets will not be at risk"

14. In newspapers on the following day, 1st February 2009, the government and Central Bank published information answering questions on "the government's rescue of CL Financial". It included the following question and answer:

"Q. I'm a proud CLICO policyholder ... CLICO insured my parents, now my wife and myself ... what happens to my policy now?

A. CLICO continues to be a company of which we can feel proud – its achievements are many. As the Minister of Finance indicated in her statement: '... substantial steps have been taken to protect the depositors and other liability holders of the group, especially life insurance clients and pension fund beneficiaries... I wish to reiterate this Government's commitment to ensure that depositors' assets will not be at risk.'"

15. On 2nd February 2009 the Minister of Finance laid a copy of the Memorandum in Parliament and made a statement to the House of Assembly on the actions she had taken. She told the House that the statutory fund deficit "must be corrected" and she went on to say, among other things:

"As a first recourse, the Government has opted to apply the proceedings of the sales of the shareholdings of CL Financial and its affiliates to fund outstanding statutory fund obligations. It would also ensure that the group's assets are first used to meet its outstanding obligations."

16. On 4th February 2009, pursuant to the Memorandum, the government appointed a new board to run CLICO and a new managing director, Claude Musaib-Ali.

17. On the same day Act No. 4 of 2009 was passed, amending the Central Bank Act to extend the Central Bank's powers under section 44D to take control of insurance companies.

18. On 13th February 2009 the Central Bank announced that it was taking control of CLICO and BAICO pursuant to its new powers under section 44D. The Governor of the Central Bank's media release explaining this step included the following statements:

"Invocation of these powers is designed to achieve several objectives including

...

5. Providing a legal basis for advancing the funding to which the Government is committed in order to ensure the protection of policyholders of CLICO.

...

Ladies and gentleman, the Govt and the Central Bank have undertaken a number of steps, including today's actions, to protect policyholders of CLICO and BA, and to maintain stability and confidence in the financial system.

I am pleased to see that the steps we have taken so far have already succeeded in reducing the initial concerns. There is a greater stability in the banking system as a whole and customers of CLICO, CINB and CMMB have shown tremendous maturity in responding to the current financial situation. There is still a considerable way to go and I therefore urge all members of the public to continue to support CLICO and BA based on the commitments made by the Govt and the Central Bank." [Emphasis added]

19. On 15th February 2009 the new managing director of CLICO, Claude Musaib-Ali issued the following public statement:

"CLICO [TRINIDAD] wishes to assure all its Policyholders and Clients that our normal business operations will continue.

All terms and conditions of existing policy contracts **will be** honoured.

All Policyholders' funds are guaranteed by the Government of Trinidad and Tobago and the Central Bank." [Original emphasis]

20. On 12th June 2009 the government and CL Financial and the majority shareholders of CL Financial came to a further agreement, with the purpose of appointing a new board to CL Financial in order to execute the actions contemplated by the Memorandum. This gave the government the power to appoint the majority of the new board, and therefore effective control over CL Financial and its affairs.

21. Shortly afterwards the Central Bank issued a statement which was published in the press on 24th June 2009 and which included the following assurance:

“As Regulator of the Financial Sector, we wish to assure the public that:

The Government of Trinidad and Tobago has committed to meet obligations of Trinidad and Tobago third party policy holders of Colonial Life Insurance Company (Trinidad) Ltd. (CLICO) consistent with the Memorandum of Understanding between the Government of Trinidad and Tobago and CL Financial.” [Emphasis added]

22. Answering questions on that statement in Parliament on the same day, the then Finance Minister said:

“We guarantee the policyholders and residents of this country, that is our guarantee...”.

23. In January 2010 the then Finance Minister in an interview in the Business Express answered the concerns of CLICO policyholders who had done as the government had asked and kept their funds in CLICO beyond maturity, and were concerned by news that other holders had been paid out while they had not. She was reported as saying:

“I would say everyone will get their money but in the context of the enormity of the situation and the fact that it will affect us all. It is not just those who invested. If you do not contain it, it can have a contagion effect for the whole economy. What it requires is the confidence of the people of Trinidad and Tobago and the patience and understanding that it is a national issue and understand the enormity of the situation. It will require patience.” [Emphasis added]

24. However, in his budget statement to Parliament on 8th September 2010, the new Finance Minister, Mr. Dookeran, announced a substantially different policy from that previously promised when he announced the following proposals (i.e. the Dookeran plan).

“1. We will separate the insurance business from short term investment and mutual funds business to protect the insurance policyholders and the obligation to the 225,000 [pensions, life and health insurance] policyholders will be honoured, backed by the statutory fund.

2. To depositors in the short term investment [including EFPAs] and mutual funds, the government will make an initial part payment of a maximum of \$75,000. This is intended to bring relief to the small depositors. This will fully pay off approximately 45 per cent of the 25,000 investors in these products, including more than 140 credit unions and 15 trade unions.
3. The short term investment and mutual fund depositors whose principal balances exceed \$75,000 will be paid through a government IOU amortised over 20 years at zero interest. This government IOU would be structured in such a way that it could be traded on the secondary markets, thereby creating a measure of immediate liquidity for the depositors.”
25. Three weeks after this budget announcement, the government reviewed its position. On 1st October 2010 you announced to the House of Representatives that the Dookeran plan was on hold and that the government was forming an Inter-Ministerial Committee chaired by the Honourable Vasant Bharath (“the Inter-Ministerial Committee”) to consult and hear representations from interested parties before making recommendations to Cabinet on how to proceed.
26. During October and November 2010 the Inter-Ministerial Committee consulted and met with some of the interested parties, including some representatives of CLICO policyholders, on several occasions. It did not consult with certain groups and individuals who represented CLICO Policyholders.
27. On 10th November 2010 the Minister of Finance announced to the media that the government’s position remained the same as in his Budget announcement.
28. On 21st November 2010 you announced that, as a result of the consultations, there would be changes in the government’s proposals.
29. To the House of Representatives on 24th November 2010, the Minister of Finance on behalf of the Government announced that the only change in the proposals was the creation of a separate fund to protect credit unions. The government’s policy towards

the EFPA policyholders was to remain the same: they would receive a zero interest 20 year government bond.

30. However, in your New Year Address on 1st January 2011 you raised again the possibility that the government's policy might change. You said: "We have announced certain plans for both CLICO and the HCU (Hindu Credit Union). We ask you to trust us and promise that when the economic circumstances change there is all likelihood that the 20 years proposal could also change."

31. Finally, on 27th January 2011 the Minister of Finance addressed a news conference after a meeting of Cabinet. In response to questions about those CLICO policyholders whose balances were over \$75,000 and who were threatening legal action against the government, he said that you planned to meet with those policyholders as soon as proper arrangements could be made.

32. In the meantime, the government, we understand, advanced TT \$7 billion to CLICO, on terms that required it (or at least permitted it) to apply this sum not (as envisaged by the Memorandum) to making good the CLICO Investment Bank's financial position, or the statutory deficit, or to meeting CLICO's continued running costs, but to paying off certain identified policyholders.

33. We infer from that comment that the government has not made a decision (or final decision) to adopt the Dookeran plan announced in the Budget Statement and referred to above (whether as announced on 8 September 2010 or in some varied form). We urge you, for the reasons set out below, not to adopt it: to do so would be unlawful.

Claimant's contentions

Illegality and Contravention of the Insurance Act

34. As stated above, on 8 September 2010 the Minister of Finance told Parliament that "the obligation to the 225,000 [pensions, life and health insurance] policyholders will be honoured, backed by the statutory fund"; whereas "short term investment and

mutual fund depositors whose principal balances exceed \$75,000 will be paid through a government IOU amortised over 20 years at zero interest” – i.e. the obligations to EFPA policyholders whose principal balances exceed \$75,000.00 will not be honoured or backed by the statutory fund.

35. The Insurance Act, however, draws no such distinction between EFPA policies and “traditional” insurance policies; and to apply this distinction in deciding whether CLICO should put monies it receives into the statutory fund is illegal. Likewise, it is illegal to apply it when deciding how the trustees of the monies, once in the fund, should then pay them out.
36. EFPAs are insurance products. Each successive version of the EFPA was approved for sale as an insurance policy under section 119 of the Insurance Act by the Central Bank or its predecessor, the Office of the Supervisor of Insurance. They include a provision for an annuity on retirement until death and a payment in the event of death before retirement. They therefore meet the definitions of “ordinary long-term insurance business” in paragraph 1 of Schedule 1; and an individual in Trinidad and Tobago holding an EFPA is a “Trinidad and Tobago policyholder” by section 3 of the Act. They accordingly fall in the category of insurance policies protected by CLICO’s statutory fund in respect of long-term insurance business, established pursuant to section 37(4) of that Act.
37. The Dookeran plan, however, proposes that only “traditional” insurance policyholders will be “honoured, backed by the statutory fund”, and EFPA policyholders will have no such protection. That is illegal. EFPA policyholders have the same entitlement to the protection of a statutory fund, and of a trust of its assets, as “traditional” policyholders. Therefore, under the Act, CLICO must apply all funds it receives from the government to making good not just the deficit in relation to traditional policyholders, but also the deficit in relation to EFPA policyholders. Further, the government, who is in reality acting as a de facto or shadow director of CLICO, cannot lawfully direct it to draw this distinction when it pays over the funds

to the trustees, because to do so is to cause CLICO to act in breach of its duty to maintain the statutory fund for the benefit of all policyholders. Nor can it do the same thing by the expedient of directing CLICO simply to bypass the statutory fund and pay out traditional policyholders direct. So to bypass the statutory fund and thus defeat the intention of the statute would be an unlawful application of the company's funds, or at least an act which the government, given its assurances to all policyholders set out above, cannot now lawfully require CLICO to carry out.

38. No doubt the Act does not require the government to advance any particular funds to CLICO, but if it does so, then it cannot direct such an unlawful application. So the Dookeran plan which appears to envisage that the government will advance money to CLICO, but only to pay or to guarantee the traditional policyholders, is a plan to act unlawfully.

39. Further, and quite separately from this, the trustees must apply those funds that are already in the statutory fund in accordance with the express or implied terms of the statutory trust set up pursuant to s.37(4) of the Act. At the moment, it is not clear to us what the terms of the trust are, nor what funds are in the trust, or indeed what the deficit is. However, as a matter of plain equity, it must be the case that, just as all policyholders should be paid out in full where there is no deficit, so too, where there is a deficit, that deficit must be applied pro rata between all policyholders. So if liabilities exceed assets by 40%, then each policyholder should be paid out 60% of his claim, and the trustees have no power to pay out 100% to some, but nothing to others. Therefore, for this reason too the Dookeran plan is unlawful, as it appears to envisage that the government will direct the trustees of the fund to pay out the traditional policyholders 100% of their claims, but to pay out EFPA policyholders only at the much lower rate.

Unfairness and Frustration of Legitimate Expectations

40. It is clear from the above history that the government, and others speaking on its behalf who were authorised to do so, repeatedly promised CLICO policyholders,

including the Claimants, that their investments were safe and that CLICO's obligations to them would be met.

41. In the statements made by the Central Bank, there can be no doubt that it was speaking for and with the authority of the government when it described the government's commitments, and further, that it was reasonable for the policyholders to understand it to be doing so.
42. Similarly, when Mr. Musaib-Ali issued his statement on behalf of CLICO on 15th February 2009, he did so as a government appointee to CLICO, and at a time when CLICO was under the control of the Central Bank, which in turn (pursuant to section 44F(5) of the Central Bank Act) was acting in accordance with the directions of the Minister of Finance and only after consultation with the Minister. Accordingly there can be no doubt that Mr Musaib-Ali was accurately communicating the government's position at the time, that he was authorised to do so, and that CLICO policyholders could reasonably understand him to be doing so.
43. The statements set out in the history above amount to clear and unambiguous promises, by the government, that policyholders' assets in CLICO were protected by the government and their funds guaranteed. Those promises were made with the intention that the policyholders, including the Claimants, would rely on them and act upon them. The express aim was restore public confidence in CLICO and other troubled institutions and to prevent more people from seeking to withdraw money or to surrender policies. The Claimants did rely on them to their detriment. Their funds are still in CLICO. They did not seek to enforce their entitlement to have the sums repaid to them, during a period when many other policyholders were repaid their full entitlement.
44. Accordingly, the government's promises engendered in the Claimants a legitimate expectation that it would ensure that their funds were safe and that their contractual entitlements would substantially be delivered to them.

45. The Dookeran plan, it is clear, would fall far short of the government's promises. It is our understanding, based on Mr. Dookeran's explanation to a media briefing on 28th September 2010, that the plan would entail EFPA policyholders being repaid their principal balances in 20 annual instalments of 1/20th of the principal over 20 years with no interest, in the form of 20 zero interest government bonds of maturities from one year up to twenty, each in the amount of 1/20th of the principal. At present government bond rates, to cash those bonds in now would realise less than half of the value of the principal, when dealing costs are taken into account. Alternatively, were the recipient of these bonds not to cash them in now, but were to wait to be paid, he or she would be at the mercy of inflation rates currently above 10%. The discounted present value of the future payments using inflation rates rather than government bond rates would be significantly less than the 50% estimated above.

46. The Dookeran plan, therefore, would not be a substantial performance of the government's promise, but a significant breach: it would deliver to the Claimant around half of what was promised, at best. So it would be unfair and unlawful to implement the plan.

47. You and the Minister of Finance have both said that the government cannot afford to keep the promise. In response the Claimant say as follows:

- i. You have not published or publicly summarised the information, reports and assessments on which you make that judgment.
- ii. The Claimant has a copy of the report prepared for the Central Bank in March 2010 by consultants from Credit Suisse and Milliman. The information in that report appears to challenge Mr Dookeran's assertion in his budget statement of 8 September 2010 that as of June 2010 the combined liabilities of CLICO and BAICO exceeded their assets by more than \$7bn. The Credit Suisse/Milliman report of March 2010 put the combined deficit at that time at \$2.8bn. And compared to the middle of 2010, the evidence is that the significant assets owned by CLICO are likely at the present date to have increased in value.

- iii. Apparently on the strength of the Credit Suisse/Milliman report, on 24 March 2010 the Central Bank Governor and the finance director and acting chief executive of CLICO, Carolyn John, held a media conference at which they described a plan by which policyholders would be paid off within 5 years, and under which policyholders with funds of greater than \$100,000 would be paid \$100,000 a month.
- iv. The Claimant is also aware of other proposals put forward to the government for consideration which described methods by which the government could pay out CLICO policyholders without additional expense to the government or taxpayers. For example, Mr. Jonathan Fox of Ryan ALM, an asset and liability management specialist, proposed to the Inter-Ministerial Committee the issue by the government of a 20 year US\$ denominated bond to pay the present liabilities. He summarised his proposal in an email to you of 27 October 2010 in which he informed you that the plan would involve no additional burden to the Treasury because the long-term bond would be paired with CL Financial assets, and, in the opinion of the Standard & Poors analyst for Trinidad & Tobago, would be unlikely to affect the country's credit rating.

48. The Claimant contends that it would be unfair to them for the government to renege from its previous promises, and to do so would be unlawful. It is not reasonable to rely, as a justification for defeating that promise, on a lack of funds and the need to protect the government's financial standing, when the evidence is that there are funds substantially to meet the government's obligations, and that doing so would not damage the government's financial standing.

Further Frustration of Legitimate Expectations

49. The Claimant had a further expectation legitimately arising from the government's statements set out in the above history, namely that the government would require CLICO to apply any funds or assets advanced by the government to making good the deficit in CLICO's statutory fund. The government made public the terms of the

Memorandum. In publicizing the Memorandum, and by its other assurances set out above, it informed CLICO's policyholders that it was committed to making good the deficit in the statutory fund, and that it would do so by advancing funds to CLICO. In Parliament, the Minister of Finance informed the House that the statutory fund deficit must be corrected and that government would ensure that the CL Financial group's assets were first used to meet its outstanding statutory fund obligations.

50. In the circumstances, the Claimant had a legitimate expectation that if and when the government advanced funds or transferred assets to CLICO while the statutory fund was in deficit, it would require those funds or assets (save for certain necessary exceptions, such as meeting the running costs of CLICO) to be applied to the statutory fund generally, and not to specific policyholders.
51. It is now apparent that the government, when it advanced a total of TT \$5 billion in assets and funds to CLICO, did not seek to ensure that those assets were applied to the statutory fund deficit. Our understanding is that government during 2009 advanced to CLICO a total of \$1.9 billion in cash and equivalent payments. In early 2010 it transferred to CLICO \$3.1 billion of assets in the form of government bonds. These transfers were made in return for preference shares in CLICO. However, it appears that CLICO (which at all material times has been under the effective control of the government) has been permitted to apply these funds and assets to purposes other than the elimination of the statutory fund deficit, including the payment in full of certain policyholders (and including policyholders not protected by the statutory fund).
52. That amounted to a frustration of the Claimant's legitimate expectations. In turn the breach of legitimate expectation amounted to a breach of the Claimants' constitutional right to property protected by s.4(a) of the Constitution which (unless the promise is now made good) has caused them loss and damage for which they are entitled to constitutional relief.

Unfairness and Illegality arising from Unequal and Arbitrary Treatment

53. The Claimant further contends that it is unfair to them they will not be paid when many EFPA policyholders have been paid in full. At the media conference of 24 March 2010 Ms Carolyn John and the Central Bank Governor described a history of ad hoc individual arrangements to pay out certain policyholders which were then to be replaced by a general scheme for repayment in the future.
54. The Claimant contends that the government has acted arbitrarily and has unfairly discriminated between EFPA policyholders in seeing to it that some have been paid in full while others must now wait to be paid over 20 years. The Dookeran plan would accordingly be unfair to them and thus unlawful; it would also amount to unequal treatment within the meaning of section 4(d) of the Constitution of Trinidad and Tobago.

Irrationality

55. Further, the Dookeran plan would be irrational for the very reason that it involves the breach of clear promises made by the government. The government's reason for intervening in CLICO in 2009 was to restore confidence in the financial system. It made promises in 2009 to reassure depositors, policyholders and the public. But if the government were now to implement the Dookeran plan, it would obviously be seen to be going back on its promises and thus destroy the very confidence in the financial system which it was the purpose of its intervention to maintain.
56. The public reaction to the Dookeran plan is an illustration of this. Since the announcement of the Dookeran plan, you, Mr. Dookeran and other members of the government have been at pains to communicate to the public that "traditional" policyholders will be fully protected and that they have the strongest assurances to that effect from the government. Such statements have prompted the question, why should these assurances be given credit when by the same plan the government is abandoning its previous assurances?

Legitimate Expectation of Further Consultation

57. In addition, the Claimant has a legitimate expectation, of a procedural kind, arising from Mr Dookeran's comments of 27th January 2011. Mr Dookeran held a press conference at which he said that he sensed a willingness on the part of CLICO policyholders with funds of over \$75,000 to compromise and that you, the Prime Minister, would be meeting with those policyholders as soon as such arrangements could be made.
58. In the circumstances, the Claimant, in addition to their other claims, have a legitimate expectation that the government will consult EFPA policyholders on the Dookeran plan, and will properly take into account and act upon their representations.

DETAILS OF THE ACTION THE DEFENDANT IS EXPECTED TO TAKE

59. We ask you:

- i. to confirm that the government does not intend to proceed with the Dookeran plan in its present form;
- ii. to confirm your acceptance that the government is bound by the previous promises that the government would protect the assets of policyholders and guarantee their funds;
- iii. to confirm your acceptance of the government's obligation to make good the deficit in CLICO's statutory fund;
- iv. to acknowledge that CLICO's liabilities to EFPA policyholders are covered by the statutory fund and that EFPA policyholders must stand in the same position, with regard to the statutory fund, as "traditional" insurance policyholders;
- v. to put forward a plan for the payment of EFPA policyholders consistent with the above;
- vi. to confirm, in accordance with the expectation engendered by Mr. Dookeran's reported comments of 28 January 2011, that you or your

government will meet and consult with EFPA policyholders, including the Claimant Association and its members.

DETAILS OF THE INFORMATION SOUGHT

60. We ask you to provide the following information:

- i. A schedule of the assets in CLICO's Statutory Fund established pursuant to section 37(4) of the Insurance Act and a valuation of the same.
- ii. The terms of the trust Deed created in accordance with the above pursuant to section 39 of the Insurance Act.
- iii. Details of the assets included in the Statutory Fund on 29 January 2009 and information as to what has happened to any assets no longer included in the Statutory Fund;
- iv. Details of the financial support given by the government to CLICO since 30 January 2009, including: descriptions of the assets or funds transferred or paid to CLICO or payments made on its behalf; any instructions given as to how those assets or funds were to be applied; and information as to how they have been applied by CLICO.
- v. Details of any assets of CLICO or CL Financial that have been sold or otherwise disposed of since 30 January 2009, and information as to how the proceeds of such sales or disposals have been applied.
- vi. Details of the government's attempts to perform its obligations under the Memorandum and to enforce the performance by the other parties to the Memorandum of their obligations.
- vii. Details of all financial advice, reports and assessments provided to the government since 30th January, 2009 concerning the affairs of CLICO and its assets and liabilities.
- viii. Details of all proposals put to the new government concerning the options for meeting CLICO's liabilities to its policyholders and the consideration given by the new government to them.

- ix. Details of the advice on which the new government relied in deciding that it cannot afford to meet its previous promises to CLICO policyholders.
- x. Details of the consultation undertaken by the Inter-Ministerial Committee, including: invitations to consult issued by the Committee; representations (written or oral) received by the committee and the minutes of its meetings; the consideration given to the representations received and how they were taken into account in the committee's deliberations and recommendations; the committee's recommendations to Cabinet.
- xi. Details of the EFPA policyholders paid out in full or in part since January 2009 and the amounts of such payments (but not including the details of payments recently started under the said plan as announced in the Budget Statement of the 8th September, 2010 to policyholders with balances of less than \$75,000).
- xii. Details of how, pursuant to the announcement of 8 September 2010, the Dookeran envisages guaranteeing CLICO's "traditional" policyholders, and of the assets to be allocated to backing up that guarantee.

DETAILS OF DOCUMENTS CONSIDERED RELEVANT AND NECESSARY

We ask you to provide copies of any documents and documentary information falling under the requests for information made in paragraph 60 above. We undertake to pay if requested the necessary costs of making the copies of the documents and documentary information. We ask that you provide the requested documents and documentary information within 21 days.

DETAILS OF THE LEGAL ADVISERS DEALING WITH THIS CLAIM

RLM & Company, Attorneys at Law, #15 Irving Street, San Fernando.

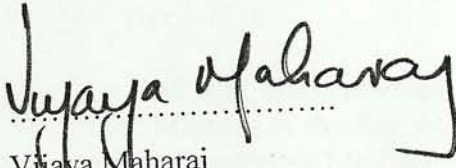
THE ADDRESS FOR REPLY AND SERVICE OF COURT DOCUMENTS

We ask you to respond to us at the following address: c/o RLM & Company, Attorneys at Law, #15 Irving Street, San Fernando.

PROPOSED REPLY DATE

We ask that you give your response to the request made in paragraph 59 above within 21 days.

Yours sincerely,



Vijaya Maharaj

For RLM & Co.