

Ryan Pinder Speaks on the Securities Bill In Parliament

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Hon. L. Ryan Pinder

Member of Parliament

Elizabeth Constituency

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Introduction

Today I am honoured to rise on behalf of the good constituents of Elizabeth. As my constituents know, every time I have the opportunity to rise in this honourable place, I do so to represent their interests to the best of my ability. We are just 4 days removed from the one-year anniversary of me being sworn in as the Member of Parliament for the great constituency of Elizabeth. To my constituents, I want to again thank you for the opportunity to serve you, to represent you in this honourable place. I have tried to give you the representation that you were without for so many years prior, but I want you to know, this is only the beginning, I intend on representing your interests, and advocating for you over the next year, and I look forward to, whenever that bell is rung, again win your confidence, and represent you for many more years to come.

Today we are here to debate a rather technical bill, The Securities Industry Bill, 2010. This Bill will likely have little direct effect to many of my constituents in Elizabeth, and frankly to many of Bahamians nation wide. However, it is a very important Bill, and its effect on the Securities Industry, those who work in it, and the country as a whole will have significant indirect effects on the lives of many Bahamians, many in the constituency of Elizabeth.

Importance of Securities Bill

This is an important piece of legislation as it provides many of the requirements for the Bahamas to be regarded as a preeminent jurisdiction for a Securities Industry, a vital component of our Financial Services Industry. IOSCO is the organization that provides guidance to international securities jurisdictions, and to qualify and be eligible for many incentives in the industry, to help our industry grow and thrive, the Bahamas must have certain regulations and oversight of the Securities Industry, to not only ensure the confidence of the international community, but to protect all the investors who invest in Bahamian regulated securities. This legislation purports to accomplish many of these requirements to strengthen our industry.

Investor protection is a very important component of this legislation. The ability for investors to know the public financials and information about a company regulated under this piece of legislation and the Securities Commission of the Bahamas is an important component for investor protection, consumer protection. An investor should have the ability to know as much information about a company he or she is investing in, and the disclosures mandated by this legislation seeks to accomplish this goal.

Furthermore, a goal of this legislation is to provide a basis for the expansion of the Securities Industry. I have spoken many times about the importance of expansion of the Financial Services Industry, and to the extent international and consumer confidence can be developed in our Securities Industry because of sound regulation and oversight, the potential for expansion of the industry is present. We need to develop policies and the framework for our economy in general to expand, and the hope is that this Securities Industry Bill will provide the necessary regulation of the industry to ensure its expansion.

Concerns over The Securities Industry Bill

Even though we recognize the importance of this piece of legislation for the Securities Industry, and the Financial Services Industry, we as a responsible opposition also have some concerns with the Bill. We have prepared a letter signed by our Leader, Mr. Christie, that sets out our concerns and recommends certain revisions. We ask for the Government and the Securities Commission to take certain affirmative undertakings to address these issues by way of Regulation that is brought to Parliament so that we can do the responsible thing, and ensure that we are passing the most comprehensive and equitable legislation possible. I would like to discuss these concerns that we have with the Bill:

1) Section 22 – One aspect that is concerning both as a matter of independence, and as a possible mechanism of an indirect tax is the provision in Section 22 that the Minister of Finance retains the residual authority to require payment to the Consolidated Fund of fees that might be charged by the Commission. The PLP would like Regulations to address under what circumstances, and also provide certain limitations, on the ability of the Minister of Finance to require payment of Commission fees to the Consolidated Fund. We recommend that unanimous Commission Board approval be required to approve payments to the Consolidated Fund at the request of the Minister of Finance.

2) Part III – This Part of the Bill addresses assistance by the Commission to domestic and foreign regulatory authorities. The PLP agrees that in today's global environment, assistance and exchange of information with foreign regulators is important. The language in the Bill appears to give the Commission greater authority and discretion than the Government is given in Tax Information Exchange Agreements ("TIEAs") to produce information. Furthermore, it seems there are fewer protections for regulated businesses than provided in TIEAs.

The PLP would like to see the same framework and protections as found in TIEAs in the regulations for this Part of the Bill. Regulations should address so-called "fishing expeditions" and provide the confidentiality and safeguards for the private sector.

3) Part VIII – This section provides the authority to put in place a Compensation Fund financed by the private sector. The Commission acknowledges this is an expensive proposition and can be overly complex and acknowledges that the IOSCO Principles do not require such a provision. The PLP recommends that this section be removed. If left unrestrained, this provision can provide a disincentive to business in the jurisdiction, and make the Bahamas less attractive for securities related businesses. This provision puts at risk the securities industry in The Bahamas.

4) Part XI – This Part includes general language about corporate governance. Given the abuses internationally, governance guidelines are important to protect the integrity of the securities industry.

The PLP insists that the corporate governance requirements and framework be set forth in Regulations brought to Parliament, and given the size of our country, conflict of interest guidelines be carefully crafted. We volunteer to be a part of the corporate governance policy and Regulatory rule making.

5) Sections 119 and 120 – We believe that the integrity of the trading system and the securities industry requires carefully thought out and implemented insider trading legislation, regulations and rules. In a country the size of The Bahamas, it is difficult to implement the same rules for international securities regulation as domestic securities regulation. The PLP recommends a bi-partisan discussion with the Commission to understand the implications of the insider trading rules and regulations as it pertains to domestic securities investment to formulate rules and regulations that have two goals: 1) protecting the integrity of the domestic securities industry; and 2) providing a practical implementation of such rules.

6) Section 133(1)(m) – The Commission in this section has the authority to appoint a receiver over a regulated entity after a hearing in front of the Commission. This is concerning from a due process point of view. The appointment of a receiver by a regulator without court order is not an industry standard; in fact, the Commission has stated, “it is noted that the Commission was advised that there are no jurisdictions that empower a regulator to appoint a receiver to a regulated entity without court order.” The PLP does not believe the Bahamas should be trailblazing new ground in this area that hinders the due process rights of Bahamian regulated entities. The PLP would like this provision removed, or at the very least require a court order for the appointment of a receiver over a regulated entity.

7) Section 133(3) – (6) – The Commission has the authority to suspend a license of a regulated entity without a hearing if it determines it is “necessary in the public interest”. This is a very broad standard and poses risk to the securities industry of the Bahamas. To suspend a license for at least 15 days can have a terminal impact on a regulated business. Furthermore, as quoted by the Commission, “the IOSCO Principles and rules of natural justice generally require that no sanction be imposed before the person is given an opportunity to be heard.” The due process limitations in these provisions create much concern for the PLP. The PLP does not agree with further limitation of due process rights, especially to a point that is more than the international principles require. The PLP recommends that a hearing be required for a suspension of a license, except when there is clear and convincing evidence of theft or fraud.

8) Sections 149 – 150 – These sections give the Commission broad discretion to perform legislative functions such as unfettered authority to make any rule necessary or expedient to carry out its functions and responsibilities. The concern is that the Commission is imposing on the responsibility of the legislature, and since the Minister of Finance appoints the Commission, it is potentially compromising the separation of powers between the Executive and the Legislature. The PLP proposes that it is clarified that the Commission has the authority to promulgate rules to further define the policies in the Bill; however, the Commission does not have the authority to promulgate rules to effectively change the provisions of the Bill. Any desire to change the provisions of the Bill should be brought to Parliament.

9) We invite to commitment of the Government to properly staff and equip the Commission to carry out its statutory function. We recognize that effective and efficient regulation is an ongoing exercise. We believe that an internationally accepted standard of human, capital and other physical resources must immediately be given to the Securities Commission as will enable it to carry out its function as the Regulator that is envisioned.

These are some of the material concerns of the Opposition with the content of this Bill. As mentioned, we believe the bill is necessary for the advancement of the industry, but ask of the Government to address these issues in Regulation form and bring them to Parliament for approval.

Transparency

An underlying policy of the Securities Industry Bill is the need for transparency when it comes to information about regulated entities. This is absolutely necessary to protect the integrity of the industry. I challenge the Government to take some lessons from this legislation, to do the same, to be transparent to the Bahamian people with respect to its activities. For example, we have demanded transparency in the following areas, and this Government has failed to deliver and inform the Bahamian people:

1) BTC Work Reduction Program – We would not have to see a debate in the press about the workforce reduction at BTC if the Government was transparent in producing the Voluntary Workforce Reduction Program that Cable and Wireless delivered to it on the signing of the purchase agreement in February.

2) Arawak Cay Shareholders – We have demanded from the Government to disclose who the beneficial owners of the Arawak Cay Port are. Who owns the 19 companies, and why are you hiding this information from the Bahamian people. Again, be transparent in who is receiving Government benefit, benefit from the Bahamian people.

3) Economic Indicators – This Government is always deceiving the Bahamian public on the economic indicators, making things seem better than they are. Projecting economic growth 35% higher than the IMF's just released numbers. Another example is tourism figures, when for January and February, hotel revenues were significantly down. Be honest and transparent with the Bahamian people so they can best prepare for continued difficult economic times.

4) Unemployment Rate – I addressed the failure to calculate an unemployment rate in a prior contribution. Transparency in this regard is very important, not only to be truthful to the Bahamian people, but to better address the challenges of the economic situation, and the unemployed and struggling Bahamans.

We recognize that in the Securities Industry Bill, the need for transparency is important to protect the investors. I challenge this Government, the need for you to be transparent in your dealings is important to protect Bahamians, all Bahamians, not just a few.

Financial Services Industry

I would like to speak to the Financial Services Industry. There are still challenges as to the responsiveness to the industry. The Minister of State for Finance would not handle the Financial Services Industry because, as was frequently pointed out to the Government, the second largest industry of the Bahamas needs more than a part time Ministry. Instead, however, the responsibility for this all-important industry was transferred to the Attorney General, in a time when crime is ravishing this country. This has not solved the problem, instead it just gave responsibility for a significant part of the economy of the Bahamas part time focus by a Ministry once again.

The PLP Government had the right model in the establishment of the Ministry of Financial Services. Tourism and Agriculture and Fisheries have their own independent Ministries, but why doesn't the second largest industry, in a time where global policy is changing rapidly and the industry has to react quickly to stay ahead of our peers, something that we have not done, losing significant ground to our regional competitors.

The Ministry of Financial Services was formed to provide responsiveness and plans and programmes for the industry and to ensure its growth and evolution in a competitive and changing global landscape. Certainly this is now of the significant failures of the FNM Government, eliminating the focus from a Cabinet level that this all-important industry deserves. Shame on you for contributing to the deterioration of the second largest industry in the Bahamas. Failed FNM policies at work once again.

The FNM Government would want to take credit for this Bill, but like much they are doing, the vision and foundation of the reform started under the Government of Mr. Perry Christie, it was under the Ministry of Financial Services under the PLP Government, in partnership with the private sector and the Securities Commission of the Bahamas where the process and reform leading to this Bill originated. Progressive reform from a Progressive Liberal Party Government.

Economic Expansion

Before concluding, I want to express my opinion on the need for economic expansion, a Government's role and hopefully what this type of legislation should provide. We are experiencing a situation where the population of the Bahamas is growing at a faster rate than our economy, in fact, we have recently experienced a shrinking of our economy. This trend stunts

career development, causes a pattern of increasing unemployment and puts pressure on Bahamian businesses.

We all hope that Bills like this one, the Securities Industry Bill, will provide a framework for an expansion of this part of the economy, the Financial Services Industry. I believe, however, a Government's responsibility is more than just passing the legislation. A Government must participate in setting the policies and framework to ensure that this and similar economic Bills are developed into a platform so that Bahamian businesses can participate. So they can have the platform to have the opportunities to thrive and grow as a result of the legislative efforts.

This is a theory of governance that extends to almost all actions in which we take in this honourable house. This is a responsibility of the Executive and governing party, something this Government has not developed, and an area where we have witnessed their failure. Once a government takes the view that implementation of programmes requires investing in platforms for equal opportunity, we will witness fundamental and progressive reform of the Bahamas, and economic growth that is required, economic growth that out paces the growth of our populations, so that careers are developed, businesses thrive, and employment is available for all who desire to progress.

Conclusion

As I conclude, Elizabeth supports the Securities Industry Bill, however, the opposition has made some requests on the Government to address certain aspects of the Bill that are troubling, areas where there are significant voids and shortcomings. Some of these recommendations require amendments to the Bill, and some we are asking that clarity is brought to Parliament in the form of Regulations. We seek to protect the industry, to be complete in our legislative endeavors. We as an opposition take this responsibility seriously, and have approached this highly technical Bill in this fashion, to ensure that we are confident we have done the best we can for this ever important and growing industry. We look for an affirmative undertaking by the Government to address our concerns and recommendations as suggested, in the interest of good governance.

We also look to the effective implementation of this Bill by the Government and the Securities Commission, with quickly developed rules and regulations, with the necessary funding and support provided to The Securities Commission to do its job. The Commission is undertaking a massive responsibility, and for the integrity of the industry, it is the responsibility of the Government to ensure it has the resources necessary.

But this Bill does not do its job without the commitment to build the platforms and models for Bahamians to succeed. This requires a philosophical change by this Government, but if this Government is not prepared to do it, certainly PLP Government is prepared to do so. Mr. Speaker, Elizabeth thanks you for your indulgence.