

CHALLENGES FACING THE NEW CBCS PRESIDENT

BY

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I am writing this note risking stepping on toes. However, the only way to avoid stepping on toes is to stand still. Standing still will come at greater cost to the reputation and the credibility of the Central Bank of Curaçao and Sint Maarten (“CBCS”), our financial system, and ultimately the Monetary Union and the well-being of its citizens than speaking out.

I write now because we need to consider the financial and reputational puzzle the new president of CBCS will have to solve. I write as well because the CBCS has strayed so far from the broad avenue of common sense. The new president, Richard Doornbosch, will face the task of remedying the harm that has been caused to the well-being and good name of CBCS and the Monetary Union. My goal here is to identify the single daunting challenge under the heading of what needs to be done to accomplish this goal.

To solve this problem however, requires a more intimate knowledge of the Bank and the storied history of the office itself than mister Doornbosch has. While not anticipating miracles, I nevertheless hope that the new president is someone in whom the country can place confidence.

According to a press release reporting on the swearing-in ceremony, the new president promised to be supportive of the countries. Loyalty, though essential, is no guarantee of talent. With the appointment comes responsibility.

The challenge before him is not a challenge of survival, but rather, a challenge of leadership. Regretfully, CBCS’s credibility capital has been squandered. Mister Doornbosch must begin to understand that the right to lead is no longer widely accepted. If he fails to comprehend this fact, he will not know how to formulate a successful strategy. He will be like a lawyer who assumes that because of his past triumphs, he has the judge in his pocket when in fact, he does not, precisely because the judge resents being taken for granted.

Amid the swirl of challenges these past years, one that poses a clear and present danger to the Bank and the Monetary Union’s interests is CBCS policies toward supervised institutions and the gathering backlash against these policies.

The Emergency Arrangement declared applicable on one of our larger financial groups in June 2018 illustrates this point. The CBCS contented that the financial group was sound, and the request to the Court to declare the Emergency Arrangement applicable to the group was only to enable the Bank to restructure the group to bring it in compliance with the Bank’s rules and

regulations. However, after two years, not much has been communicated about progress made toward the stated objective of the Emergency Arrangement.

In fact, little evidence is available to suggest any progress. The holy grail of supervision should be a sound and stable financial sector devoid of any actions not consistent with the highest governance standards. But this objective now seems to have been masked by a civil case against the very architects of this group. Underneath this policy lurks the danger of a regulatory maze that creates unnecessary risks and uncertainties. In addition, this policy of regulatory overreach runs counter to the government's overriding objective to re-establish growth.

This policy also brings to the fore the undue burden placed on the Judicial branch for what in effect are tasks of the Bank itself and ultimately the Executive branch, specifically the Ministers of Finance of Curaçao and Sint Maarten. A signal that the Court may be struggling with this undue burden is found in a caveat in the verdict stating that contrary to the Emergency Arrangement in Holland, our laws do not accord a very active role for the judge.

The instrument of Emergency Arrangement is not an instrument to resolve disputes between the Central Bank and an institution under supervision. Rather, the Insurance Supervision Ordinance provides the Bank with sufficient instruments to discharge its supervisory tasks preemptively. In addition, it is an instrument to promote and maintain sound development of the insurance sector and protect the interest of the insured and those entitled to a payment pursuant to an insurance contract. To use the Emergency Arrangement as a dispute resolution mechanism not only runs counter to these objectives, but it also can have far-reaching consequences for other macroeconomic objectives of the country.

At issue here is whether the institution was solvent or not. Because of confidentiality considerations, I cannot go into the details during my tenure. Suffice it to quote the CBCS statement at the time of the request that the institution under consideration was healthy but needed only to be restructured to bring it in line with the Bank's rules and regulations.

According to the CBCS's request to the Court as it appeared in the newspapers, the issue was one of admissibility of the claims of the life insurance entity on a group company and the valuation of an important asset on the balance sheet of an investment entity of the group. The logic underlying CBCS's restructuring objective was that by substituting the claims of the life insurance company with the assets of the investment entity, the issue of admissibility becomes moot, and hence the life insurance company would become solvent according to the rules and regulation of the Bank. Even if a conservative approach was taken to the valuation of the asset, the life insurance company would be shown solvent.

The questions, therefore, are: why did CBCS not carry out the restructuring to protect the interest of the policyholders but instead apportion an important share of the available assets to legal cases with no apparent direct impact on the solvency of the company? If after two years no action seems to have been taken, was there a legitimate case for "emergency?" This

unfettered court supervised action boggles the mind and brings into question the issue of bilateral investment protection and its larger implication for foreign direct investments (“FDI”).

A brilliant thinker who dismisses any idea not his own will be more disruptive than helpful. A charming person who is unoriginal will not help much either. The Bank needs a team player who is a team leader—confident enough to expect that he will be right on most issues and humble enough, to realize when he is not. Being a team leader demands intelligent guesswork and out-of-the box thinking. What happens elsewhere does not necessarily happen everywhere.

During the last few decades, CBCS and formerly the Bank van de Nederlandse Antillen was faced by several challenges. But because of the constraints imposed by the size of our economies, solutions adopted elsewhere were not available to us. It is the proverbial one size does not fit all. To risk dragging a financially sound company into bankruptcy is certainly not the objective of the Emergency Arrangement.

Facing mister Doornbosch is the daunting task of repairing the Bank’s tarnished credibility after the damage caused during the last few years. The foregoing provides him with an opportunity to do that. More than a set of policy prescriptions, the resolution of this challenge requires a blend of the past and forward-looking approaches within the context of the realities of the Monetary Union.

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