SENATE

Tuesday, May 18, 1993

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave to Sen. Ainsley Mark, Vice-President of the Senate, to be absent from sittings of the Senate during the period May 16 to May 23, 1993, as he will be out of the country on official business.

I have also granted leave to Sen. Carol Mahadeo to be absent from today's sitting due to illness.

FINANCIAL INSTITUTIONS BILL

Bill to provide for the regulation of banks and other financial institutions which engage in the business of banking and business of a financial nature, for matters incidental and related thereto, for the repeal of the Banking Act (Chap. 79:01) and the Financial Institutions (Non-Banking) Act 1979 (Chap. 83:01) and the re-enactment of certain provisions of those Acts in consolidated form; brought from the House of Representatives *[The Minister of Finance];* read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings. *[Hon. W. Mottley]*

Question put and agreed to.

PAPER LAID

Report of Team of British Police Officers Commissioned to conduct a review of the Trinidad and Tobago Police Service—the O'Dowd Report. *[The Minister of National Security (Hon. R. Huggins)]*

CARIBBEAN ORGANIZATION OF SUPREME AUDIT INSTITUTIONS (INC'N) BILL

Presentation

Sen. John Rahael: Mr. President, I beg to present the Report of the Special Select Committee of the Senate appointed to consider and report on a private bill for the incorporation of the Caribbean Organization of Supreme Audit Institutions and for matters incidental thereto.

ORAL ANSWERS TO QUESTIONS

Former President of Trinidad and Tobago (Payment of Salaries)

59. Sen. Wade Mark asked the Attorney General and Minister of Legal Affairs:

Could the Attorney General state whether the matter involving the payment of salaries and allowances to the former President of the Republic of Trinidad and Tobago has been settled?

If the answer is in the affirmative, could the Attorney General provide details of the final settlement to the Senate?

The Attorney General And Minister of Legal Affairs (Hon. Keith Sobion): Mr. President, the answer is yes. The matter involving the payment of salary in lieu of payments and allowances to the former President of the Republic of Trinidad and Tobago has been settled.

The details are as follows:

(1) Salary related claim in lieu of 261 days unutilized leave, the original claim, $180,533; final settlement, is $180,276.

(2) Overseas allowance, original claim, $422,820; final settlement, $422, 563.

(3) Interest on overseas allowance, original claim, $317, 115; final settlement, nil.

(4) Legal costs, $5,000, original claim; final settlement, $5,000.

The Attorney General is of the view that a settlement of this claim was fair and reasonable in all the circumstances, given, also, the undesirability of contentious litigation between a former President of the Republic and the State.

Sen. W. Mark: Mr. President, could the hon. Minister indicate to the Senate what were some of the factors responsible for delay in arriving at this settlement, which I understand has been outstanding since 1987? What were some of the factors which were initially responsible for this delay in settling the President's outstanding allowances?

Hon. K. Sobion: Having regard to?

Sen. W. Mark: Having regard to the fact, for instance, that he resigned from office.

Mr. President: You have asked your question.

Sen. W. Mark: We would like some elaboration.

Mr. President: You have asked your question.

Hon. K. Sobion: Mr. President, I cannot speak for any period prior to December, 1991. The matter was negotiated over a period of time and there were numerous factors why there was a delay. But the fact is, it has now been settled.

Private Security Guards (Conditions of Employment)

60. Sen. Wade Mark asked the Minister of Labour and Co-operatives:

Could the Minister state:

(a) What are some of the factors delaying the issuance of orders governing the Wages/Salaries and other conditions of employment in respect of private security guards in Trinidad and Tobago?

(b) When these orders will be issued?

The Minister of Labour And Co-operatives (Hon. Kenneth Collis): Mr. President, I wish to advise this honourable House that the draft order concerning minimum wages for security agencies' employees has been published for public comment and this ends on May 31, 1993.

Sen. W. Mark: Mr. President, could the hon. Minister indicate to this House when the final order for wages and salaries and other conditions of employment governing private security guards will be issued?

Hon. K. Collis: Mr. President, this is supposed to take place after we have received the comments from the public and due deliberations have taken place. I cannot give a final date at this point in time, Sir.

Sen. W. Mark: Would the hon. Minister indicate to us whether it will be issued before the end of 1993 and also indicate to this House as to the categories of private security guards that will be covered by this new form?

Hon. K. Collis: This should take place within a month's time, after we have received the comments, that is, after May 31. This caters for unprecepted guards and clerical workers in the security agencies. Occupational Legislation.

Occupational Legislation

61. Sen. W. Mark asked the Minister of Labour and Co-operatives:

Could the Minister state when the Government intends to bring to the Senate, legislation concerning Occupational Safety and Health, sexual harassment on the job as well as the updating of the Retrenchment and Severance Benefits Act?

The Minister of Labour And Co-operatives (Hon. Kenneth Collis): Mr. President, with regard to occupational safety and health, I take this opportunity to remind hon. Senators that the Occupational Safety and Health Bill was approved by the then Cabinet and it was agreed that the Bill be given first reading on October 11, 1991. However, Parliament was dissolved on November 5, 1991, and the Bill automatically lapsed.

Since taking office, however, this Government, through the Ministry of Labour and Co-operatives has been engaged in a review of the policy considerations which have informed the Bill, as well as its considerable implications for personnel infrastructure within the Ministry of Labour and Co-operatives.

Once this exercise has been completed, the Minister of Labour and Co-operatives will seek Cabinet approval for the introduction of the Bill into Parliament at the earliest opportunity.

The Government, through the Ministry of Community Development, Culture and Women's Affairs, is engaged in preparing the necessary legislative measures to address the whole question of sexual discrimination in Trinidad and Tobago, including a focus on sexual harassment in the workplace.

With regard to the Retrenchment and Severance Benefits Act, Mr. President, the Minister wishes to advise this honourable House that since August 27, 1992, the Government had agreed to the establishment of a standing tripartite committee which was set up to undertake a comprehensive review of certain areas of labour legislation. Top priority in this regard was assigned to the review of the Retrenchment and Severance Benefit Act. The outcome of that Committee's deliberations in this connection is currently being awaited and it is anticipated that a submission will be tendered shortly.

Sen. W. Mark: Mr. President, could the hon. Minister of Labour indicate to this Senate what are some of the difficulties that this committee is faced with at the moment in terms of bringing this outstanding Occupational Safety and Health

Bill to this Parliament? That is the first question. I would like to know the factors inhibiting the Committee.

Secondly, given the desperate situation involving safety and health in this country, can he give this Senate a deadline for the submission and tabling of this Bill in the Senate? Mr. President, I have some other questions, but I will pause, so he would not get lost.

Hon. K. Collis: Mr. President, as I mentioned earlier, in my response, considerable implications for personnel infrastructure within the Ministry of Labour and Co-operatives is the reason why this Bill is still being delayed. Again, because of the financial implications in staffing the department, because the Bill is a wide ranging one.

Sen. W. Mark: Mr. President, could the hon. Minister indicate when this staffing problem will be addressed? Because the Occupational Safety and Health Bill has been outstanding in Trinidad and Tobago for the last few years.

Mr. President: Could you pose your statement as a question?

Sen. W. Mark: Could the hon. Minister tell us how soon this Bill will be tabled in the Senate? Secondly, what are some of the factors delaying the tabling of the Sexual Discrimination Bill which this Government has been talking about for so long?

Hon. K. Collis: Mr. President, I am not in a position to state this, again, because of financial implications.

Sen. W. Mark: Did the Minister not pick up the second question?

Hon. K. Collis: Does the Senator mind repeating it?

Sen. W. Mark: What are some of the reasons for the delay in bringing this Sexual Harassment Bill to this Parliament?

Hon. K. Collis: Mr. President, again, I am not in a position to answer this at this point in time. I would have to consult with the Minister for Women's Affairs.

ORDER OF BUSINESS

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, I wish to seek leave of the Senate to deal with Motion No. 4, listed as a private Bill.

Leave granted.

CARIBBEAN ORGANIZATION OF SUPREME AUDIT INSTITUTIONS (INC'N) BILL

Adoption

Sen. John Rahael: Mr. President, I beg to move, That this House adopt the Report of the Special Select Committee of the Senate appointed to consider and report on a Private Bill for the Incorporation of the Caribbean Organization of Supreme Audit Institutions and for matters incidental thereto.

Question proposed.

Question put and agreed to.

Report adopted.

Question put and agreed to, That the bill be now read the third time.

Bill accordingly read the third time and passed.

FINANCIAL INSTITUTIONS BILL

The Minister of Finance (Hon. Wendell Mottley): Mr. President, I beg to move.

> That a bill to provide for the regulation of banks and other financial institutions which engage in the business of banking and business of a financial nature, for matters incidental and related thereto, for the repeal of the Banking Act (Chap. 79:01) and the Financial Institutions (Non-Banking) Act 1979 (Chap. 83:01) and the re-enactment of certain provisions of those Acts in consolidated form, be now read a second time.

This Bill seeks to repeal the Banking Act, Chap. 79:01 and the Financial Institutions (Non-Banking) Act of 1979 and to replace them with a single comprehensive bill now before the Senate.

My Government is conscious of the need to enhance the regulation of banks and near banks and to seek to improve their supervision, especially in light of developments both at home and abroad. Indeed, in our *Medium Term Policy Framework*—1993 to 1995, my Government clearly stated that it was in pursuit of financial sector reform and that we would be bringing several pieces of legislation to address these concerns. So that it is not only this particular matter, the banking; but shortly, insurance, as well as the regulation of the stock market would be brought before this honourable Senate.

Before going into the details of the proposed changes, I thought it would be useful to reflect somewhat on the history of the legislation of this country as related to the matter at hand, the regulation of banks.

The Central Bank Act, Chap. 79:02 and the Banking Act, Chap. 79:01, were brought into effect in 1964. The financial system as prevailed then was a much simpler one than we now have to deal with. The role and functions given to the Central Bank under the Central Bank Act and the Banking Act reflected the nature of the financial system at the time, which was a simple, traditional system of banking done effectively through short-term credits. There was an absence of much of the new and quickly evolving types of credits and derivatives which we now have to deal with.

The major thrust of the Central Bank, after it was established, was to promote the development and diversification of the local financial sector and especially, as stated in the policies of the 1970s, was to effect a fair degree of localization of the domestic financial sector. That goal was largely achieved.

At the same time, the decade saw the establishment of several near banks or what we referred to as the NFIs, the non-bank financial institutions. The growth of the NFIs came about as a direct consequence of the substantial increase in liquidity which prevailed at that time, corresponding with the boom years, and the enormous profits which were being made, not only in the oil sector, but in all sectors of Trinidad and Tobago business.

By the mid-1970's, there were eight commercial banks in operation, with several of these finance companies, NFIs, trust companies, mortgage companies, all with different areas of specialization. To the extent that their total assets increased from approximately $106 million, in 1973, to $2.1 billion, in 1981, because of the significant increase in the business of these NFIs, the Government, in 1979, passed the Financial Institutions (Non-Banking) Act, the provisions of which were almost the same as those in the Banking Act. The major distinctions were that NFIs were not allowed to take demand deposits or lend under one year.

Unfortunately, Mr. President, just at the time when that legislation was passed, it coincided with a significant downturn in the economy and the sharp contraction of the economy triggered shaking out of the weak NFIs. The shortcomings of the existing laws governing both the banks and the NFIs became manifestly clear at that point in time. Foremost among the shortcomings were the lack of convenient enforcement powers. This is something I want to stress, because it is the major

advancement in the Bill before us at this time, the move towards the strengthening of intermediate enforcement powers.

Then again, in 1986, an amendment to the Central Bank Act was passed amending the existing law and establishing, for the first time, a deposit insurance fund for the benefit of depositors of banks and NFIs. In a number of instances prior to 1976, where the Central Bank might have acted to actually close many of the NFIs that were in serious trouble then, they would have done so at the total expense of the depositors. Until the deposit insurance came into effect, in 1986, the effect of the closure would be that all of the depositors of any size would have been wiped out. There would be no insurance, which is a concept we have recently become accustomed to.

More specifically, Mr. President, the economy has remained in a serious state of deflation since that time and pressures on the banking system and the NFIs have increased and it is to the great credit of the bankers and the banking system that prudent management—a number of banks in the late 1980s and early 1990s had to take very stringent measures to make sure that they remained robust financial institutions during this period of the weakening of the economy.

My Government has already started taking certain initiatives which, as we had indicated in our *Medium Term Policy Framework*, would expand the productive base, increase the international competitiveness of our industries and impart a greater resilience to the economy, all with the purpose of stimulating investment and invigorating growth once more into the economy with the consequential employment that would flow. This, we believe, would have a very beneficial effect on the whole financial system.

At the same time, we are pointing in the direction of establishing Trinidad and Tobago as a financial centre for the region and, again, a number of our policy initiatives are geared to achieving this purpose. The present legislation before you does have that as one of its desired objectives.

We are all aware that the international environment is becoming increasingly competitive and that the rapid pace of technology and the globalization of commerce have brought about profound changes in the world which have dramatically affected not only industry but banking and finance as well.

The financial services industry and the financial markets have brought about widespread changes in the last two decades. Changes in telecommunications and technology have generated rapid and accelerated linkages in products and markets as well as integration of the firms that have provided them.

We have hence moved very rapidly and the interlinkage of banks, systems and the whole financial world became very evident here when, on one single day, as a result of the closure of BCCI, in London, immediate steps had to be taken *vis-à-vis* the domestic subsidiary in this market.

Three major changes, Mr. President, in the last decade have been impacting on finance houses and the speed and rate of change have certainly increased the risks to these businesses. I am speaking, in particular, about changes in technology, the massive flows of capital almost overnight, the volatile markets and this period of financial deregulation that is characteristic of the whole global economy at this time.

Tremendous developments in technology facilitate the achievement of global control by transnational companies. Competition from such corporations has resulted in the liberalization of many economies and has created new opportunities as well as risks.

It is obvious to everyone that policy-making can no longer be entirely inward oriented and, therefore, cannot be carried out solely in a national context. The international linkages and intra-dependence of markets must be factored into policy decisions.

We can see that there has been a high degree of volatility in these markets by just scanning the global history. I do not want to bore the Senate with all the details, but on every single continent there have been an unprecedented number of bank failures and finance house failures that has led to an entirely new perspective for regulation of such houses.

Mr. President, it was all well and good in the past, in the simple system that I earlier described when we introduced the Central Bank legislation back in 1964. The main thing that was characteristic of that period is that it was presumed that all of the members of these institutions were members who wore the same tie and were motivated by the same motives. In other words, it was a gentlemanly club at that time.

In every single jurisdiction, as a result of the massive changes, some technological and so forth, as I have indicated, that world has disappeared. There is no longer the capability of accepting gentlemanly roles of the game for regulation of financial institutions and that is something which is accepted worldwide, and we need to understand that very clearly.

It has happened in the context where small and large depositors alike, all over the world have lost billions and billions of dollars. So we are talking about very hard, pragmatic realities and we need to understand that gentlemanly regulation is a thing of the past.

As I say, Mr. President, that I can recite instances right across all the continents:

> In Ghana, in 1989, the Government had to recapitalize 10 institutions; in Asia, between 1983 and 1986; the Commissioner of Banking had to liquidate or take over seven banks; in the Philippines, the Central Bank closed 173 banks. If we look at Norway, the Central Bank provided special loans to assist six banks. Of course, very well known to Senators on both sides of the Senate, the United Kingdom, the Bank of England had to acquire Johnston and Mathey, a key player in the gold market and had to totally recapitalize it.

2.00 p.m.

In the United States between 1981—1991, more than 1,400 saving and loans institutions and 1,300 banks failed, and this thrift crisis has cost between US $315. to $500. billion. We are not talking about "chicken-feed", nor are we talking about something entirely related to Trinidad and Tobago.

We had our share of problems here, too, Mr. President, and it is as well that we go into some of them because it is out of some of our own domestic lessons that we have learnt, as well as pooling with the international experience, that we got together and tailored some of the concepts that we now bring before you in this Bill.

I want Members to understand: (1) that regulation is here for a good reason, it is internationally accepted as being much tighter than it needed to be before; (2) that depositors have lost money and that there is an onus on the Government and the Central Bank to protect the depositors.

Here in Trinidad there were a number of practices in which all of the non-financial institutions that failed, recently, could be clearly stated that they did not observe safe limits in respect of loans to related party groups. It is a fundamental matter, Mr. President. Every one of them failed normal prudential requirements in loans to related party groups—"party groups" not to be understood in the narrow political sense.

For instance, I look at one here, Mr. President, Trade Confirmers. In 1986, advances and investments to related parties as a percentage of the total portfolio was 45 per cent. SWAIT—loans to related parties, 75 per cent. Commercial Finance—we get into the details of the balance sheet and we see over $77 million in loans to subsidiary companies.

Mr. President, when these institutions failed, there were totals to creditors outstanding that were absolutely tremendous. SWAIT—creditors claims amounting to over $12 million; CFC—$181 million; Summit—$36 million; TCL—$115 million; MATT—$15 million; BCCI—$44 million; CM&L—$4 million; tremendous amounts of moneys. So that one needs to understand, again, the context in which this Bill now comes before us.

The United Kingdom, especially after some of these kinds of experiences, have now strengthened its regulatory powers—

Sen. Daly: Mr. President, I wonder if the Minister—before he goes abroad—could give us any information on the cost of what happened in the Workers' Bank in 1989, particularly what happened to depositors' funds?

Hon. W. Mottley: Mr. President, I do not have the figures before me, but I can undertake to get some of them. The Workers' Bank was re-organized, but I do not have those figures before me. It is not—I think as he is indicating—only the non financial institutions that failed. There was need to reorganize the Workers' Bank. That is true, Mr. President. There were some—one should not snigger here—very respectable large banks that observed certain kinds of practices that got them into trouble and there were situations that were highly undesirable, that those banks today, would so recognize, but they took steps subsequently to correct them. Nevertheless, it is not an experience that only the Workers' Bank or SWAIT and the others had. I just want us to know that, so that there would not be any sniggers with the implication that it can only happen to certain people. We need to understand differently. You breach the kind of practices that we are talking about in this legislation and nobody is immuned from getting into trouble. It is not only certain kinds of institutions or banks that can get into this kind of trouble. We have that kind of experience here in Trinidad.

The United Kingdom has now strengthened its regulatory powers through the Banking Act 1987 and many of the provisions we now seek to legislate occurred from that United Kingdom legislation. Not only in the United Kingdom, but in Canada. On June 1, 1992, Canada brought into force new legislation for the

Federal Financial Institutions. Argentina similarly, Malasia in 1987, Chile, Philippines, Spain, Jamaica and Japan, all new legislation. And from what I gather, Mr. President, coming right behind us, Barbados and the Eastern Caribbean. We need to understand that it is a worldwide experience and there has been concertive action and pooling of information that has caused bills of this type to come before Parliaments, worldwide.

We, too, have to understand that even within recent times, we have moved away from the pegged dollar and that, in itself, is a fundamental change and it brings new requirements to the system as a far more complexed world in which we operate, in which rapid change is now the order of the day.

Our financial institutions, therefore, if they are to survive have to learn to manage risks, they have to learn that they are players in a globalised economy, and the developments or financial derivatives have been seen as the more recent response to better risk management. It is therefore necessary for us to look ahead and to prepare ourselves for these new developments so as not to be left behind in the global competition.

As we all know, laws usually tend to lag behind developments and to deal with the ever changing reality, it is necessary to build into the legislation, the clear understanding that developments are so fast-paced now in the financial sector that there is a degree of flexibility built into this legislation that contemplates dealing with factors yet unknown. So that you will see in the legislation a great deal of provisioning for regulations that may change in the light of experience.

It is also a key aspect of this legislation, Mr. President, that in moving from where we are today to the desired objectives that we seek to introduce in this legislation that there has to be a transition period. We cannot shock the financial system by seeking overnight, by the stroke of a pen and the passage of this legislation, to move from the world in which we operated hitherto to the desired objectives that we want to introduce.

We are contemplating a transition by which existing institutions, in whatever forms, if they do not comply with the letter of the law, have a period within which they can move to that desired objective.

2.10 p.m.

What my Government is seeking to do is to respond and adapt to the realities of global environment. We have already taken the steps to remove all of the

restrictions on trade, and as I have mentioned already, Mr. President, we have recently removed exchange controls. We have commenced our efforts to enhance revenue collection by the Board of Inland Revenue and there are a whole series of other measures that we must see this legislation fitting in harmony with. Only last Friday a new Companies Bill was laid in the other House and, as I mentioned, shortly to come before both Houses are the insurance legislation; the new Securities Industries Act, a new Customs legislation and a Venture Capital Bill. All of this, Mr. President has the desired effect of modernizing Trinidad and Tobago's business and making us more competitive and to fit this country better into a globalized environment.

I now come, therefore, Mr. President, to some of the details of the legislation. There are certain governing principles, which you will have gleaned from what I have said, guiding this legislation. The first is to provide an effective framework for the supervision and regulation of financial policies. The second is to allow the banks to participate in wider spheres of financial activities. Third, a tighter admissions policy for financial institutions. It has got to be very tight, not any and everybody can just jump into these kinds of institutions where depositors' funds are at risk. To establish minimum accounting standards aimed at reflecting accurately and properly the true condition of financial institutions.

One of the sorry facts about the failure of a lot of financial institutions is the difference between what is recorded, often with all kinds of proper audit certificates and so forth as to the value of assets; and then what those assets actually realize afterwards. Very, very remarkable differences, Mr. President. Stipulated criteria for analyzing the performance of loans and especially the classification of assets and, most especially, this business of accruing interest on bad loans. That is a no-no. Minimum capital and liquidity requirements. Regulation of controlling interests and regulation of unsafe practices. Where necessary, the sharing of information between the regulator and auditors. These are the guiding principles that have gone into this legislation, Mr. President.

I now come to the main proposals of the new legislation. The supervisory functions will be removed from the purview of the Minister of Finance. The powers of supervision of financial institutions will be squarely vested in the Central Bank with an obligation on the part of the Governor to keep the Minister informed of developments in the system and the conditions of the financial institutions.

The definition in the schedules, which is rather technical, as to what constitutes a borrower group; what is connected or related parties; what is an affiliate, that is, all the technical aspects of the Bill.

The grant and revocation of licence, a major thrust of the Bill. Applications for licences to operate as a financial institution must be made to the Central Bank of Trinidad and Tobago which will be the power to grant or refuse licences. The function is now exercised by the Minister of Finance. In addition to the present requirements for the grant of a licence, the applicant will now have to satisfy the Central Bank that it has a minimum paid-up capital of at least $15 million. That will apply to new applicants.

Subsidiary companies and representative offices may be established only with the consent of the Central Bank. Annual licence fees have been increased to $50,000 per Bank and $20,000 for NFIs. It is contemplated, Mr. President, that NFIs should be licensed to do certain things and they can graduate upwards ultimately doing all the functions of a bank, if they meet all the required standards. So it will be seen almost as a graduation process. The Central Bank, and not the Minister of Finance, will have the power to revoke licences. Mr. President. this we view as a purely technical matter: oftentimes, the Central Bank needs to act with some urgency in these matters and we do not believe that in such matters the Minister of Finance can bring any particular competence to the matter, outside of the fact that it is expected that the Minister of Finance would be informed, and so forth, of developments and, in any event, I want to stress that it is not likely, except as happened in the BCCI incident, where it was a decision in a metropolitan country that triggered need for urgent action here. Otherwise in the normal regulation of the domestic banking system it would be through a long process of "cease and desist orders" and exchange of correspondence between a bank in some measure of default and the Central Bank that would, ultimately, lead to revocation. These would be technical matters that we believe can best be discharged by the Central Bank.

Directors and Management. The present law deals, to some extent, with this subject. However, the new legislation widens the restrictions governing directors and persons debarred from management. It places restrictions on loans over a certain limit by institutions to its directors. The Central Bank will have a right to notify persons who are disqualified on the grounds of not being fit and proper persons to be directors or managers of these institutions.

Prohibitions is another section, or another aspect that is strongly addressed in this Bill. The provisions under existing laws will be retained subject to some amendments.

In particular we come to some of the more controversial aspects of this Bill, Mr. President; and I looked across to see my learned Friends on the other side circulating some amendments.

The grant of unsecured credit facilities to any one person has been restricted to five per cent instead of 10 per cent of the paid-up capital and statutory reserve fund. And to minimize exposure to any one group of borrowers, the restriction now extends to a borrower group. In other words it was easy to circumvent the law prior to now, and that is why the definition of a "borrower group" has been clearly spelt out in the legislation. A financial institution will be restricted in its exposure to any one person or borrower group exceeding 25 per cent of its capital base, which is defined to include a total of paid-up share capital and other stipulated reserves. A financial institution will also be restricted in its aggregate holdings of equity in commercial, agricultural and industrial enterprises, to a limit of 100 per cent of its capital base and in respect of any one company, 25 per cent of the paid-up share capital and statutory reserve fund of the financial institution.

And then, Mr. President, one would have thought this would be obvious but in practice it has not been so: restrictions on the payment of dividends by a financial institution have been widened. This recognizes a potential norm pertaining to capital adequacy standards. One has to be careful about the circumstances under which we pay our dividends.

A licensee will not be able to establish a subsidiary or representative office without prior approval of the Central Bank.

2.20 p.m.

Mr. President, there has been much discussion on some of these matters that I have just raised here between the banks and the Central Bank, and we have moved a great way along the line in trying to accommodate some of the concerns of the banks in this regard.

In fact, there was a meeting as late as Monday 17, in which the practical aspects of some of this was addressed. Again, the guiding principle is how do you get from where you are to the desired objective. Because clearly, it is undesirable for any one bank to be exposed to any borrower group and so forth, to the extent

where—and we have to admit, right now we are involved in virtually, reshaping the Trinidad and Tobago economy. There are risks around in Trinidad and Tobago's re-integration into global trading. The last thing we want is for any failure to cause financial instability, first to a bank, and if that bank is significant enough a player, then to the whole financial system.

That is a very desirable objective. Mr. President, I want to let this Senate understand that we, as I say, have been conferring with the wider international financial community. Their opinion is that the legislation as we now have it written is too lax; that the percentage guidelines that we have, in view of where they are, we are too lax. We have argued that this is not a G-7 country; that the Trinidad and Tobago economy is not as diversified as we would like it to be, and therefore, we cannot apply their standards here. We have gained some recognition of that, and we, therefore, have said to them that our standards have to be somewhat different, although we understand the underlying principle.

Sen. Mansoor: Mr. President, through you, I wonder if the Minister would let us know whether it is his Government's policy for the private sector, broadly defined, to be accessing loan capital from foreign banks. Is that Government's policy? I am speaking about these borrower groups, these larger groupings. Is it the desired policy, as far as the Government is concerned, for these institutions to go foreign and borrow from foreign sources?

Hon. W. Mottley: Mr. President, we are discussing that right now with the Central Bank. That would seem to be the general direction in which we have to go. It cannot be that the risks are in one institution. It has to be spread. For one thing, we foresee some attraction of new institutions in Trinidad and Tobago itself. We understand that the consequence may well be that some of the larger borrower groups may have to spread some of their borrowings outside. That may well be the case, because of the seriousness of the risks that we are looking at here.

The last thing that we want is to shock the financial system, and, therefore, arrangements have been worked out between the commercial banks and the Central Bank that would allow, over the next four months, pretty much the same conditions to apply and the tight restrictions on borrower groups would not prevail. But the Central Bank has clearly signalled, this is a desired objective and we should be working together to try to achieve those objectives. So that at no time do we shock the system and cause economic instability by the passage of this

legislation. The Central Bank, under the legislation, has the capacity. In fact, it says, for instance, under one section:

> The unsecured credit facilities to any one person or borrower group greater than five per cent of its paid-up share capital and statutory reserve fund or of such greater proportion thereof as the Central Bank may from time to time approve.

We are working under those kinds of guidelines to give the flexibility to the system in transition. I would say that it has been reported to me that there is a meeting of minds so as to solve this problem on these more controversial aspects of the Bill that I have just recited.

Inspection, Investigation and Winding Up: The major changes to the present laws are the Inspector of Banks will be reporting to the Central Bank and not to the Minister of Finance. He will now be allowed in certain limited cases to hold other offices, that is, the Inspector of Banks may become a director of an international lending agency to which the Government subscribes. Disclosure of information by the Inspector and his assistants is restricted to the Governor or a person designated by the Governor, provided that the person on whom information is given, is so informed, except in cases of criminal charges or involving national security. The Central Bank may also appoint persons to investigate any aspect of the business of a licensee and there are also disclosure provisions on the information accessed.

General Regulation of Licensees: The general powers and duties of the Central Bank with regard to regulation of licensees is set out in this part, which gives the Central Bank authority to make bye-laws in respect of prudential criteria.

Accounts, Auditors and Information: Requirements for publication of accounts have been retained and a new provision has been included to have institutions submit to the Central Bank, consolidated accounts and accounts of affiliates. Where those accounts indicate the likelihood of insolvency of an affiliate, the financial institution will be required to take measures to prevent the adverse conditions of the affiliate affecting the licensee.

The Central Bank will now be empowered to commission special reports from auditors, and provision has been made for auditors to report directly to the Central Bank. This is a novel provision. Auditors can be required to report directly to the Central Bank on relevant matters pertaining to the institution or its affiliate which come to the attention of the auditors. Protection has been given to the auditor

where confidentiality between the auditor and its client institution may be breached under these circumstances.

Most important, Mr. President, Cease and Desist Orders: A radical improvement which the legislation will achieve is by providing intermediate enforcement powers, which I have alluded to earlier, to the Central Bank, which have been severely lacking under the existing legislation. The Central Bank, under the old legislation, had power to go in and inspect and report on, and so forth, but very little teeth, except to close the institution. So that all of the steps, intermediary, that might have led to the institution being brought back on track; the teeth of enforcement were lacking. It is only at the end of the day that the Central Bank could virtually go in there, with a very heavy "clout", and close the institution. Now, it is contemplated that intermediate powers will be granted the Central Bank, largely in the form of these Cease and Desist orders. The Central Bank will be now empowered to issue cease and desist orders to institutions which are engaging in or likely to engage in practices which are unsafe or unsound and a procedure for dealing with the imposition of such orders is set out in the legislation.

Appeals: A new mechanism has been put in place for appeals by appointing the Tax Appeal Board as the forum. The role of the Appeal Board would be in the nature of a review of the decisions of the regulator and pending appeal, the decision of the regulator would take effect. That is, the decision of the regulator stands until reversed. While the matter is being heard, the decision of the regulator stands. It is hoped that through this mechanism, there will be speedy resolution of decisions of the Central Bank which are appealed.

2.30 p.m.

There is a whole series of offences and penalties that are quite clear in the Bill, which I do not think I need to go into, but they are very strong penalties for breaches of this legislation.

Mr. President, we believe that in the passage of this—

Sen. Hosein: Mr. President, I wonder if the Minister would like to tell us whether there are plans to beef-up the Tax Appeal Board, given the rate at which they do their work, in order to have this legislation work.

Hon. W. Mottley: Mr. President, I know that is a subject close to the hon. Senator's heart. Yes, we will be attempting to beef-up the Tax Appeal Board. We

felt that the Tax Appeal Board has the kind of staffing with which we could build on, and it is the kind of institution that can assist us in these financial matters. Rather than try to create an entirely new institution with all of its support staff, we believe it is better that we spend some time assisting the Tax Appeal Board rather than trying to start afresh with a new institution to discharge the appeal function of this legislation.

Mr. President, I believe in bringing this legislation, we would be coming up to scratch. I make the point, that as we are becoming a global trading nation; that as we seek to become a financial centre; that more and more as we become a depository of international investment money, foreign jurisdictions are looking closely at the kind of legislation we have regulating our banks.

Sen. Hosein: Mr. President, the Minister seems to be winding down, and I would like to ask him whether the Government has any plans to increase the deposit insurance on the depositors from $50,000 to let me say $100,000.

Hon. W. Mottley: No, Mr. President, it is not that it may not be justified. Frankly, I have not addressed that matter, but since the hon. Senator has raised it, I will take it into consideration.

Mr. President if, for instance, we did not have internationally recognized financial legislation in place, foreign jurisdictions would view our operations here with a jaundiced eye. And there is need for reciprocity; we need their protection; as our banks go overseas, they look to us as their depositors or even when their banks come here. We, therefore, need, for all varieties of reasons, to bring this legislation before you. But, above all, we bring this legislation because we need to protect depositors. We, like the rest of the world, have had over the last five to 10 years, a very bitter experience, and it is mainly in their name that we now bring this legislation.

I beg to move.

Question proposed.

Sen. Wade Mark: Mr. President, I would like to commence my contribution on this very vital and far-reaching piece of legislation by quoting from the "Concluding Notes" on page 383 of *The General Theory of Employment, Interest and Money* by John Maynard Keynes, which I think is quite pertinent to our dilemma in Trinidad and Tobago.

"...the ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed the world is ruled by little else. Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist. Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back."

Mr. President, classical economists of the 18th and 19th centuries, although they are dead, their outdated theoretical models and ideas are still alive in the body and soul of many Third World politicians including our own hon. Minister of Finance.

This is part of the liberalization theology of the international financial institutions. And, they have been imposed and dutifully executed by an administration which is committed, not only to transforming this country into an arrangement in which the vast majority of our people will ultimately be expropriated from the realities of our own existence, but what we are experiencing as we get into this debate is the emergence of what we would like to describe as a new bourgeoisie in Trinidad and Tobago.

This Bill is not of the Government's making. This Bill was supposed to have been introduced by the former NAR administration, and it is part of the whole financial deregulation of our financial system. What we are witnessing today is the execution by the PNM, in a very vicious manner, of the policies of the former NAR Government of 1986 — 1991. I quote from a text entitled *The Trinidad and Tobago Government's Relationship with the International Monetary Fund and the Paris Club of 1990.* We have this infamous letter, dated March, 14, 1990, that was signed by the then Minister of Finance and the then Governor of the Central Bank, addressed to Mr. Michael Candessus, Managing Director of the International Monetary Fund. I quote from section 26 of this report.

"In order to help prevent a recurrence of the liquidity or solvency problems that have affected a few financial institutions (both bank and non-bank) in the recent past, the Central Bank is about to complete the preparation of draft legislation for submission to the Minister of Finance aimed at improving the regulatory framework governing the commercial banks and non-bank financial intermediaries. Legislation is also being prepared which would apply to the local Stock Exchange and Securities Markets. All this legislation is expected to be presented to Parliament early in 1990."

Mr. President, what I am saying is that the hon. Minister gave us the impression, in his presentation, that this piece of legislation is of the PNM's making. This is International Monetary Fund conditionalities. It is part of the whole liberalization of the economy of Trinidad and Tobago. I think, for instance, that the population of the country needs to know exactly what is taking place in our land at this time. It is not correct to come to this Parliament and give the Senate the impression that this is Government's legislation. This is IMF legislation, PNM style.

Mr. President, it is an IMF commitment that has forced this PNM Government to come to this Parliament to bring this piece of legislation. In fact, we have many other pieces of legislation that are to come before this Parliament. These are outlined in the Government's *Medium Term Policy Framework*, and they are coming in piecemeal. I keep saying over and over that this is a bandage Government.

2.40 p.m.

There is no comprehension in this arrangement. If we are to benefit at all from this exercise we believe that the Bills that are coming to this Parliament, ought to be coming here in some kind of comprehensive package or framework. Hence, we want to indicate that the reason this Government is seeking very hastily—69 sections of this Bill; you gave Members this Bill last week Thursday. It is a very technical piece of legislation. It took them almost five years to prepare it. Now they want to come and give Senators four days in order to debate and deliberate on something so fundamental—and this Government tells the country it cares.

We would like to state very clearly on this side, that this Government ought to have prepared a Green Paper on financial reform in Trinidad and Tobago which they ought to have made public so that the population of this country would have a say in terms of where the financial culture of this country should be heading. Sometimes I wonder if this Government is setting up this country for revolution. If this Government is serious about maintaining the stability of this nation, how can they come with a very fat piece of legislation, give Members four days, and expect us to debate and give the kind of competent and professional contribution that is necessary?

We on this side want to make it very clear that the Government is at fault. We are calling on this Government to withdraw this Bill. We are calling on the Government to issue a Green Paper on financial reform in Trinidad and Tobago

and have it circulated and debated and allow the population to have a say in the direction of this economy. This is not the hon. Sen. Lenny Saith's or the hon. Wendell Mottley's of the PNM's country. This is our country. What the PNM is doing is changing the culture of our country. That is what they are doing!

Mr. President, this Bill has far-reaching implications for our country. What this Government is doing is establishing a new bourgeoisie in Trinidad and Tobago. A new planter class. That is what they are seeking to do. My union—I wear many caps—is the Bank and General Workers Union. We represent workers in the banking industry. We are yet to receive a copy of the Bill. They have consulted all the "big boys" in finance. They are having their chit chat. Did you hear what the Minister told us a short while ago? They had a meeting to discuss the practicality of some of these measures. So they are meeting and discussing, but the workers are not involved whatsoever in these deliberations. They care!

We have a difficulty and we warn this Government they will get no support whatsoever from this side, none whatsoever, unless this Government begins to recognize the importance of getting the people involved and making the necessary amendments to legislation to ensure that we have some supervision over those institutions in which in which they are going to invest with draconian powers in Trinidad and Tobago.

The PNM is entering what I would like to describe as the slippery slope of financial liberalization of our economy. First, it was floatation—no transition for the consumers, workers or the farmers. But the Minister says they have to have a transition period for the banks and the non-bank financial institutions so that they can get their act in place. When they floated the currency in this country and devalued people's lives by over 60 per cent because of the criminal activity taking place in this country by certain business persons, the Minister of Finance gets up and says he is going to take action. Where is the action? The Prime Minister says do not buy, but his fridge in St. Ann's is full. He tells people do not buy but he is eating chicken left, right and centre. "Mamaguying" the population. Firstly, it was the floatation of our currency. Now, we are receiving legislation to tighten the regulatory environment of the laws governing our financial institutions.

There are only a few success cases of financial liberalization. The Minister must be honest to tell us that what the Government is about is financially deregulating our economy. He must tell us that. The literature and the empirical evidence is there to tell us that there are few success cases in this particular area.

The majority of countries which have embarked on this adventurous course have crashed. Liberalization ought never to be adopted as a remedy for economic stagnation and instability. That is a law of economics and the Minister ought to know that. He is a graduate of Cambridge.

In the few cases where success occurred two factors stand out. First, liberalization was adopted after, and not before, a considerable amount of industrialization had been achieved, and from a position of economic strength and not weakness. Secondly, liberalization was undertaken gradually and without making it impossible to pursue an active industrial policy.

When you have to speak on legislation like this—the one that we are dealing with, you have to put things in perspective. We are dealing with financial institutions and we are dealing with a regulatory environment that the Government intends to tighten.

There is a report, UNCTAD V111 of 1991. I think the Minister of Finance and Dr. Lenny Saith need to look at this report. It is either they do not read or they do not read and understand. What is happening here is that there is a section in this text that tells you exactly what this process entails and what are the conditions necessary for success in terms of this particular line that the Government is proceeding along at this time. I do not want to detain this Senate with the details, but the experience and the literature are here in the UNCTAD V111 Report of 1991. I can lend it to the Minister of Finance if he does not have a copy.

It is notable that interventionist financial policies have played an important role in some success stories. For instance, the Republic of Korea did not leave interest rates entirely to market forces. It allocated directly and differentiated the course of finance among different sectors and activities as part of its active industrial and trade policies. Japan and Korea have regulated financial systems. That system has contributed enormously to industrial expansion in Japan. We say that while there have been many failures associated with interventionist financial policy, the only modern examples of industrialization based on purely market orientated financial policies are a few city states, as was outlined in this particular report that I quoted from.

I wanted to put this matter in perspective so that the hon. Minister and our senatorial colleagues can understand where we are and where this Government is seeking to take us.

2.50 p.m.

We wish to jolt this Government. If we cannot jolt them in this Parliament, the masses will jolt them in the streets of our country. We are heading for a collision. I warn this Parliament and this country that the PNM is prepared to rule this country by terror and gunfire. They are prepared to do that and that is the line they are taking.

The real question that we have to address in this Bill is: Who will benefit from it? Who stands to benefit from this new Bill that is before this Parliament. Is it the small man, the working class people of this country? Who stands to benefit? Which class—not race—will benefit from this? It is certainly not the working people.

Mr. President, as you know, this Bill will further entrench the rule of the national bourgeoisie of our country. As you know, the majority of funds come, or are derived from individuals. That is our assessment. Individuals are underwriting business in Trinidad and Tobago. Individuals save the most, yet they do not have access even to loans at times, from some of these institutions. In fact, if we are not careful—the Minister might not be aware of it—we would go full circle, back to 1950, 1960, and 1970. When you went to a bank in this country, in that period, the only black people who used to be in those banks were the messengers and drivers. I do not know for instance, if this is the mission of the Government of Trinidad and Tobago.

I think that we have to recognize that this Bill we have before us does not set out, as far as we are concerned, any new role for the commercial banks. What this Bill does essentially is to tighten the regulatory mechanism governing these institutions. As far as we on this side are concerned, it does not address the developmental aspect of our economy.

What is the role of the commercial banks in development in Trinidad and Tobago? We have not seen it here. In fact, we believe that the Government, in its haste to deregulate this economy, is shifting decision making from the locals of our country to foreigners. Just today on the news at lunch time, I heard the hon. Minister of Industry, Trade and Tourism telling the whole country, there is liberalization of services now, so they are inviting advertising firms in the country. For instance, they advertised people in certain limited health related areas. He said people in computer software are going to come in and he also mentioned two or three other areas.

We hear these things on the news. This Parliament is a mockery, but we will pay a price if we are not careful. As I asked: What is the new role set out for the commercial banks? When we talk about financial institutions in our country, we are talking essentially about these dominant commercial banks and there are about five of them. The local commercial banks such as National Commercial Bank (NCB), Workers' Bank and Cooperative Bank are now in a process of merger. They are to merge in order to see if they could actually withstand the tidal wave of financial deregulation in this society. That is the basis for the merger.

We ask the hon. Minister whether this Bill will re-orient the colonial status of these commercial banks that we have in Trinidad and Tobago? These commercial banks have not graduated from a state of colonial rule to a state of independence. We see no hope in this new legislation, in terms of graduating these institutions.

These commercial banks, historically, have proven to be mainly financiers of trade rather than financiers of industry. It was so in the 19th century when the colonial banks were here. It was so and still is so in the 20th century when Scotia, Bank of Commerce and Royal came. They simply do not see a link between themselves and national development in Trinidad and Tobago. Their portfolio is concentrated in consumer spending and basically trade. That is what they deal with.

We believe that this Bill will further entrench disorientation as we move towards the 21st century. We believe that the banking system ought to marshal national savings in directions which would positively impact on the development process and the development of our resources. Therefore, we need to break this connection between banking and trade.

The hon. Minister went back historically to tell us what the situation was in 1964 when the Central Bank Act and the Banking Act were proclaimed. The previous PNM Government, the old PNM, not this hijacked PNM—the PNM has been hijacked by a group from south and the masses of people are literally languishing on the pavement of that party. We know the fate of Nello Mitchell already. We do not even have to wait on the general council results. They want to expel the man, but that is another matter.

Mr. President: Stick to the debate.

Sen. W. Mark: That is another matter we are coming back to.

Let me make this point very clear. The previous PNM Government pursued a policy of localization and indigenization. This strategy is now being overthrow by this reactionary and new radical right organization and party that is called the PNM. There exists in Trinidad and Tobago, a symbiotic relationship and we need to establish between financial development and economic development. This is the thrust of my contribution.

We need to establish the link between this Financial Institutions Bill and the process of economic development. Financial development aids the process of capital accumulation and by extension, economic growth, as it directs financial resources from one area, starved, to another area that requires. Financial development should be viewed, therefore, as a facilitator of the process of economic growth and development. Commercial banks over the broad sweep of the history in Trinidad and Tobago are more concerned, as I said, with the promotion of trade and consumption spending rather than industrial development.

I have the 1992 Central Bank Report that deals with an economic survey of our country. We have had colonial banking—because we have not graduated—since 1834 in Trinidad and Tobago, when the colonial bank opened its doors to the population. That was the planter class at that time. If we look between 1834 to 1993, we would realize that even though we had new banks coming into play, their nature and character really have not changed.

3.00 p.m.

Table 23 of the Central Bank Report deals with commercial banks and their distribution of loans and advances by sectors. You must be well familiar with this history. It shows that the banks in our country that we now seek to give more authority, now have a greater freedom, as the Minister said, to move into new areas of activity. This legislation is providing for the banks, not only to engage in banking, but to get into other areas of economic activity which have not been defined in this legislation, but we can assume that what they are talking about is that maybe a commercial bank can now enter into the insurance industry or development financing. But they have not told us. It has not been defined. All the Minister tells us and all the legislation says, is that they are going to get involved in new business activity.

Look at agriculture. Between 1988 and 1991, out of their lending portfolio of $7.5 billion in 1988, a mere $224 million was allocated to agriculture, which represented about three per cent of the overall lending of the commercial banks.

At the end of 1991 it was little different—$301 million. That is the history of commercial banks in this country, and we have to re-orient them, not give them more powers to get into these areas.

However, when you look at consumer spending or the distributive trades, what you see is a massive amount of money being allocated to these institutions. For instance, in 1988, consumer loans amounted to $1.6 billion out of $7.3 billion. In 1989, it went up to $1.8 billion; in 1990, another $1.8 billion; in 1991, it went up to $2 billion. That is the history.

We are very concerned. We are saying, if you are bringing legislation, bring legislation that will re-orient our economy and provide these commercial banks with a greater developmental responsibility in our country because they dominate the financial sector in Trinidad and Tobago. We believe that the critical nature of banking and finance cannot be over-emphasized. We insist that the Government re-orient this sector to the new development challenges.

We are faced with major difficulties in Trinidad and Tobago. Right now the banks are making a "killing" in terms of the foreign exchange floatation. They do not even have to lend money any more. It takes long. They are making excessive profits as a result of the floatation of the currency. I would imagine that in 1992 the commercial banks realized $92 million in net profits. In 1993, it will be in excess of $130 million. They are having a field day in Trinidad and Tobago.

We have scarce resources and we have to direct those resources in proper channels that would benefit the population socially and economically. We feel that the Government ought really again to take a serious look at this legislation. Apart from some of the areas that have been identified, this Bill needs to be tidied up; it is riddled with many errors, grammatical and otherwise. I think that they would need really to take this Bill and study it carefully. We understand that the reason this Bill is before this Parliament is that the Government is actually committed to receiving some new loans from these international financial institutions (IFIs) and they have been so ordered to bring quickly to Parliament these pieces of legislation, in order to qualify for the new loan they are to get shortly.

When we look at the Bill what we see are 69 clauses. You know, Mr. President, there used to be a situation where you get a piece of scrap in terms of a Bill in this form, and when we come to debate, we get the real thing. For the first time since I am in Parliament I am debating a first draft. They do not even have

money to go to the printer to give us a proper draft, but the Prime Minister is going to England to dine with the Queen. I do not know what is happening here.

This Bill has 69 clauses and no fewer than 40 clauses refer to the Central Bank. But the Central Bank Act has not come before Parliament for amendment. We are asking the question: Should not the Government have brought before this Parliament the Central Bank Act? The Central Bank is given draconian powers in this Financial Institutions Bill. My colleague will comment on that later, but we believe that the Government ought to look at this area very seriously.

We see where regulations are talked about in this Bill. Where are the regulations? Government is modernizing the financial system in Trinidad and Tobago and reference after reference is made to regulations—the Minister on the advice of the Central Bank will make regulations; the Central Bank will have the power to make bye-laws. Where are the regulations? We do not have them. The hon. Minister of Works came here some time ago and gave this Parliament the commitment that he will bring shortly to Parliament the Maxi-Taxi Regulations. We are still waiting for the Maxi-Taxi Regulations. Government is going to alter fundamentally the financial culture of Trinidad and Tobago and it wants this Senate to pass this Bill but we are not seeing the regulations. What is worse is that when the regulations are made, they say that it must have a negative resolution. We have not seen it yet, but when it comes, we cannot debate it unless we have a Private Member's Motion. I must make it very clear that we cannot support this Bill. This Government is joking and we are not going to be "pappyshowed" or be part of a "pappyshow" arrangement. If the Government is serious, it should tidy up its act and bring serious matters before this Senate.

I wish to speak on the question of money laundering and the drug trade. There is a committee called the Basil Committee, located, I understand in Geneva, Switzerland. It is responsible for the supervision of international banking in the world. That committee, I think, in December 1988, issued a statement of principle as far as money laundering is concerned. The whole issue of prudential criteria that the hon. Minister referred to came out of that committee in Geneva and we are now implementing these things into law. They also passed and issued a statement of principles as far as money laundering is concerned. I looked through this legislation, maybe it is too thick for me, and I cannot see it. The Minister will have to point it out to me. I am not seeing any clause in this Bill to address the question of money laundering.

Mr. President, you will not believe it. There is a gentleman's agreement among these commercial banks to report to each other and then to the Central Bank in the event of suspicious activity. That is, if somebody deposits $50,000 or $100,000, there is a gentleman's agreement between the commercial banks and the Central Bank.

3.10 p.m.

Mr. President, the drug trade is too serious an issue to have a gentleman's agreement. We want law, we want something in the regulations to deal with this issue and if it means amending the law that deals with banking secrecy and banking confidentiality, we say change the law. Dirty money has now become clean money since the floatation in Trinidad and Tobago. That is why the banks are awash. They have so much money that they do not know what the hell to do with it. When I was going to Guyana—

Mr. President: I think you can rephrase that.

Sen. W. Mark: Oh, "to hell" is not a parliamentary word. I will just withdraw it.

Mr. President, I am here on a very serious issue. The Minister needs to come and tell this Parliament how he intends to address the issue of money laundering.

I was making the point about Guyana. I was going to a Workers' Conference—and Mr. President I am not a rich man, like Sen. Dr. Lenny Saith. He financed the party, that is why he is the acting Prime Minister. But the point I want to make here is that they actually offered me US $1,000. But I do not want all that. The bank is awash with money and if you have a link inside there, the level of corruption and mismanagement at that level is staggering.

Mr. President, the key point I wish to make here is that there is no provision in this legislation to deal with the issue of money laundering. I wish to urge the hon. Minister to address that question. There are certain principles that the Minister is aware of which have been issued since December of 1988 and they ought to be incorporated into law and into the regulations that will govern this Bill which is before this Parliament. We can no longer tolerate "gentlemen's agreements". Firm action is needed to deal with this question.

The Minister of National Security was saying this morning, I heard him on the news, indicating that they have no money, scarce resources to deal with the

question of the drug trade. Yet we are not taking the drug question very seriously. We have to take that question seriously.

Mr. President, we have some difficulty with clause 26. Clause 26 of this Bill gives the Central Bank the power to consult with the licensees on matters of monetary and credit conditions. So the Central Bank will consult with the bankers, the mortgage companies and the trust companies on matters of monetary and credit conditions. What about the public? What provision is there in this Bill to allow the population—the population of this country was left out of finance and banking very early. We are modernizing our financial system. What provision is there for the public to have a say in this matter? What about their representatives in Parliament?

Mr. President, we talk about democracy but we are not serious about democracy. What this Government is talking about is dictatorship. We know the elements on that side that are committed to that. The Police are under their control. They want police under their control, army and so on.

Mr. President, I have a little pamphlet here on the Board of Governors on the Federal Reserve system of the United States of America. America has many problems and difficulties. This country is falling completely in the footpath of America now but they will not take some positive things from America.

Mr. President, the Board of Governors of the Federal Reserve system has an obligation under law to report to the Congress of the United States annually and there is a committee called the Federal Open Market Committee which makes key decisions affecting the course and availability of money and credit. They have to report to the Congress twice a year.

What we are saying on this side is you cannot give the Central Bank all that power that they cannot use. Let us not fool ourselves. They can abuse their powers. We need to have some supervision and we need someone that the Central Bank will have to report and account to. We are saying, parliamentary reform. We are saying, establish a joint committee of this Parliament to supervise and monitor the Central Bank. This thing about Tax Appeal Board is a separate matter.

We are talking about monetary policy, we are talking about credit policies in this country and leaving that up to the Central Bank and the Minister of Finance. We must deepen democracy here otherwise we will lose it. So they are not serious and they want support from this side. They cannot be serious.

We call on the Minister of Finance and the Government to address the issue of more parliamentary control over the Central Bank. This Bill is even contrary to the Constitution. I am seeing some provisions in this Bill which frighten me. The Inspector of Banks is seen to be a landlord unto himself in this Bill. I do not understand it.

If you have experience and you can make a contribution to your country and you are based in America or you are based in Trinidad and you have experience in banking, what this Bill says is if an inspector of banks is to be appointed, he must come from a closed circuit in the Central Bank. Maybe that is a party group. In other words, Mr. President, no one can become an inspector of banks unless he or she is an officer of the Central Bank. What nonsense is this? So this is a closed shop? This is a closed shop party? It is a party group they are going to establish at the Central Bank.

Mr. President, we make it very clear, that is undemocratic. These things have to be changed. They will get no support from our side on this matter. They cannot query and question. There is higher law than here; they are not the High Court in any matter.

Hon. K. Sobion: Mr. President, I just want to correct what seems to be a misreading of the relevant provision, which is Clause 30(1). It says:

> "The President shall, upon the recommendation of the Governor, appoint a fit and proper person to be Inspector of Banks who shall be an officer of the Central Bank."

When he is appointed. It does not mean that the person who is to be appointed is to be an officer of the Central Bank.

Mr. President: This is a timely moment to indicate that the speaking time of the Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. S. Capildeo]*

Question put and agreed to.

Sen. W. Mark: The area that we are really concerned about here is accountability, which is largely absent in this Bill. We want the Government to address that question.

We are saying, Mr. President, we do not agree—we must make it very clear—we do not agree with this open-ended liberalization policy which this Government is pursuing. This side does not agree with that. Therefore, if you are going to give the Central Bank draconian powers to assure that there are no collapses in this economy as a result of the deregulation of the system and this elusive dream of making Trinidad and Tobago the business and financial centre of the Caribbean and the gateway to Latin America, we are saying let us deal with accountability. That is what we are concerned about.

My colleague raised the matter earlier and I want to go back to it. This thing about the Tax Appeals Board. They give the Tax Appeal Board new responsibility, but the Minister said in a very halting manner, when he was responding, that he will attempt, he will do this. They do not have a plan. This is a group of men who are just blowing in the wind. They do not have a clue of where they are taking this country, but I am clear where they are heading, they are heading for unrest.

Mr. President, we have a problem: We want to know what is the present status of the Tax Appeal Board. If they are now going to saddle this board with new responsibilities, what is the status of the Tax Appeal Board. We understand there are three or four judges down there. We know that judgments are outstanding at the Tax Appeal Board for years. So if you now saddle these people with a new responsibility and the functions and powers are clearly defined, we want to find out from the hon. Minister whether, for instance, he is going to ensure that the Tax Appeal Board has the necessary manpower and expertise to deal with this new specialized and technical responsibility which is being vested in that body. Whether, for instance, they would be in a position to expeditiously handle matters which come before them. We feel that the Minister owes us an explanation.

We see something under the directorship. You know this country is locked down. By the freeing up of the financial system, what we are going to experience is a concentration of credit power. A few banks and insurance companies will have a monopoly on credit in this country. That is what is going to emerge.

Mr. President, you know, in Trinidad and Tobago, even before this Bill was introduced, you have something called the interlocking directorate. You have that. They control the banks and insurance companies and everything you can think about in Trinidad and Tobago. A few men and women, a clique, a gang, a private sector clique control the economy of this country.

Mr. President, we have no problem—if they are now going to make it difficult to open a bank, it means that you are now going to entrench big people into the banking system. It is as simple as that. Mr. President, $360,000, in 1964, was required to open a bank. Now I am told it is $15 million, when poor people go and open a bank in this country, they mash up Workers' Bank; they close it down deliberately because they feel that workers should not be in charge. Now they have entrenched a provision which would keep us as hewers of wood and drawers of water.

Mr. President, this Government is really a right wing arrangement, a very dangerous one, too. But they are playing with fire in this country.

We believe that the interlocking directorate has not been properly addressed in this legislation at all. That has to be re-visited. Government gives some spurious criteria to try to see if it can bring about some integrity to the system when it knows that we have to go deeper into this matter because of the interlocking nature of our economy, the interlocking directorate which exists in this economy.

Again, the question about deposit insurance. You go from $360,000 to open a bank to $15 million to open a bank yet there are no provisions in this Bill to up the deposits. When a bank closes or collapses, everything has gone up; you know, they up everything, but they do not deal with the depositors. People lost millions of dollars in this country as a result of the PNM. PNM was in power at that time.

Mr. President, we would like the Government to look at this question of increasing the amount of moneys which people are going to be entitled to in the event of a collapse taking place.

In the legislation, you have many references being made to the Gazette. How many people receive the Gazette? We say the Government should also expand that to daily newspapers. Instead of just talking about the Gazette. It is only a few people get the Gazette, the population does not get the Gazette. So if they are going to issue whatever the Central Bank has to issue, in the case of a new licensee and so on, put that in the daily newspapers, the Express and Guardian, that is what is modern now.

The Minister says he is modernizing the bank, itself. Well, we have modern newspapers now. The Gazette is a thing of the past. We on this side would like to tell the Government that the present financial landscape which we have in this country has retained its essential character. No change has taken place. The NAR came, no change. The PNM are here and then they will leave. I do not believe this

population will ever again vote for this disaster that we have as a Government. This is the last term. The PNM will never see power again in Trinidad and Tobago again.

Mr. President, we believe that the commercial banks, in particular, unless we do not orient the commercial banks and their thinking, in this country, they are going to continue to block, stifle and suppress the constructive intervention of the people of Trinidad and Tobago because their thinking is nineteenth century style.

The financial system has been resistant to change in terms of its profound and chronic capacity to generate the kinds of savings equal to the demand of the times. The institutions, Mr. President, still lend heavily for consumption. The leakages involved place great limits on the expansion of activity in our country. The struggle to promote savings and investment at the expense of consumption of imports continues in our country. The commercial banks seem to be mainly interested in assisting the distribution sector and engaging in consumer spending. This Bill has obviously failed to address that deficiency.

Apart from the obvious other deficiencies, Mr. President, the fact is that this Bill has failed to tackle the fundamental issue of accountability whilst giving sweeping powers to the Central Bank. This is our grave concern.

At this time, we believe that the Government lacks foresight. The Government needs to address this question of reorientation of the financial sector, particularly the commercial banks in Trinidad and Tobago.

We would like to support this legislation, but we believe that if this Government does not bring about the necessary changes and, in particular, in that area of accountability where the Central Bank would be supervised by the Parliament of this country, it will take a United National Congress Government to put these institutions under control, because this Government is not prepared to do it. We will have to do it. It will be shortly, you know. We have no doubt in our minds that if there were a referendum in Trinidad and Tobago now, the PNM would be the most unpopular Government since the turn of the century.

Mr. President, we on this side would like to support this legislation, but we make it very clear that this Government will get no support from this Opposition until they are able to bring legislation here with the kind of teeth and supervisory mechanism to ensure that accountability is given centre stage and the interests of the population, particularly the working people of our country, the poor, the

dispossessed, the lame and the weak are able to have some justice and fair play in this country.

We believe that the course that this Government is taking is going to expropriate the majority of citizens to the periphery of life in our country. This we will not stand for and, therefore, we serve notice that legislation of this type with these deficiencies and shortcomings shall receive no support whatsoever from this side of the Senate.

Thank you very much, Mr. President.

Sen. Martin Daly: Mr. President, may I say at the outset of my contribution that despite the fact that I will not be able to support this Bill in its present form, I must compliment the Minister for having brought this legislation and to my knowledge, having been very receptive to suggestions that were made in the course of the preparation of this Bill.

It is important, Mr. President—before I focus on certain constitutional issues—that I let Senators know that I have been professionally engaged in advising on this Bill. So that there will be no doubt about it, I am placing that professional engagement on the record.

Notwithstanding that, Mr. President, there are certain very important constitutional issues which I would like first of all to deal with. "Constitutional issues" is the heading of several of my amendments.

My concern, Mr. President, in relation to what I have described as a constitutional issue is the fact that an attempt is being made to give the regulatory body, that is the Central Bank, the ability to make what is euphemistically referred to as bye-laws, but the ability to legislate, albeit in a subsidiary fashion, for the regulation of financial matters. I am totally against that. It is for that reason that I have raised the amendments in the latter half of the list which I have circulated.

Mr. President, my total opposition to any body that is not accountable to Parliament being able to make regulations can be seen in the amendments I have proposed under clause 38; in the amendments which I have proposed in clause 63 and the amendments I have proposed in clause 64.

Mr. President, there are some others which are listed, as well, but those are the main ones. In each case, I am seeking and urging the Minister to accept an amendment which will make this Bill more consistent with our constitutional norms.

Mr. President, the Central Bank is a body which is set up by an Act of Parliament. Incidentally, I say, in passing, I agree with Sen. Wade Mark that that Bill should have been brought at least for its first reading at the same time as this, so that we could see what proposals or changes were being considered in the institution known as the Central Bank.

As I have indicated, the Central Bank is established under its own Act and it is not a body, in my view, which should be given the power to legislate in any way, without the sanction of Parliament, to regulate the affairs of our citizens.

So, Mr. President, the short point is that if the Central Bank wants to give the Minister advice—I see an amendment from the other place that they may make recommendations to the Minister—for prudential criteria or regulations for electronic transfer of funds, by all means, let them give the Minister some advice. But it is my desire to see at the end of that process that the regulations issued are regulations issued by the Minister in accordance with the usual practice; that is to say, either subject to a negative or affirmative resolution of Parliament.

What I have done in those amendments to which I have referred, Mr. President, is to seek to ensure that we continue with that practice. In some cases, and I will deal with them in more detail as time permits, I have accepted that there could be a mere negative resolution, in other cases I have asked that there be an affirmative resolution.

Mr. President, while I am on that, I think it is totally unsatisfactory that in a matter of this importance, neither the guidelines nor the prudential criteria which I believe have had limited circulation have been brought to the Parliament at the same time as this legislation. Those guidelines and those prudential criteria, being introduced as they are into our country for the first time, could have just as significant an effect on the financial culture of the country as the principal Act. I object strongly—and I have objected to this before—to bringing legislation of this kind without the regulations attached.

Now, I understand that it is the desire of those who advise the Minister not to take on the Parliament at all. Left to them, they should not have to come here and send anything here; they should sit in their offices and make bye-laws and capsize anything in the banking system that they like. That is totally unacceptable to me.

I appreciate that because they are trying that, that is the reason why the Minister may not have given us the regulations. But, nevertheless, in a matter of

this importance, even the soi-disant bye-laws should have been produced for our comment and scrutiny for the reasons which I suggest.

More than that, there is much debate in this country about whether we should release some of the authorities in the society from the controls which have been placed on them by the Constitution. There is much debate about service commissions and other bodies which are set up constitutionally and the checks and balances on persons who manage and operate key areas of our life in this country.

Here we have a Central Bank which is going to be subject to absolutely nobody. They are not going to be subject to any parliamentary control. The regulations which they want to use to run the financial life of the country and to supervise the financial institutions do not have to be sent to Parliament and they have nobody controlling them at all. They are subject to no one.

3.40 p.m.

That as I have said, is completely contrary to the constitutional norms of this country. And I noted with interest that the Minister, who always gives us a very clear exposition, said that much of this legislation was culled from the United Kingdom legislation. I find it amazing, that that part of the United Kingdom legislation, which deals with supervision of the Bank of England should have been totally ignored.

It is against that background that I have proposed the addition of a Part XI to establish a committee of supervision of the Central Bank. I do so, Mr. President, on the basis of precedent, because the United Kingdom Act, to which the Minister referred, has provision for what is called a Board of Banking Supervision. I understand everything that the Minister is saying about the need for more regulation and I will deal with that as well. I understand all of that, but I will not accept—so far as my vote is concerned—a piece of legislation that permits a player in an important field in this country to do, effectively, what he likes. I will not descend into some of the metaphysical terms used by Sen. Wade Mark, I will just say, "what it likes," I will not qualify it. That, Mr. President is totally unacceptable.

I want to draw the Minister's attention to the fact that the committee of supervision which I propose, is neither a body which is even going to bring—subject to one limited exception—strangers in, to bother these high and mighty technocrats. I have not even gone that far. The board of Banking Supervision in

the United Kingdom has independent persons who comprise its membership, that is, completely independent of the Bank of England.

Mr. President, I have not even gone that far. As a commercial lawyer, I recognize that all over the world there is increased regulation of the activities of financial institutions, but I am not going to be blinded into accepting that that regulation must be without one single check or balance, except the appeal process, which in itself has serious deficiencies which I will identify.

Mr. President, we are recommending a committee of supervision which will comprise persons, all of whom are affiliated to the Central Bank, that is to say, the Governor, the Deputy Governor and three of the four directors that the President appoints under the Central Bank Act. The committee of banking supervision will comprise the executives of the Central Bank and the non-executive directors who are appointed by the President.

What could be more friendly than that! Friendly though it may appear, Mr. President, the effect of it is twofold: First of all any—and the amendment provides for this—of the grave decisions which the Central Bank has to take will be subject to collegiate scrutiny, that is to say, before one of these grave decisions is taken, more than one head, more than one person who may be too close to the case will have to say, yes, this order can or should be made. That is all we are seeking, a very small area for a final look at any one of these grave decisions.

Mr. President, let us not fool ourselves. In the context of the intermediate action of which the Minister has spoken, because the banking and financial system operates on confidence, and because that is a fragile thing, if an intermediate step—which later turns out to have been quite a wrong step—is taken, the mere taking of that intermediate step, could maim, damage or destroy the reputation of the financial institution; even though there is a complete exoneration or pulling back later. This Minister frequently talks about how rumour-laden our country is. Even the taking of that intermediate step could completely destroy a financial institution that turns out to be completely reputable.

It is for that reason we want this very limited group of persons to bring their collective heads together and examine these decisions before they are taken. I emphasize, Mr. President, I have not even gone as far as the United Kingdom legislation. That is why, I have asked for a new Part XI to introduce such a committee. This Minister would not waste time, perhaps some of his advisors will waste his time. Let us not waste time over what is going to take them too long to

make a decision. They are all persons affiliated with the Central Bank. So if somebody managing an account or inspecting a financial institution has to take a decision, they can get the directors together quickly and look at the matter. It will not delay them unduly. And we are not bringing in any outsiders who would not understand these matters.

That is why, Mr. President, I have expressly provided in my proposed clause 55:

> "No licence issued hereunder shall be revoked, varied or restricted, no cease or desist order or order suspending the business of a licensee may be made under this Act without the prior approval of the Committee of Banking Supervision."

I want the comfort of knowing—if I were a financial institution—that before one of these orders were made against me that—Mr.—well-respected—John Smith, Barry Brown, or whoever—who is thought to be fit enough to be recommended for appointment by the President to the board of the Central Bank has taken a final look at that decision. Mr. President I cannot urge too strongly on the Minister, that he insert this check and balance on the powers of the Central Bank.

To summarize, Mr. President, the Bill in its present form gives enormous powers, gives the powers of life and financial death to the Central Bank. Their regulations are not subject to any kind of parliamentary scrutiny, not even a negative resolution, and no one has any kind of group or board responsibility in a formal way for the decisions which they take.

Mr. President, I do not mean to attack any one who is now employed by the Central Bank. But we have had crazy kings, unpopular chief justices, poor governors of central banks all over the world; God forbid we get one of those, who is not a team player, who is a rugged individualist, who has some overzealous concerns about the financial institution, whose family has been refused a loan at an institution and decides to embark on a campaign of victimization. Who is going to stop that runaway train? That is what I want the committee of supervision for, to make sure that there is collegiate responsibility with these important decisions.

Mr. President, that is why I am proposing amendments that will ensure that these regulations, in most cases, are brought before the Parliament for an affirmative resolution. So that if, for example, we look at clauses 63 and 64, we would see that in the case of the Minister amending the Third Schedule, that is to

exclude certain institutions from the operation of the Act, I am content with a negative resolution. I am content that a duly elected representative of the people should take such a decision or amend the Third Schedule subject to a negative resolution.

3.50 p.m.

It is a different matter when it comes to amending the other schedules that are regulatory and very far-reaching in character; and I want to emphasize, it is the first time we are having anything like this in the country. It is not as though we have had this kind of extensive legislation before, so that is why, Mr. President, certainly in relation to the initial regulations, I would like to see those safeguards put in the legislation.

Who, I ask rhetorically, Mr. President, are the Central Bank to be the sole important players in this country to be given that kind of freedom to make or break financial institutions, without one single check or balance? I object to it, Mr. President, and I will continue to object to it, unless we can get some kind of assurance in the form of rules and regulations, in the form of the amendments which I have proposed, or something like it, to place a check and balance on the Central Bank.

I do not want to dwell on it any further, Mr. President, in case some misguided person thinks that I am concerned about persons who are at present employed in the Central Bank. These things can happen. Persons have been the subject of victimization by tax inspectors and all kinds of persons. All over the world it happens. So for those reasons, Mr. President, I am proposing that group of amendments. In due course, Mr. President, I will move the appropriate Motion, but I would like to get through as much of my contribution as I can without those formal matters.

Now, Mr. President, as I have indicated, I have no dispute with the principles which the Minister has put forward about the need for regulation. I have no dispute with the principles he has put forward that the regulations must be outward looking—or when you are looking at this legislation we must look outward as well as inward. What I am concerned about is the transition period. That is what I am concerned about. It is the first time in my experience of this Minister that I am hearing him say one thing, but in fact, promoting a piece of legislation that is going to do the exact opposite. I know it is a fact, Mr. President, because I have declared my interest, that he has been told in terms that certain of

these provisions are disruptive and are likely to damage confidence in the financial system. He has been told that in terms.

Mr. President, it is not surprising, because if you look at the monthly *Statistical Digest* that is put out by the Central Bank—I took March, 1993—you can find out what money is available in the system; and then you can work out if your lending ratio is 25 per cent of the capital available in the system, what that is going to commit you to lend. Then you can look in the annual reports of companies—and I am sure that Sen. Mansoor is feverishly doing so as we speak—and see what their borrowing requirements are; and then when you do the sums, and I tried to do a few—I am not very good at Arithmetic—you will see that in relation to the situation in Trinidad and Tobago, based on published information—it is no secret or inside information that one has acquired from anywhere—none of the top commercial banks in this country will avoid a massive rearrangement of their lending portfolio.

It may be right that they are being asked to rearrange their lending portfolio, but the Minister must also be careful that without proper transition arrangements, the shock to the system about which he is concerned, is not to be a fatal shock. So if you could have a situation where, in some of the top commercial banks in this country—and I repeat it again for emphasis—based on published information, a bank in relation to a particular client—and this is a conservative estimate—might, as a result of these lending ratios, to which I will point with more particularity, be confined to lending TT $50 million to a particular borrower group, but may, in fact, have on its books $200—$250 million worth of borrowing to that same borrower group. Now, Mr. President, how is that excess of $200 million to be disposed of? If you have that one bank with one client; if you have several banks with several clients in that position, then you are going to have a "fire sale" of indebtedness. What is that going to do to the commercial banking system?

My second quarrel with this Bill is that there are no satisfactory transition periods; and with the greatest respect to the Minister, when he talks about the four months, that—for reasons that I will demonstrate—is totally "airy-fairy," because it is contained in a clause in the Bill which talks about four months; and that, Mr. President, is infamous; and I guarantee you that clause 22 of this Bill is going to become as infamous as clause 24 of the Retrenchment and Severance Benefits Act. People are going to talk about it and litigate about it for generations to come.

Therefore when you look at clause 22 (7), where all the prohibitions and all the lending ratios are set out, following upon that it says:

> "Within four months of the coming into force of this Act, a person deemed to be licensed under section 4 (5) or section 5 (5) shall notify the Central Bank of all credit facilities to persons and borrower groups which are in excess of the limits fixed under this section..."

That's fine. Tell the Central Bank you are setting out to limit me to $50 million to this group and I have a lending of $250 million, so I have an excess of $200 million. But then comes the sting—

> "and the Central Bank shall direct the licensee to take such measures as it considers necessary to reduce the excess credit facilities granted within the limits laid down in subsection (2) within a reasonable period of time..."

And I pause there. There is another phrase about "capital adequacy".

So after we pass this Act, some commissar of the Central Bank, who is subject to no regulation, no check and balance by anyone, is going to tell a successful trading company or business in this country, "Look here, I direct you that this is how you must get rid of your excess $200 million." Now, Mr. President, what becomes of the bank manager? Suppose, for example, he has a client who has some trouble with a shipment, and he wants to extend part of the loan portfolio for another 30 days because the vessel did not leave Singapore—there is a strike or something—is he going to have to ring up the commissar to find out if he can extend for another 30 days? That, Mr. President, is ridiculous; it is impractical and it will bring the whole financial system into total and utter disrepute! So when the Minister says he does not want to shock the system, I suggest to him that he check the advice that is being given to him about the arrangements being made about this. Because there are no proper transition arrangements here and he could shock the system into death.

It is against that background, Mr. President, that I have suggested what I conceive to be a very important amendment to clause 22, that is, to replace 22(i)—and it is on the first page of my amendments under B—by, first of all, breaking it down into two sections: One lending ratio for the individual borrower and a higher lending ratio for a borrower group.

Now, Mr. President, I cannot speak for other persons, but I always acknowledge my sources. That is precisely what they have in Jamaica. I have the

Jamaican Act here, and I would like to hear the Minister as to why we cannot, as Jamaica has done, have a separate lending ratio for an individual person as opposed to a borrower group. In Jamaica the provisions are 20 per cent in the case of a person, and 40 per cent in the case of a borrower group. I have accepted the 25 per cent in the case of a person; and borrowed from Jamaica 40 per cent in the case of a group and I have put it in here.

Then, Mr. President, I do not want any commissar telling any bank where I might have a few pennies what they must do. I want my bank manager, difficult though he is, to run the bank—not a commissar. So I say, let us have a formally written transition period; and I have suggested that these prohibitions take effect in four and a half years' time.

4.00 p.m.

Why have I chosen four and a half years? Because the very Basle Committee to which Sen. Wade Mark has referred, specified four and a half years for banks in Europe to meet the new capital adequacy requirements. That is where I got the four and a half years from.

Mr. President, we are writing in four months before the commissars step in their boots. In Europe, and according to the Basle guidelines, they had four and a half years to come to terms with capital adequacy requirements. I would like to quote from a paper put out by the Basle Committee in July l988, in which they dealt with the importance of transition periods. The only transition period here is whatever the Central Bank decides is a reasonable time, and the four months alarms me. Because no bank in Trinidad and Tobago is going to be able, except under "forced sale" and totally disruptive conditions, to get rid of indebtedness in the order of $200 million without an almost fatal shock to the financial system.

I do not care what the experts from abroad have told us. We have got to consider what our situation is here. Maybe it is wrong that so much economic activity in Trinidad and Tobago is financed by bank borrowing. Maybe it is wrong that we have such high bank borrowings. But to quote the Minister, we cannot bring that situation into line overnight. I do not believe the Minister has been properly advised what will happen if these lending ratios remain the same without proper transition periods. I do not believe he has been properly advised on what the published information shows.

The July l988 paper of the Committee on Banking Regulations and Supervisory Practices refers in several places to the importance of a transitional period. I quote, for example, from paragraph 5:

> "The framework provides for a transitional period so that the existing circumstances in different countries can be reflected in flexible arrangements that allow time for adjustment."

Now, do not tell me there are flexible arrangements in guidelines and criteria which I have not seen, because I cannot come to any conclusion about that. I could only work on the basis of what is in the Bill. I will be pointing out to you, if time permits, that in the case of lenders who are also affiliates, there is no flexibility at all. I emphasize, it is probably quite right to stop a close relationship between financial institutions and affiliates, but you cannot uproot it overnight. Because of how clause 22(6) of the Bill is drafted, there is no flexibility in the case of lender/affiliates. So even though the lender may have millions and millions of dollars of assets and there is nothing intrinsically worrisome on the published information in its relationship with the affiliate, other than the principle that they should not be in that relationship, they are going to be told overnight that those arrangements must be dismantled.

So I am not surprised that in response to Sen. Mansoor's question, the Minister indicated that we might be going in the direction of foreign borrowing and maybe other banks coming in here. Because we are going to have a fire sale. So just maybe—I try not to be suspicious—the international experts who are telling us, "hurry, hurry, conform with the international guidelines," have client banks that they want to come in here and sap up all this debt that is going to be available for sale in a very short time. I think that is a very alarming situation.

When one looks at paragraph 44 of the same Basle paper, it refers again to transition periods. I emphasize that they are saying it in the context of capital adequacy, that is, the situation analogous to the $15 million paid up capital that is required for persons to be licensees here. I emphasize that these comments are in that context and not in the context of lending ratios, but I would come to that. In that context, they refer specifically to the transition period of four and a half years for any necessary adjustment by banks who need time to build up those levels, that is, to build up the capital adequacy levels. In our case I am advocating the same period for banks who have to build down their borrowing as a result of this legislation. Paragraph 44 says:

> "The Committee fully recognizes that the transition from existing sometimes long established definitions of capital and methods of measurement towards a new internationally agreed standard will not necessarily be achieved easily or quickly. The full period to end “92 is available to ensure progressive steps towards adjustment."

So this is what the foreigners agreed among themselves, that you cannot just walk into the banking system, jackboot it, and start uprooting everybody's lending and pitching it out of the window, subject to no parliamentary control, no collegiate approach of any kind. I will not accept, until I see the regulations and have a chance to debate them, that the Minister has up his sleeve, regulations that are going to take care of these serious matters. I simply will not accept that.

A major concern of mine with this legislation is the impractical nature of it and, more particularly, the fact that it does not deal with the transition period properly. Whatever the Minister's vision of not wanting to shock the system is, I believe the published information shows that there is going to be a shock to our financial system which could cripple us. I put it as high as that. Because I do not see how a bank is going to be able to sell off all of this excess indebtedness in a relatively short period of time, and certainly, should not be obliged to do so on the direction of someone who is not only not accountable to the Parliament, but not accountable to the shareholders of the financial institution either. So if he makes a mistake in the decrees which he gives and he brings the whole financial situation down, what recourse do the shareholders have? No recourse at all; man made a mistake; a bureaucrat made a mistake. That is why we have to guard against mistakes.

All the Minister's impassioned pleas about depositors' money, I adopt and reiterate in the context of this point which I am making. It is totally unacceptable to have someone, not accountable to Parliament and to the shareholder, making these kinds of decisions. Whereas, if I may say so—the practical value of my amendment—it is published; it is there and it is certain, and the financial institutions know that they have a fixed four and a half year period in order themselves, not at the dictates of somebody else, to bring down their lending to meet these ratios, that is a much better and a more orderly system.

I do not know about Central Bankers or Ministers of Finance, I know that we are taught in the commercial world and in the world of commercial law that certainty is vital, so that people can organize their business in a way in which

there are no surprises and no shocks. That is why I am recommending an amendment that is plain and simple like this.

Then you will see—and that is why I have asked for the deletion of certain words in clause 22(6)—that even where under the legislation as it is now, where the Central Bank can give you an ease up under certain conditions and vary the proportions of the lending ratios, there is an expressed exception in relation to lender/affiliates. I am asking that those last four lines on page 23 in clause 22(6) be deleted for that reason. I made a consequential amendment to say that the Central Bank cannot give directives under the infamous clause 22(7) until a certain date. I had been more polite and said that the directives which they give shall not take effect until the four and a half year period. So we can have a smooth and orderly transition. I do not know if the Minister's advisors have told him where in the short-term, the kinds of excesses of borrowing as prescribed for in this Bill, are going to be available for people to continue business.

4.10 p.m.

Mr. President, I spent much time on only one side of the coin, that is, what is going to happen to the financial institutions. But what about their customers? Where are they going to get these funds from, if these debts are sold off? If they are bought by other banks—merged banks, foreign banks—what one would have is a series of shotgun banking marriages. That is not going to do anybody any good. One might have to go to X Bank which one does not particularly like because ones lending ratio with it is not as yet out of conformity with the lending ratios in this Bill. Do not let these foreigners tell us anything about conditions in Trinidad and Tobago. Let them tell us what the international guidelines are, and, if it is a condition of getting money from them, fine, we will accept them, but can we say: "Please, Sir, can we make our own arrangements about how we are going to implement those guidelines to suit this society? Please, Sir, can we look at Jamaica and divide the lending ratios between one person's ratio and a borrowed group on another?"

Mr. President, just in case the Minister says, as he frequently does, "Oh no alarm, we are going to manage everything". Let me just tell him that this whole question of lending ratios, as usual in these matters, is itself a controversial issue according to the information that has been made available to me. In the International Report, for example—which, I am told, is a very prestigious series of reports that come out periodically and are read by bankers and other high

capitalists—this whole question of ratios was dealt with. The 1989 issue, for example, talked about the new fashion for controlling these lending ratios. The particular article ends with the warning—having talked about the fact that lending ratios were not the only thing that has brought about the collapse of the S and L institutions in the United States—that the cure could kill a patient who was not even ill.

I take that as my text because the Minister of Finance is seeking to administer a cure. He is aware and concerned, and I know he is genuine, but he should not shock the system, he should not kill the patient. Well, for the reasons that I have been suggesting, there is concern about whether the patient would be maimed.

The other thing I want to point out is that apart from whatever happened with the Workers' Bank in 1989, we have not had any bank failures in Trinidad and Tobago. All these shocking cases to which the Minister has referred, with which we are all familiar, were cases of the failures of non-bank financial institutions.

I do not know about all this high finance and high economics: I have a failing business; I open a deposit-taking company; I suck in everybody's deposits and use them to prop-up my failing business. Then, when I cannot prop it up any more or cannot pay depositors on time and cannot get any more money, the business fails. I am not an expert, but I think that is a form of pyramiding. It is a simple thing. Some high-profile crook goes out there and says "Give me your money" and sometimes they flee to other countries. The man who brought the Polly Peck companies down in the United Kingdom had just fled to Cyprus and when he got off the plane there, he was thumbing his nose at the British authorities and saying they were victimizing him, and he has left billions of dollars of debt behind.

That is a simple thing. We have not had any bank failures, and the Minister apparently misunderstood the purpose of my question about the Workers' Bank because that is a bank which was formed and operated in very peculiar circumstances. When I say "peculiar", I do not mean wrong "peculiar" or improper "peculiar", but merely peculiar in the sense that it was not formed and operated in the traditional way.

What sick banks are to take this cure? We do not have any. The Minister himself, in his presentation, talked about the prudence of the banking community in managing banks out of difficult times in the past. These are the same banks, incidentally, that localized, as a result of the prodding of his predecessors in office. Now, he is saying "Well fellows, these are the new lending ratios; in four

months the commissar is coming to tell you what to do. You cannot complain to the Parliament; you cannot complain to somebody who sits on the Central Bank's Board. Anyway, what are you worrying about? Your customers are going to be able to borrow abroad or borrow from foreign banks." The Minister does not expect the banks who have localized to be alarmed, and to feel ungrateful about the way in which they are being treated by an administration that first pushed them into localization? Then, when banks become alarmed, what happens next? I ask the Minister to seriously consider whether we are not going overboard, at least in relation to the absence of a transition period.

Mr. President, I also have one or two other major concerns about this piece of legislation. Under the constitutional issues, I should have pointed out in relation to the provision for appeals that here again, who is the Central Bank, that we must have an ouster clause for the appointment of the Inspector and for any order which they make to remain in force until the court decides the merits of the matter? Nowhere, nohow in this free country can some regulatory authority make an order and when one appeals against it or makes an application to court one cannot, as an interim step, get the court to stay the proceeding and the order. It is astounding that we should have something like this.

So, there is a provision where the validity of the Inspector's order cannot be challenged. There is an ouster clause for the holder of an office—and without any disrespect for the Inspector, the work that he does is very important, but he is hardly the President of the country; he may end up being able to do more good or damage than the President of the country because of these powers. On top of that, if one appeals, one cannot get a stay of the order while the appeal is being heard on the merits. That, to me, is an important constitutional issue and I have provided for that in my amendments in the appropriate place.

I have asked for the deletion of those two ouster clauses in the appropriate place. Just for the guidance of Senators, those clauses are 30(9), which is not being able to question the appointment of the Inspector. Also, in the appeal section—the Minister himself referred to it—clause 53(3) which states:

> "During the pendency of any appeal, orders made and decisions and directions given by the Central Bank remain in force pending the outcome of the appeal."

Mr. President, we are mature people here, so let us not take offence. A Central Bank official decides to persecute a particular financial institution; he has got domestic problems; he is an alcoholic; he is some form of substance abuser—a

purely hypothetical example. He can decide to start serving these notices and orders on his victim; he can act by reference to bye-laws that have never received parliamentary scrutiny; he can slap an order on a person. Assuming, that you knew, in the case of the Inspector, that he was not a fit person to be appointed in the first place, you cannot challenge his appointment, and if you go to the Appeal Board, they cannot help you either until they have heard and determined the merits. If they sit all night to hear and determine the merits, in 48 hours the run on your bank or institution has taken place already. So, speaking colloquially, "yuh dogs dead", because one man or woman went off his or her head, and you do not have one single piece of recourse in this Bill.

Sen. Kuei Tung: Mr. President, I wonder if I can alert the hon. Senator that there was a particular matter affecting the steel industry, in which an injunction that has brought the entire steel industry to a halt, which started more than two and one-half months now, has only been settled today. I am only enquiring whether the Senator is aware that something like this can also bring the entire financial industry into disrepute.

4.20 p.m.

Sen. M. Daly: Allowing me the 30 seconds that are required to hear and answer the question, the Attorney General and Minister of National Security will remind the Minister of Trade and Industry that “hard cases make bad law”. If the judge wasted time, the lawyer wasted time, the parties manoeuvred too long, that, in my view, does not destroy my argument that we must have recourse to the courts or to some other check and balance. As a matter of fact, the court might be less likely to interfere with an order if it has first received the prior approval of the committee of supervision. It is well known in the courts that they take a non-interventionist position in specialist matters. They say: “you see that industrialist court, they know about labour, we are just lawyers, we should not interfere with that.” They might say, these people know about finance, we should not vary that. So that is another reason for having a Committee of Banking Supervision so the court will feel less compelled to intervene on the basis that some arbitrary action has taken place.

Mr. President: The speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. M. Mansoor]*

Question put and agreed to.

Sen. M. Daly: I say to the Minister of Finance, resist no longer the Committee of Banking Supervision. Hear our cries and resist no longer. I had diverted to another constitutional issue which I had forgotten which were these two ouster clauses; one of which was referred to by my colleague Sen. Wade Mark. Then I have an amendment in relation to clause 11.

Mr. President, I am sorry. I really do not want anybody to take offence but, this is the type of abuse that could take place with this legislation. Clause 10, except for one or two things is perfectly unobjectionable. It says:

"The Central Bank may revoke a licence where..."

and it specifies the grounds so I know what it is I must not do and what are the grounds on which my licence must not be revoked. The Appeal Board can see what are the grounds for the revocation of a licence. But then, apparently in the name of intermediate regulation or taking an intermediate step we have a clause 11, which deals with restriction of a licence and it says:

"(1) "Where it appears to the Central Bank that there are grounds on which its power to revoke a licence is exercisable but the circumstances are not such as to justify revocation, it may place restrictions on the licence instead of revoking it."

Mr. President, we must be told what differentiation is there on the grounds for revoking on the one hand, and restricting on the other. So, the circumstances for revocation do not exist but some other unnamed, unspecified and undefined condition exists and you can restrict my licence and drive me out of business. The way I have dealt with this is: I simply say, put the power to revoke or restrict under clause 10(1), so that the Central Bank may revoke or restrict where these conditions exist and leave it there. Then you can keep all the different types of restrictions that are specified in clause 11.

It is a measure of my gratitude to the Parliament staff to help me get these amendments in appropriate form that I would take even five seconds off my limited time to thank them but I happily give them the five seconds and do so.

So you re-number those clauses to make sure that that specifies what the restrictions are. I do not want somebody telling me that "well boy I cannot really revoke you, but I will restrict you."

Kill me any way—one is gramoxone and one is a slow cancer. So either way I would be stone dead. In the case of the slow death, people know I am dying, so

they are coming to buy up all my assets cheap, cheap. And I cannot do anything about it, because if I go to the Appeal Board they can watch me die. They cannot intervene because they cannot grant a stay on the order and no respectable member of the public who sits on the Central Bank's Board has been a party to this decision. They could all say I was out of the country. I was out at the beach or, as sometimes happens, at cricket while I am being killed and my huge investment is going down the drain.

That is why I have particularly taken up clause 11. Time does not permit me to deal with a whole host of other things. I have given a hint of what is to happen in the transition period where you are already in excess of the requirements and further advances are frozen. Where is the money that I might want to borrow to run the business to come from? The experts tell me we do not have a highly developed capital market. The Minster tells me he is bringing a bill to update the stock exchange. Where am I to get the money from?

A bond issue? So I am forced to make a bond issue at the time when the cost of money is high and conditions are not appropriate. I have to lumber myself for the future with a heavy interest payment because you have uprooted my lending facility. We have a limited stock exchange. We do not even have a proper Caricom stock exchange. Bond issues are dicey things, as the Minister well knows. In the many answers he gave about the First Boston placement, how many times he told me in the course of my question that we cannot place it yet. Are we going to treat these fellows differently in the context of this legislation? We do not have the available sources of capital.

I would not be able to go into the question of what is going to happen to lender affiliates under clause 22(6). When the Minister says in his usual very charming and seductive style that they are in support of the private sector—he comes here on this occasion and really, if we call his bluff, he has not done anything to back it up. This is not going to help the private sector unless we have some of the improvements of which I have spoken.

To summarize, if this Bill goes unamended and we do not follow for example, some of the things they have done in Jamaica and the United Kingdom, we would be in danger in shocking the financial system if not to death, to crippling. We are in danger of stopping the private sector that is already impeded by the high cost of money from developing.

Mr. President, I have said what my objections are on the constitutional issues. For those reasons, and since I have a few minutes more, may I just associate myself with those principles other than the second-hand Keynes which was given to us by Sen. Wade Mark. I would nevertheless associate myself with what he said about the need to have included in this legislation, provisions for money laundering. He has spoken about the abuse of Central Bank power and I associate myself with that. I associate myself with his call for more parliamentary control over the Central Bank.

Last but by no means least, let me just say to the Minister for the record, what I believe he knows to be my view already. At the end of the day a bank or some financial institution or some customer might well simply turn its back on clause 22(i) because it is my view—and I say it for the purposes of the record, because I do not want it to be said that I sat here and let it pass—that that is one of the clauses of this Bill that is likely not to be lawful unless it is passed by a special majority. Perhaps it would be best for the Minister to take on board some of these concerns. Because we will be fools to have a constitutional challenge to this highly touted legislation.

I myself do not see how in the absence of a special majority, you can dictate to someone that they must divest themselves of their borrowing portfolio or dictate to a customer with whom he must associate financially. I think the lawyers who advised the Government should look very carefully at whether some of these clauses, and in particular, some of the subclauses at 22, are not unconstitutional in the absence of a majority and therefore, are severable from the rest of the Bill. I am not saying the whole Bill would be unconstitutional but some of those things would give me grave cause for concern. At the end of the day if there is no consensus, many of the persons affected by this might turn their backs.

This has been a very dry and humourless presentation. They might not only turn their backs on the Minister but haply some of them would pick up their phones and telephone Sen. Capildeo or myself with the view to testing the point.

Thank you very much, Mr. President.

ADJOURNMENT

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, before I move the adjournment, I merely wish to inform the

Senate that the Companies Bill 1993 will, in the near future, be brought to this Senate for debate. It is in this regard that the office of the Clerk has been asked to circularize the bill to Members of the Senate. It has 553 clauses and I am seeking to give Senators enough time to study it.

I beg to move, That the Senate do now adjourn to Tuesday, May 25, 1993 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.32 p.m.