

## **PUBLIC BILLS**

### *First Reading*

*On motion made and seconded the following Bills were read a first time -*

- (a) The Banking (Amendment) Bill (No. II of 2013)
- (b) The Mauritius Society for the Prevention of Cruelty to Animals (Temporary Provisions) Bill (No. III of 2013)

### *Second Reading*

## **THE BANKING (AMENDMENT) BILL**

**(No. II of 2013)**

*Order for Second Reading read.*

**The Vice-Prime Minister, Minister of Finance and Economic Development (Mr X. L. Duval):** Mr Deputy Speaker Sir, I move that the Banking (Amendment) Bill (No. II of 2013) be read a second time.

Mr Deputy Speaker Sir, to preserve the stability of the financial system in Mauritius, the Bank of Mauritius has requested foreign banks operating in Mauritius as branches of foreign companies to restructure themselves into locally incorporated subsidiaries. The Central Bank has also requested banks which, because of their size and importance, are becoming systemically important, to separate their banking from their non-banking activities.

Following the global financial crisis, many countries are encouraging branches of foreign banks to convert into local subsidiaries to avoid the risk of contagion. The risk with a branch is that if the parent company collapses, the assets of the branches may also disappear, whereas with a subsidiary, since the assets are owned by a different legal person, these assets are protected. Several countries like the United Kingdom, Australia and New Zealand have amended their respective laws on similar lines.

The scope of the present Banking Act is currently limited and does not provide for the Central Bank to direct a bank to merge or consolidate with another bank or to be set up as a separate entity.

In addition, under the current legislation the existing process for banks to restructure, that is, by way of private contract or pursuant to existing provisions under the Companies Act, is lengthy. In view of the systemic risk that the bank may pose, it is important for mergers, acquisitions and restructuring of banks be carried out in a fast, diligent and efficient manner.

It is with these objectives that we are proposing the amendments to the Banking Act through the Banking (Amendment) Bill. It will provide for an expedient process for banks to restructure their respective businesses subject to the approval of the Bank of Mauritius.

Mr Deputy Speaker, Sir, the amendments that are being proposed in the Banking (Amendment) Bill 2013 are that whenever banks propose to transfer the whole or part of their businesses to their respective parent company or to their wholly owned subsidiary or any subsidiary of the parent company, they shall apply to the Bank of Mauritius for approval. In addition, powers are being given to the Bank of Mauritius to direct a bank to restructure its operations.

Before the Central Bank gives its approval to an application from a bank or before it directs a bank to restructure, the Central Bank shall, *inter alia* consider the following –

- any systemic risk that the bank may pose;
- any incidence on the stability of the financial system of Mauritius which the bank may have, and
- the protection of the bank's depositors, its assets and the public.

While submitting its application to the Central Bank, the applicant bank shall provide to the Central Bank a provisional list of its assets and liabilities updated as at the day immediately preceding the date of application. Same applies to a bank which is required by the Bank of Mauritius to restructure.

Mr Deputy Speaker, Sir, once a bank has complied with the requirements of the Central Bank, the latter shall authorise the transfer of the undertaking of the bank. The Central Bank will notify both the bank and the Registrar of Companies who shall issue a Certificate of Transfer of Undertaking to the bank under the Companies Act. The certificate issued shall be for all intent and purposes evidence of the transfer to and vesting in the transferee bank of the transferred undertaking.

The Central Bank shall also give notice in at least three daily newspapers of the transfer of undertaking of the transferor bank.

The transfer of all assets, liabilities, mortgages, privileges, books, records, etc. that form part of the undertaking of the transferor bank shall be transferred to the transferee bank in accordance with the procedure set out in the Third Schedule to the Bill. Similarly any judgement, ruling or order in favour of or against the transferor bank shall be enforceable on the transferee bank as per the Third Schedule.

All employees of the transferor bank shall be entitled to be transferred to the transferee bank on such terms and conditions which are not less favourable than those with the transferor bank. The period of service as well as any pension rights or scheme with the transferor bank shall be transferred to the transferee bank.

The transfer of assets from one entity to another normally attracts registration duty and land transfer tax. However, there is an exemption provision where such transfers are effected between companies forming part of the same group of companies. This exemption provision will be fine-tuned, if required, through relevant regulations.

Mr Deputy Speaker, Sir, before finalising the Bill, my Ministry had consultations with the Bank of Mauritius and the Mauritius Bankers' Association.

Consequential amendments are being brought to the Companies Act, Land (Duties and Taxes) Act, the Registration Duty Act and the Transcription and Mortgages Act. Provision is being made for the Minister to make regulations to provide for any matter necessary or consequential to the implementation of the amendments and the Third Schedule.

The Banking (Amendment) Bill, once enacted, shall come into operation on the date it is published in the Government Gazette.

At Committee Stage, I shall bring an amendment to clarify the provisions relating to the Registration Duty Act.

Mr Deputy Speaker Sir, I now commend the Banking (Amendment) Bill to the House.

**Dr. A. Boolell rose and seconded.**

(2.43 a.m.)

**Mr K. Li Kwong Wing (Second Member for Beau Bassin & Petite Rivière):** Mr Deputy Speaker, Sir, this Bill before the House is meant to provide for banks to restructure of their own will, to provide for the Bank of Mauritius to have power to require a bank to restructure and also to provide for procedures as set out under the Third Schedule for the transfer of undertakings. The reason that could be put for bringing this amendment to the Banking Act is to fill up the regulatory gaps in the present banking legislation since current provisions seem to be inadequate to facilitate bank restructuring as they provide only for the power to merge and consolidate and there is also now, after the global financial crisis, the need to exert greater regulatory oversight and control over bank restructuring.

Mr Deputy Speaker, Sir, what could be the rationale behind these amendments that are being brought at this stage? Fundamentally, it appears that it will serve to preserve the stability of the financial system and forestall systemic risks and prevent or, at least, reduce the probability of bank default and contagion within the banking system and also, to minimise the risk to the taxpayers for financial bailouts of insolvent banks.

Why is financial stability so crucial at this stage for these amendments to be introduced tonight? This is because there is increasing risks of certain bank failures or default in Mauritius in view of the international economic environment and in view of the domestic economic challenges and deteriorating economic indicators and, to say the least, the Government mismanagement and bad governance. If we look at the international environment, the euro zone recession that is taking place whereby growth rate would be negative this year, is going to create challenges to our export sector. Already, growth is slackening at around 3.5% while inflation is rising to an estimated rate of 5.5% according to the Bank of Mauritius while unemployment itself is rising above 8%.

In this context of declining private investment and declining national savings rate with a widening trade deficit, the economy is definitely peering into an abyss with mal-investment and mal-governance all around. All these challenges will have an impact on the Banking Sector, hence, the need to provide for effective Central Bank oversight on potential bank restructuring due to default. If we look at the banking sector in the present days, there is a high bank concentration whereby two big banks control two thirds of the market in an incestuous relationship where they corner the market and have potentials for conflict of interests due to loans being given to related client groups.

When we look at the MCB and the State Bank of Mauritius, what is the governance that guides the allocation of loans among State enterprises and a few large conglomerates which are also their main shareholders? Looking at the credit risks, we find that there is large exposure, that is, exposure to big conglomerates ranging to 30% of the total bank credit where the large exposure of credit to big conglomerates constitutes, according to the last financial stability report of the Bank of Mauritius, 92% of the total capital base of the banking system. These large conglomerates are steeped in debt and they are considered too big to fail because they think that their group will last forever and, therefore, continue to benefit from bank credit on the basis that their capital should not be opened to outsiders.

The ratio of debt to equity is rising and increasing. In the case of the hotel and textile sector, the short-term debt also is increasing as a percentage of the total debt ratio and it is clear that most of the large hotel groups, even sugar and textile groups, are now short of working capital and it is no secret to Small and Medium Enterprises and suppliers that they get paid over three to four months. Many of these large conglomerates are even asking for moratorium and technically, therefore, they are in soft default. The buzz word now, in the banking sector is loan restructuring for these large groups. The Bank of Mauritius is even stepping in with special lines of credit and Government is providing stimulus packages and soft loans and bailout funds even from the National Resilience Fund. Commercial Banks these days require high credit risk premium when they come to the rescue of these groups.

As I said, the method to salvage these groups is through debt restructure, that is, loan restructuring rather than requiring them to sell their assets and coming with new and fresh capital or opening up their capital to new shareholders. These large conglomerates provide a systemic risk to the banking system. The Bill is about bank restructuring - unless you don't understand what bank restructuring is for, you should understand the basis and the rationale for the amendment being brought which is to give wider powers to the Bank of Mauritius to oversee the bank restructuring that is required before the whole banking system collapse in this country because there are Ponzi schemes that are flourishing all around and even creating shadow banks in the financial system.

Mr Deputy Speaker, Sir, it is the risk of these loan defaults that will affect the solvency of banks. Non-performing loans are rising. Although the ratio is claimed to be low to the extent of 3% of the total credit, yet the amount of non-performing loan as a percentage of a total private sector credit has risen last year, by 30% while the ratio of the specific

provision of the banks to cover the non-performing loans has fallen from 45% to 40%, hence the risk to the financial system. On top of that the economy is being fuelled by a property bubble and by a financial bubble. People will note the bubble that burst in Spain driven by the property crash and very recently another bubble burst in Cyprus due to the financial crash owing to the problems in the Euro. If we look at the situation in Mauritius, we have supposedly high inflows of FDI, but this Foreign Direct Investment is secured towards real estate and financial services. On the other hand, both the property development loans and housing loans are suffering alarming problems by the case of Centrepoint which is an eyesore in Trianon and Port Chambly which is put under administration. The Bank of Mauritius has been raising the alarm bell since many years now about the property speculation which is creating a risk to the banking system. The IMF in its article 4 consultation note also raises the same warning note. Therefore, property speculation through hot money from foreign investors is creating a bubble which is a tremendous risk to the banking system in Mauritius. On the other hand, if we look at the household debt, this also is increasing. Just looking at the newspapers we can see that deluge of credit card promotions whereby people are offered all kinds of discounts in all kinds of shops. Household credit also is rising whereby the growth in household credit exceeds the nominal GDP growth. Now with the payment of PRB and the low interest rate environment, the household indebtedness has increased and also the non-performing loan ratio of household debt to personal sector debt has risen to 16%.

Mr Deputy Speaker, Sir, just to envisage the situation of Cyprus which was bragging about its resilience as it thought that its economy was going to be shock free and crash free. If we look at the large exposure of the Cyprus banks to real estate speculations and to financial products especially Greek bonds, Cyprus has been hit by the Euro zone storm and, today, it has to sell its natural gas reserves in order to salvage its financial system. The second largest bank in Cyprus had to close down and the depositors lost money and will have to face a haircut of 15%. So, the final losers in this situation are the small savers and the taxpayers.

Mr Deputy Speaker, Sir, we have talked about loan structuring within the banks, but this is not enough. It is bank structuring that is important. But even more important is economic restructuring. This Bill, therefore, is welcome. However, in view of the challenges and the high risks facing the economy, the corporate sector, the household sector and, therefore, the whole banking system; these amendments that are being tabled before the House tonight fall short of the positive regulatory changes that are required to ensure the

sustainable health of the banking system and to match the international best practices with regard to reorganising and restructuring of financial institutions. In this context, let me therefore, comment on a few clauses of the amendment.

Firstly, it is important for the public to know in advance what are the criteria, conditions and parameters that will determine the Bank of Mauritius decision to approve a bank restructuring. There is a need of well established parameters in the best interest of depositors and of the public, inasmuch as there is no deposit insurance scheme in place in spite of long awaited promises that have been made by the Government. There is need, therefore, of transparency in the decision process for Bank of Mauritius approval to be put on the same lines as when banking licence is granted where the criteria are fully set out. If we look at section 32 (a) (iii), it refers to the factors that the Central Bank has to consider in deciding whether or not to grant its approval to a Bank restructuring. However, in the absence of the words 'and' or 'or' between all these subparagraphs detailing the factors to be considered, it is unclear whether all of the four factors need to be considered or whether it is sufficient to consider only one of the four factors before the bank can give its approval. So, what are the factors that will trigger off the decision of the Bank of Mauritius to require the bank restructure? The public should be made fully aware and be fully informed in advance in order to avoid panic and loss of confidence during a restructuring, but time frame for the Bank of Mauritius to approve the restructure is also very important since the amendment is supposed to provide for expediency of decision regarding restructuring. What is missing in the law also is the recourse to an appeal in the case of the approval or non approval of the Central Bank to a bank restructure. Also, Mr Deputy Speaker, Sir, emphasis is laid in the amendments on preserving the rights of the existing shareholders and in preserving the permanence of contractual obligations along with the transfer of undertaking. Section 32A (10)(a) states that nothing shall invalidate any contract or discharge any agreement.

While section 32(10)(e) states that nothing in the amendment shall entitle any party to a contract, to modify the terms of the contract. So, the question is: what happens where in a contract between a bank and a third party, it is specifically stated that there can be no transfer? Does this mean then that the whole restructuring exercise is being put at risk and is at stake? Also, would all this not be in contradiction with the definition of liabilities where liabilities is defined to include obligations not lawfully capable of being assigned. So, how do we address such possible problems under these amendments?

Mr Deputy Speaker, Sir, the whole restructure exercise, as allowed under these amendments, is limited to intergroup restructure and is, therefore, limitative in scope. Subsection (1) of paragraph 32A says that the amendment will provide for a situation –

“(…) where a bank proposes to restructure its business in a manner that involves the transfer of the whole or part of its undertaking to –

- (a) its parent;
- (b) to its wholly owned subsidiary; or
- (c) a wholly owned subsidiary of its parent,”

It means, therefore, that when the bank comes to the Central Bank or when the Central Bank requires the bank to restructure its business in order to transfer its non-banking business out of its banking business from a holding company to a subsidiary or from a company to its parent, then the restructuring exercise comes under the ambit of the provisions of these amendments. But what happens if the Central Bank would need to call on a weak bank which is having problems and, therefore, there is need to transfer its good assets out of that weak bank or failing bank to be entrusted to a more important and better managed bank between two different companies?

This can be done because this is done in Cyprus, because the second largest bank in Cyprus is going bankrupt. So, the Government of Cyprus decided to take out all the bad assets in the second bank, close the second bank, and keep the good assets and transfer it to another well run bank. So, the question is: whether the present amendments would be able to provide for this situation if it ever arises in Mauritius, because there are several banks in Mauritius which are at risk due to the weak and vulnerable economic situation and the problem facing a lot of these corporates in Mauritius.

The question arises is: when the restructure requires transfer of good assets from one bank to another bank and, therefore, not restricted to intergroup transfer, will the amendments cover these requirements?

Fourthly, Mr Speaker, Sir, the amendments make mention that the staff of a transferor bank shall be entitled to be employed by the transferee bank in view of the fact that the banking system is making enormous profits of Rs17.6 billion this year. So, it is thought that these amendments will sufficiently protect the employment of banks staff, especially for those that are in a transferor bank being transferred to another bank, and Lastly, Mr Speaker,



Sir, if we look at section 13, it makes provision for the Minister to 'make regulations to provide for any matter necessary or consequential to the implementation of this section.' Mr Speaker, Sir, this concerns the banking sector which is under the control of the Bank of Mauritius. If the hon. Minister is going to make any regulation under this law it would be proper for the Minister to seek advice from the Governor of the Central Bank. Therefore, it is proposed that under section 13, it is added that the Minister upon consultation with the Governor or upon advice of the Governor of the Central Bank, may make regulations to provide for any matter necessary to the implementations of this amendment and this is even more important when we consider the strained relations between the Minister of Finance and the Governor of the Central Bank. With this I put an end to my intervention.

Thank you.

(3.06 a.m)

**The Minister of Education and Human Resources (Dr. V. Bunwaree):** M. le président, permettez-moi d'apporter ma contribution à ce texte projet de loi d'amendement au *Banking Amendment Bill* qui est devant nous tôt ce matin, je dois dire. Mon ami le vice-Premier ministre et ministre des finances a fait une très bonne présentation de ce projet de loi coming to the point without beating about the bush. Je pense qu'il a bien fait comprendre ce dont il s'agit et on vient d'entendre l'honorable Li Kwong Wing qui a bien compris le bien-fondé de la loi, je dois dire. Il est d'accord. *He welcomes the Amendment Bill*, mais bien entendu il a fallu dire des choses un peu plus profond pour prouver qu'il travaille au sein de l'Assemblée.

*(Interruptions)*

Je le félicite pour avoir fouillé dans le bien-fondé et puis dans le *rationale* qui souligne ce projet de loi.

M. le président, le but essentiel de ce projet de loi, comme l'a dit, tout à l'heure, mon collègue le vice-Premier ministre, et comme l'a dit aussi l'honorable Li Kwong Wing, c'est de faire provision pour une procédure expéditive afin de permettre une banque de pouvoir se restructurer avec la probation bien entendu de la banque centrale et pour cela encore faut-il que la banque centrale, dans notre cas la banque de Maurice, ait le pouvoir de permettre cette restructuration.

Donc, je pense que cela a été dit par l'honorable Li Kwong Wing. Il faut d'abord faire provision pour que cette procédure puisse se faire, cette restructuration, en cas de besoin et, deuxièmement, il faut que la banque de Maurice, la banque centrale, ait le pouvoir de permettre cela. Ce qu'on est en train de dire, M. le président, s'accorde tout à fait avec le politique de la banque centrale, parce que la requête est venue de la banque centrale. La banque centrale surveille sur la banque qui a la responsabilité de régulateur et la banque centrale suit tout ce qui se passe dans le monde et on connaît les problèmes économiques, les problèmes financiers de ces dernières années. La banque centrale et nous-aussi constatons qu'il y a certaine faiblesse au niveau du *Banking Act* qui pourrait avoir des répercussions assez compliquées, assez graves même, sur une banque locale dont la mère est à l'étranger, et si des précautions ne sont pas prises, on pourrait voir la banque s'effondrer à Maurice en même temps que ça s'effondre à l'étranger.

Ayant compris cela, il faudrait qu'on légifère pour pouvoir faire le nécessaire pour empêcher cela. C'est une solution un peu *win-win*, je dois dire parce que la banque locale aussi pourrait avoir des problèmes. Et dans des cas pareils, je ne pense pas que la banque mère va laisser tomber sa filiale. Donc, c'est une affaire gagnante des deux cotés. On a vu combien de banques ont souffert à l'étranger, continuent à souffrir jusqu'à maintenant. Il ne faudrait pas que quand un problème important arrive et une banque s'effondre à l'étranger et que sa subsidiaire à Maurice, paie les pots cassés, comme on dit. Donc, il faudrait faire cela. Je félicite mon collègue pour être venu au bon moment parce qu'il fallait peut-être venir plus tôt, mais il n'est jamais trop tard pour bien faire. Tout cela bien sûr il s'agit au fond de maintenir la stabilité financière du système bancaire, ce qui est aussi important. Nous savons combien notre système à Maurice est fragile.

M. le président, je dois aussi vous dire que ce projet de loi donne le pouvoir à la banque centrale de pouvoir demander à une banque de se restructurer, de restructurer ses opérations ce qui n'est pas le cas présentement. De plus, le *Banking Act*, tel qu'il est, jusqu'à présent, n'a pas de provision pour permettre à la banque centrale de donner ses instructions à une banque dans le cas où la banque doit opérer en merger comme on dit ou même se consolider avec une autre banque. Donc, maintenant avec les amendements que nous allons faire passer tôt ce matin, cela va résoudre le problème. On se rend compte, M. le président, que le scope même du présent *Banking Act* est limité. Il n'y a pas de provisions pour

permettre à la banque de Maurice, comme je le disais tout à l'heure de donner des instructions pour permettre ce que je viens de mentionner tout à l'heure.

I must tell you, Mr Deputy Speaker, Sir, that, in some cases, the process in our current legislation when we want to act is cumbersome and lengthy. In view of the systemic risk that the bank may pose, it is important that, in cases of mergers, the acquisition and restructuring of banks be carried out in a fast and efficient manner. Il faut agir vite parfois dans certain cas. Si nous voyons la loi comme elle est comme nous il y a beaucoup de procédures and the procedures are very lengthy. Cela pose un problème majeur.

I was saying, Mr Deputy Speaker, Sir, following the global financial crisis that we are still witnessing. We have witnessed it very strongly in the recent past. Many countries, I think it was mentioned by my colleague, the Vice-Prime Minister and Minister of Finance, are encouraging branches of foreign banks to be converted into local subsidiaries. The risk with a branch is that, as we want to point out, when the parent company collapses, the assets of the branches also disappear whereas with a subsidiary, the assets are protected. This is the crux of the matter. This is, in fact, what we are trying to do tonight, to protect the assets. Several countries - I can mention the UK, Australia and New Zealand - have already amended their respective laws on similar lines. Now, Mr Deputy Speaker, Sir, in the amendments that we are proposing in the Banking Amendment Bill that is in front of us here, we are saying that when a bank proposes to transfer its business either whole or part to its parent company or its wholly owned subsidiary, it must apply to the Bank of Mauritius. That is what we are saying. It has to apply to the Bank of Mauritius for approval. We are also giving the Bank of Mauritius the power to require the bank to restructure.

Mr Deputy Speaker, Sir, before the Central Bank gives its approval to an application from a bank; before it directs a bank to restructure, the Bank of Mauritius, that is, the Central Bank will have to consider a few important points, first of all, the protection of the banks' depositors, of the banks' assets and of the public also. It is very important to note that the Bank of Mauritius will have to take this into consideration. Also, any risk within the system: it has to consider whether there are any risks in the system, systemic risks as we say, that the bank may pose. The Central Bank also has to consider whether there would be any impact on financial stability, that is, on the stability of the financial system of the country. These are the points that the Central Bank will have to consider when the application comes to it. Of course, once the bank has complied with the requirements, then the Central Bank will authorise the transfer of the undertaking of the bank. What is good to note, Mr Deputy Speaker, Sir, in the proposed amendments nothing prevents a bank from undergoing any

restructuring of its business outside the proposed amendments. Nothing prevents that. That is by way of private contract or pursuant to existing provisions of the Companies Act. In the event of any conflict with any enactments regarding mergers, acquisitions and consolidation of banks using this section, the provisions of this section shall prevail. This is what the amendments say. Two good notes, one in the process of transfer of undertakings: - I think it has been mentioned just before me: all employees of the transfer bank shall be entitled to be transferred to the transferee bank on terms and conditions which are not transferable than those with the transfer of banks. So there is protection of the employees also. Insofar as transfer of assets is concerned, from one entity to another, it normally attracts duties and taxes and if the Central Bank has, itself, proposed the procedure, then, of course, this will have to be taken into consideration. I think my colleague will have a few words on that when he is going to sum.

Mr Deputy Speaker, Sir, as I was saying at the beginning, we are doing something very important essentially to protect the assets of the branch of a bank which is found abroad. So, I wish to commend my colleague for having come in due time with these amendments. It goes in line with the protection of our banks, therefore, the consumers of the banks, the clients of the banks whoever they may be.

Thank you very much Mr Deputy Speaker, Sir.

(03.17 a.m.)

**Mr R. Uteem (Second Member for Port Louis South and Port Louis Central):** Mr Deputy Speaker, Sir, we live in very uncertain international financial times. We live at a time where even Triple A banks have collapsed; giant banks like Burnstern, Lehman Brothers have collapsed in recent years. Just a few days ago, we saw what happened in Cyprus; out the banking system collapsed; how the Central bank of Cyprus had to intervene; how the second largest bank in Cyprus had to close down. So it is against this background that a Bill like this is being considered today and is being also supported by this side of the House subject to the various remarks that I have to make on this Bill.

The hon. Minister of Finance mentioned that one of the reasons for passing the Bill is to be the Central Bank's desire that branches of international banks be converted into subsidiaries. As at to date, out of the twenty-one banks duly licensed by the Bank of Mauritius, only five are branches of international banks. I take it that the Central Bank, and the Minister, has taken the views of all those branches before he comes up with this Bill and has taken also on board any of their concerns. One of the direct consequences of converting a branch into a subsidiary is that they will have to comply with the Companies Act. They will

need to have an independent Board and they will have to be properly capitalised. At the moment all banks are required to maintain a capital adequacy ratio of 10%. However, branches of a foreign owned bank are exempted from this requirement for the operation conducted outside Mauritius; so if they were lending outside of Mauritius the 10% capital adequacy ratio with respect to the rated risk of loans, this is not applicable.

Once they convert into subsidiaries, they would have to observe this adequacy ratio of 10% even for loans outside of Mauritius. So, the subsidiaries will now have to inject more capital in the bank and that is why I hope consultations have been made with, at least, the five branches. I heard the hon. Minister mentioned that he spoke to the representative of the Bankers' Association. I hope that he also spoke to the five branches which are directly concerned with this measure.

Also, on the fifth side, we need to ascertain whether, the fact that we are converting branch into subsidiary will have any impact on depositors. It is a fact that there are certain depositors who feel more comfortable putting their money in an international bank which is obviously more capitalised than local subsidiary. So, I do not know if the Bank of Mauritius has carried out any survey, especially with respect to offshore companies with non-Mauritians who put deposit in fixed accounts or deposit in savings accounts of these international banks.

Mr Deputy Speaker, Sir, the powers that are being given to the central bank, in respect to restructuring, go beyond the mere converting of branches into subsidiaries.

In fact, under section 32(a), they can ask any bank to structure its business in any manner that involves the transfer of the whole or part of its business. So, even for part of the business as at today, even for existing banks, licensed banks, domestic banks, the central bank will now be given the power to cause them to restructure. Obviously, this new found power has to be exercised with caution in a reasonable manner rationally. This is where I share the concern of hon. Li Kwong Wing that we do not have sufficient transparency, we do not have sufficient guidelines. I hope that, by regulations, the Minister can come forward with more objective criteria, because we need checks and balances. We also need to give the banks recourse, if they are unhappy with the measures taken by the central bank. There must be a way that they can appeal to a Court, by way of judicial review or anything else. At the moment, there does not seem to have this appeal process which you have in other sections of the Banking Act.

Hon. Minister Bunwaree mentioned about the lack of regulation with respect to mergers and transfers. In fact, that is not correct. We already have a section 32 which has been used in relation to a number of transfers, for example, when Delphis Bank was transferred to First City Bank and the Central Bank has a lot of powers under the existing section 32 in case of merger, in case of acquisition.

In fact, one of the shortcomings of this amendment is that it only concerns section 32(a); it only concerns the situation where there is a transfer to parent and to subsidiaries. I would have preferred that all these provisions relating to transfers of assets, consequences on assets and liabilities be also applicable to any merger, any acquisition under section 32. All these measures, as currently drafted, seem to apply to only restructuring under 32(a). Maybe, subsequently, the hon. Minister can by regulations have rules.

The hon. Vice-Prime Minister and Minister of Finance also mentioned that the other reasons for bringing this amendment was the request from the Central Bank to be able to cause bank to segregate their banking and non-banking assets. In fact, under subsection 5(b) of the Bill, the Central Bank will only give its approval where the transferral bank shall comply with such other regulatory requirements relating to any part of its business under any enactment. must have all other licences. We know today that there are two separate sets of regulations. Banking, Financial Services are regulated by the Central Bank; Non-Banking Financial Services are regulated by the Financial Services Commission.

We have just seen in the recent scandals of Whitedot and Sunkai, how there is a semblance of lack of corporation and coordination between these two regulators. We have seen how the Bank of Mauritius put all the blame on the Financial Services Commission, saying that this was an investment scheme to be regulated by the FSC. We read in the press how the Chairman of the FSC said: 'No, no, in fact, that was deposit, a disguise form of deposit. So, it was a banking service and should have been licensed under the Central Bank.'

I would urge the Vice-Prime Minister to take this opportunity to try to sort out matters between these two regulatory authorities which will be very important, if we are going to segregate banking and non-banking services through this legislation.

The banks, so far, have spoken about the situation where it is the central bank which exercised its new found powers under section 32(a). The amendment also enables branch bank to restructure itself. So, without the Central Bank imposing on it, a bank can itself decide to restructure and come to the Central Bank for approval. The way it is being done

currently before the passing of this Bill is, either there is a conventional restructuring through contractual obligation, so the bank decides to transfer its undertaking by way of an out-of-court contractual arrangement. But, in that case, if the bank decides to do this, it will have to seek the consent of various parties, depositors, sureties, people who have given mortgages, third parties and also contractual parties who had a clause in the agreement against assignment of debt and obligation. So, it is a very cumbersome process if a bank today has to go by out-of-court contractual transfer of assets.

The second option available to the bank today is to apply to the Supreme Court for a scheme of arrangement and ask the Supreme Court to sanction the transfer of the undertaking. I am very surprised that the hon. Vice-Prime Minister and Minister of Finance did not touch on this at all while presenting this Bill. I hope that in the summing-up he can enlighten the House about how this Bill is going to affect the current scheme of arrangement which Barclays Bank has entered before the Supreme Court.

As the hon. Vice-Prime Minister and Minister of Finance is aware, around October 2012, Barclays Bank PLC (Mauritius) Branch lodged with the Court a scheme of arrangement asking the Court to sanction the transfer of all of its business, assets and liabilities to Barclays Bank Mauritius Ltd., and any interested persons were invited through a public notice which appeared in the press. So, any interested person wishing to make representations against the approval of the scheme must do so by submitting representation in writing to the Supreme Court by 12 November 2012. I do not know whether anyone had objected to this scheme. I would like the Vice-Prime Minister and Minister of Finance to tell us whether this scheme is still before the Supreme Court of Mauritius, whether anyone objected and what is going on, on this front. I have come across the petition on the website of Barclays Bank.

It seems to me that this law is tailor-made for Barclays Bank and I say so because I have seen certain disturbing similarities between the wordings of the petition and the wordings of the Act. I will give you an example of what I am saying so that you can see for yourself. For example, if we take section 32A (10), (a) the consequence of the transfer of assets we see that the wordings are almost identical to clause 10.2.1. For example, under the Bill 'nothing will invalidate or discharge any contract or agreement which had been entered into before the transfer of the undertaking', under the petition it is 'nothing will invalidate or discharge any contract security or other thing'. Under the Bill in (10) (b), it is 'nothing will constitute a breach of, or default under, or require compliance with any notice or consent

provision, including express or implied consent for transfer’ and under the petition it is ‘nothing will constitute a breach of, or default under, or require compliance with any notice or consent provision’. They are almost identical. Moreover, part (d) ‘nothing will allow any party to any contract to which the transferor bank is a party, or by which it is bound, to terminate that contract where that party would not otherwise have been able to terminate (...)’. It is the same thing for 10.2. It is cut and paste. I do not know why and I would like to be enlightened by the hon. Vice-Prime Minister as to whether this Bill has been tailor-made for Barclays Bank and, if so, why.

Thank you.

(3.32 a.m.)

**Mr Duval:** Mr Deputy Speaker, Sir, let me thank my colleague, hon. Dr. Bunwaree and hon. Uteem for the very good points that they raised. As for my friend, hon. Li Kwong Wing, he is used to his usual exaggeration; perhaps I should say ‘headline grabbing nonsense’ that he uses now in this House. But there is a cost to that, Mr Deputy Speaker, Sir. The cost is the reputation of the country. The cost is the advancement of the country. This is why I always ask the hon. Member to be fair in his comments because that is fair but to go all the time and exaggerate and see all the time the black side. Last year he predicted, Mr Deputy Speaker, Sir, ‘doomsday for Mauritius’ and what happened? We got upgraded by Moody’s, one grade up to Baa1 same as South Africa! We had Mrs Christine Lagarde who was here, a fantastic lady, she is a well-known personality. The Head of the highest financial institution in the world, she came to Mauritius and she told everybody here that we are doing a remarkable job. Here, Mr Deputy Speaker, Sir, we had this headline grabbing Member of Parliament, at the expense of the country, all the time coming and trying to bring us down! *Quel regard est-ce qu’il jette sur la performance de son propre parti quand ils étaient au gouvernement ? Quel regard il jette dessus, M. le président ?* Unemployment was 9.6%, when there was no recession on any side in the world! 9.6% unemployment! FDI that they were attracting ...

*(Interruptions)*

He has the cheek to mention about FDI! They were attracting FDI, Mr Deputy Speaker, Sir. What FDI they got in five years, we get every year now! Last year was almost a record in terms of FDI for Mauritius at Rs12.7 billion. What does FDI mean? It does not just mean



that people like to invest in a hotel or invest in a bank or in a house; it means that they trust this country because of the democracy, the Government, the macroeconomic indicators which are fantastic in this country. That is why it is an indication of trust and people trust us. This year too, we have seen a few days ago SAPER investing billions of rupees in the shipping industry in Mauritius. Maybe they are a bit jealous of this. That is not a reason...

*(Interruptions)*

...to bring down this country and as long as we are here, Mr Deputy Speaker, Sir, we will not allow people to talk of doomsday everyday just to bring down the morale of our citizens who wake up at 6.00 a.m. every day to go to work and deserve a good living, advancement and prosperity.

*(Interruptions)*

I will speak about Whitedot in a minute, do not worry about it.

As far as this year's growth is concerned, he mentioned himself 3.5% which is positive for the country. I hope we can do that. If we can do more, we will do more. We will do our best for our country, Mr Deputy Speaker, Sir. The banking sector has been remarkably stable in this country. We have had a few hiccups, under their Government. Here too under their Government the MCB/NPF scandal, Rs800 m. were lost under their nose.

*(Interruptions)*

That happened, Mr Deputy Speaker, Sir. It was public money, pensioners' money, the NPF money that was stolen! That happened there and then because financial fraud happens everywhere, in every single country all the time. It is very difficult. It is like crime, like speeding on the road; you cannot have hundred percent. The cost of having hundred percent assurance would be too much for any economy to bear, Mr Deputy Speaker, Sir. I agree that this year we have some issues. I think weather permitting, the hotel in the tourism industry will do well in terms of numbers and we are diversifying into China very well. We have successfully, first time in history, two direct flights going to Shanghai now. Air Mauritius wants to announce, soon I hope, a direct flight to Beijing also. This will revolutionise the tourism sector in Mauritius by bringing into the tourism sector one of the most prosperous nations in the world, the Chinese.

*(Interruptions)*

That is working. The manufacturing ...

*(Interruptions)*

The manufacturing sector, with the diversification to Africa will do well also, Mr Deputy Speaker, Sir. The manufacturing sector in Mauritius is very positive at the moment because there has been a 35% increase in our exports to Africa. Today, Mr Deputy Speaker, Sir, Africa, in terms of exports, represents more for Mauritius than America does, that is, *la percée que nous avons faite* in South Africa. Of course, there is duty protection vis-à-vis the Chinese. Nevertheless, we are taking advantage of what exists, but there is a very positive feeling in the manufacturing sector. The ICT/BPO is doing well. I have just mentioned the large investment coming in the Seafood hub. That is also doing well. For the financial services, we accept we have issues. We are dealing with these issues. The President of India was here recently and it was taken at the very highest level of the State by the Prime Minister and by our own President and by Members of the Government here. So, Mr Deputy Speaker, Sir, we are not running away from the challenges that exist and that will always exist in an economy like Mauritius.

Article 4 of the IMF is an excellent report. It has not had a big headline. Why? It is because it is an excellent report that the Article 4 IMF team have come up with and we can discuss about that at any time, Mr Deputy Speaker, Sir. Please, let us not score cheap political points at the expense of our country's reputation!

*(Interruptions)*

I make an appeal to this particular hon. Member of the Opposition.

The hon. Member is very reasonable. The points he raised on Barclays Bank were very reasonable and I will answer them happily. But I am tired of always having an Opposition Member who wants to bring down the reputation of the country to the gutter, making people think these people are investing in FDI, thinking that banks are about to close, that our property sector is about to crash, that our manufacturing sector is about to throw 56,000 people out of work! It is time that he looks himself in the mirror, Mr Deputy Speaker, Sir. Is it worth a few electoral votes to act like this in your own country, Mr Deputy Speaker, Sir?

*(Interruptions)*

Anyway, Mr Deputy Speaker, Sir, Time Magazine at their own expense ran a conference last week in Mauritius.

*(Interruptions)*

The famous Time Magazine!

*(Interruptions)*

Anyway, *oiseau de malheur* we are used to it.

*(Interruptions)*

Now, we come to the points, Mr Deputy Speaker, Sir.

*(Interruptions)*

I have said what I had to say. I will not go further.

*(Interruptions)*

Mr Deputy Speaker, Sir, I come back to some of the other points that were raised, of course, there are provisions in the law when a bank falters. I am sure everybody knows this because there had been so many banks that faltered in the past. I was, myself, Special Manager of the Union Bank, and when it faltered, all the banking businesses were transferred to another bank at that time. It happens all the time. There are provisions in the law - I think hon. Uteem mentioned it afterwards. Either you do it individually or you go before the Court. We went before the Court and it was sanctioned by the Court. So, there are provisions. They are saying that there are no provisions in the law to transfer good assets etc. That is completely untrue, Mr Deputy Speaker, Sir.

The hon. Member also mentioned, Mr Deputy Speaker, the regulations that are provided in the law to govern some of the points and to make some of the fine-tuning that may be required. We are talking about businesses, I am an elected Member of Parliament and I am answerable to this House at anytime. I take my responsibility. I am not going to hide behind anyone; I take my responsibility as Minister of Finance, I am answerable to this House and at anytime I will answer for what we are doing, Mr Deputy Speaker, Sir.

Concerning provisions for voluntary transfer of assets, it already exists in the law. What is happening is that we want a speedy transfer. There are already provisions and we are not changing this provision that the bank can go through the normal process of restructuring if it wants. We are not changing this. We are just saying that if it is to happen, it must happen. We cannot go on for years with appeals, etc. In fact, this amendment is a general amendment. It follows from the desire, which we support from the Bank of Mauritius, which has intimated to the banks in Mauritius that, firstly, it wishes banks which are foreign branches to be locally incorporated, which we support, as hon. Dr. Bunwaree said, it is a win-win situation. Firstly, because should there be a problem in an international bank, if it is a branch, and obviously, the branch holds the asset of just one legal person, the whole thing goes. But if it is a subsidiary, there is a firewall, a protection in that the subsidiary is the legal owner of the assets in Mauritius. So, there is that firewall.

On the other hand, we cannot see any international bank operating in Mauritius. Should one of the banks – hopefully it will not - have some sort of financial problem, just cut the golden knot and say bye-bye, because its reputation too is at stake. Mr Deputy Speaker, Sir, it is a win-win situation. We are in this way, so far as the foreign banks are concerned, reinforcing the stability of our financial system. In addition, as hon. Uteem, rightly mentioned, this usually requires additional investment to come in, to meet the various ratios that the Bank of Mauritius has in place. In every side, it is, in fact, a positive nature. Of course, Mr Deputy Speaker, Sir, if we force the banks, they can say no, they can shut up shop and go. It is only because they believe in this country that they will do what is being asked of them. We cannot force them to stay in this country. Look at Barclays Bank. It is investing Rs3.5 billion in order to be able to comply with the requirement. It was a request from the Bank of Mauritius to locally incorporate, to let Barclays Bank invest; they have Rs3.5 billion last year into its banks in Mauritius because it believes in Mauritius. Otherwise, it will just say: it is too expensive, it is going somewhere else. Some banks had done it in the past. In fact, a few years ago, Barclays Bank wanted virtually to leave Mauritius. The hon. Member should take note of what I am saying. I think Mr De Navacelle was the Managing Director. Barclays Bank was closing up his branches everywhere and was on the point of leaving Mauritius because it was not longer interested. Now, it is different. It is much more money being spent in Mauritius because they believe in the economy and it is important that it should be so. This is one thing concerning the foreign banks which will incorporate locally.

Secondly, of course, we have - quite rightly so, it is a fair point - some banks which are very large. We could just sit back and do nothing, which has been the case up to now. Nobody has yet done it. This is the first time that we are passing legislation to force banks to break their businesses into separate legal entities. These banks have not become large overnight. I say 'always been'. We grew up like this; maybe there was the State Bank before. The SBM and the MCB, controlling at least 60% or more of the banking sector in Mauritius. This is a fact. This is the first time that we come up with legislation to say: let us try and deal with these banks, which are too big to fail. This is what we are doing and this is commendable, Mr Deputy Speaker, Sir.

I think hon. Li Kwong Wing raised a point at page 3 of the Bill, concerning clause 32(a) (3) and I am advised, Mr Deputy Speaker, Sir, that any one of these reasons will be a reason for the Bank of Mauritius to request a restructure. It is just a clarification that the hon. Member wanted to know, whether it was, at least, one or the end was missing. It has to be at least one that has to be met as a reason for the Central Bank to request the bank to restructure.

As far as appeal is concerned - the right of appeal was raised by two hon. Members - there is the right of appeal through judicial review. That is still there.

Mr Deputy Speaker, Sir, I believe the depositors will be as safe, if not, safer. What we are doing today is not to render the banking system less safe. It is to render the banking system safer. So, the depositors - once the message get through - should feel safer with their deposits than previously, Mr Deputy Speaker, Sir.

Mr Deputy Speaker, Sir, there were passing remarks made on the troubles we are having at the moment with unregulated schemes. Let me say, Mr Deputy Speaker, Sir, that nowhere in the law, would anyone provide for fraudulent activities to be regulated. That cannot be. No one will regulate so that no one can steal other people's money. That is not the case. A fraud is a fraud, swindling is swindling and it will always be an illegal activity as far as this Government is concerned. This is not a question of regulating. However, I also agree that we do need to ensure that there is proper coordination between all the various institutions. That is a key.

In fact, Mr Deputy Speaker, Sir, that was one the points when the IMF came to review the system here. They wanted better coordination. In fact, tomorrow itself, I will be chairing a session at the Financial Stability Committee where we will, in fact, be looking again at the

situation of coordination. I do not want to deal with this in a political way. We can do. But this is an issue that happens everywhere. Every country, Mr Deputy Speaker, Sir, has this problem. We will continue to have these problems because people are gullible, people also want easy money. As long as there is a scheme that works, nobody comes to report it. It is only when things start to go bad. We are totally happy, Mr Deputy Speaker, Sir, that, at least, the system works. It may have taken a bit of time, but the system worked to bring all these perpetrators to justice. We can deal with that at the appropriate time, Mr Deputy Speaker, Sir. We have taken a number of measures since I came in to better regulate the financial services sector in Mauritius. Nominee companies are no longer authorised in Mauritius, either in the offshore sector - that was always the case - and now also in the onshore sector. And we did that recently in the 2013 Budget, Mr Deputy Speaker, Sir.

The Asset Recovery Unit was not only created by my colleague the Attorney General. The budget was increased by 60% this year and we made provision in last year's budget for it to be able to deal directly with all financial institutions with all regulators directly to speed up its action as far as freezing and recovery of assets is concerned. We passed, of course, the Private Pension Bill to better regulate the pension sector and a number of amendments and improvements were made also to the Financial Services Commission.

Now Mr Deputy Speaker, Sir, the last point raised, I think, was concerning the Barclays Bank. It comes at a time when there is a restructure going on, it is good to say that, as I have mentioned, I said again that the restructure of the Barclays Bank is at the request, it was not given a directive it could not at that time, but probably the Governor would have given a directive, at the time, had they had the present law, but following a request by the Governor the Barclays Bank is in the process of restructuring. There have been some legal points raised in so far by the lawyers of certain banks here, of one bank at least, that the process may not be infallible and may therefore give rise to problems in the future and everybody agrees that the best solution is to have a Bill in the House which not only provides for the wider provisions; giving the powers to the Bank of Mauritius, not only for foreign banks, but also for local banks. At the same time, provides a quick and foolproof solution to proceed, Mr Deputy Speaker, Sir, when the banks actually agree to do so, when they enact what the Bank of Mauritius will ask them to do.

Mr Deputy Speaker, Sir, I think this is a good day for the banking sector, I think we've taken, even if you take the criticisms into account, as far as the concentration of the banking

sector etc. is concerned, it is a good thing that we have done, it is a long overdue piece of legislation Mr Deputy Speaker, Sir, and I thank all my colleagues for their input. Thank you.

*Question put and agreed to.*

*Bill read a second time and committed.*