SENATE

Tuesday, July 05, 1994

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have been advised that His Excellency the President has appointed Mrs. Nirupa Oudit to be a temporary Senator with effect from July 4, 1994 and continuing during the absence from Trinidad and Tobago of Sen. Everard Dean.

I have also been advised that His Excellency the President has appointed Sen. Prof. Kenneth Ramchand to be a temporary Senator with effect from July 5, 1994 and continuing during the period of illness of Sen. Carol Mahadeo.

OATH OF ALLEGIANCE

Mr. President: Hon. Senators, two temporary Senators are required to take the Oath of Allegiance at this stage. I invite all in the Chamber to stand while this is taking place.

Senators Nirupa Oudit and Prof. Kenneth Ramchand took and subscribed the Oath of Allegiance as required by law.

SEN. SALISHA BAKSH
(Vacation of Seat)

Mr. President: Hon. Senators, section 43(2), paragraph (a) of the Constitution of the Republic of Trinidad and Tobago reads as follows:

"(2) A Senator shall also vacate his seat in the Senate where—

(a) he is absent from the sittings of the Senate for such period and in such circumstances as may be prescribed in the rules of procedure of the Senate;"

The relevant Standing Order, as amended, reads as follows:

"76. (2) If, without the leave of the President obtained in writing before the end of the last of the sittings referred to in this paragraph, any Senator is absent from the Senate for more than six

consecutive sittings occurring during the same session, such Senator shall vacate his seat in the Senate under section 43(2), paragraph (a) of the Constitution of the Republic of Trinidad and Tobago."

On May 12, 1994, I received a letter from Sen. Salisha Baksh dated May 11, 1994 which reads as follows:

"Mr. E. Carter,

Parliament Building,

Port of Spain.

Dear Mr. Carter,

I wish to advise, that effective immediately, I will no longer be able to serve in my present capacity as a Senator in the Upper House for the United National Congress.

My decision has come after much thought and careful consideration, but I wish to assure you of my continued commitment to serve my country and my fellow man.

I have duly informed The President of The Republic of Trinidad and Tobago, His Excellency, Mr. Noor M. Hassanali and the Leader of the Opposition, The Honourable Mr. Basdeo Panday. A copy of the letter referred to subsequently is enclosed for your kind attention.

It was indeed a privilege to be a Member of The Upper House—The Senate of the Republic of Trinidad and Tobago. I wish to assure you, that I am presently in the process of making the necessary arrangements that accompany my resignation.

May God continue to bless you and your family.

Very respectfully yours,

Salisha Baksh."

The last Senate meeting which Sen. Baksh attended was the 35th sitting of the Senate held on May 10, 1994. Since her letter of May 11, 1994 to the President of the Senate, she was absent from the next seven consecutive sittings of the Senate without seeking or obtaining the leave of the President of the Senate.

The sittings from which Sen. Baksh was absent commenced with the 36th sitting on May 17, 1994 and ended with the 42nd sitting on June 28, 1994.

I have made appropriate inquiries and my information is that the appointment of Miss Salisha Baksh, as a Senator has not been revoked. In the light of the contents of the letter from Sen. Baksh to the President of the Senate dated May 11, 1994, and as a result of her absence for more than six consecutive sittings of the Senate without the leave of the President of the Senate, Sen. Baksh has vacated her seat in the Senate in accordance with section 43(2), of the Constitution of the Republic of Trinidad and Tobago.

PAPERS LAID

1. Report of the Auditor General on the accounts and financial statements of the East-West Corridor Highways Project for the year ended December 31, 1993 as required by loan contract No. 513/OC-TT between the Government of the Republic of Trinidad and Tobago and the Inter-American Development Bank. *[The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith)]*

2. Report of the Auditor General on the accounts and financial statements of the Rehabilitation of Access Roads and Reconstruction of Bridges Programme for the year ended December 31, 1993 as required by loan contract No. 700/OC-TT between the Government of the Republic of Trinidad and Tobago and the Inter-American Development Bank. [*Dr. The Hon. L. Saith*]

3. Report of the Auditor General on the accounts of the Chaguaramas Development Authority for the year ended December 31, 1991. [*Dr. The Hon. L. Saith*]

4. Report of the Auditor General on the accounts of Trinidad and Tobago Television Company Limited for the year ended December 31, 1993. [*Dr. The Hon. L. Saith*]

1.40 p.m.

ORAL ANSWER TO QUESTION

Piarco Airport
(Expansion of Utilities)

61. Sen. Martin Daly asked the Minister of Works and Transport:

(a) Is it the intention of the Government to undertake any financial exposure in expanding utilities at Piarco Airport?

(b) If the answer to (a) is in the affirmative:

(i) why has the Government formed this intention, given the existence of the PRIDE project?

(ii) will the preferred developer benefit from an expansion of utilities at no cost to the developer?

The Minister of Works and Transport and Minister of Local Government (Hon. Colm Imbert): The Minister of Works and Transport would like to inform this honourable Senate that it is proposed to have specific infrastructural works connected with the development of the Piarco International Airport master plan funded under the Ministry of Works and Transport development programme as follows:

Electrical Supplies: This will cater for the buildout requirements of the Piarco master plan project (Pride) which is 600 kilovolts. T&TEC can supply only 66 kilovolts; step down transformers are therefore required.

Potable Water and Fire Protection Systems: This is required to provide increased backup storage capacity and pumping capability for fire fighting and potable water supply systems.

Waste Water Collection and Treatment: This involves secondary treatment of waste water using modulary upgradable mechanical plant for the expanded Piarco estate.

Connecting Fuel Pipeline: This involves connection of a fuel pipeline connecting the existing tank farm to the new sub A pond hydrant fuelling system.

The current initiative for which a preferred developer has been selected is in respect of Phase 1 of a much wider estate development called Project PRIDE which includes a new terminal building, a bonded industrial park, an airport hotel, a fuel pipeline and so forth.

The Phase 1 developer will be primarily concerned with only the Phase 1 requirements which entail the development of the terminal building, an air cargo handling facility and air fuelling improvements. However, it has been identified that specific infrastructural elements as outlined previously, should be built in such a way as to minimize the long-term cost and provide the requisite capacity for the buildout of the much larger PRIDE master plan.

The Government would require that each business on the estate, including the Phase 1 developer, be charged for the use of the infrastructure provided.

Sen. Daly: Would the Minister give us a figure for the money that is to be spent under the Ministry of Works and Transport budget for the purposes he has outlined?

Hon. C. Imbert: I would have to get that information for the Senator and give it to him at a later time.

Sen. Daly: Would the Minister indicate whether the long-term financing for the PRIDE Project which he told this Senate would be in place by June 1994, is now in place?

Hon. C. Imbert: The financing is not yet in place.

Sen. Daly: Would the Minister indicate how soon, since the question specifically identified financial exposure, he would be in a position to give us the figures relating to the money to be spent under the Ministry of Works and Transport budget?

Hon. C. Imbert: With regard to the specific question relating to those infrastructural works that I have described, that information can be provided within a maximum of two weeks.

DEFENCE (AMDT.) BILL

Bill to amend the Defence Act, Chap. 14:01 [*The Minister of National Security*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate. [*Sen. The Hon. R. Huggins*]

Question put and agreed to.

TRADE MARKS (AMDT.) BILL

Bill to amend the Trade Marks Act, Chap. 82:81 [*The Minister of National Security*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate. [*Sen. The Hon. R. Huggins*]

Question put and agreed to.

FINANCIAL INSTITUTIONS (PRUDENTIAL CRITERIA) REGULATIONS

The Minister of Finance and Minister of Tourism (Hon. Wendell Mottley): Mr. President, I beg to move the following motion:

Whereas it is provided by section 38 (1) of the Financial Institutions Act, 1993 (hereinafter referred to as "The Act") that the Minister may make regulations with respect to prudential criteria with which licencees under the Act shall comply;

And Whereas it is also provided by section 38(2) of the Act that regulations made under section 38(1) shall be subject to affirmative resolution of Parliament;

And Whereas it is expedient that the regulations now be affirmed;

Be it Resolved that the Financial Institutions (Prudential Criteria) Regulations, 1994 be approved.

Mr. President, today I have the pleasure of presenting to this honourable Senate the Financial Institutions (Prudential Criteria) Regulations, 1994. You may recall that in May 1993 when I presented the Financial Institutions Bill, there was extensive discussion on the matter. It was referred to committee and the Bill finally became law in August 1993.

One of the significant changes that were affected between the draft Bill and the final Bill that became the Act was in relation to section 38 of the Act. That clause proposed that the Central Bank would have the authority to make bye-laws with respect to prudential criteria. Based on some of the concerns expressed by some of the Members of this Senate in particular, during the course of debate, the clause was amended so that the section now enacted provides that "the Minister after receiving recommendations of the Central Bank may make Regulations with respect to prudential criteria with which licensees shall comply." These regulations are subject to affirmative resolution of Parliament.

Section 38 sets out a list of prudential criteria which might be included in regulations. They have to deal with capital adequacy; solvency requirements and capital ratios; liquidity requirements; treatment of loans and other credit facilities; treatment of assets; risks related to foreign exchange transactions; off-balance-sheets transactions and business risks; derivatives in new financial instruments being implemented in not only this country but also abroad. These are some of the matters that we now seek to address.

Those items which I have just mentioned are critical areas related to market risks incurred by banks. Hence they are the first set of regulations which the Central Bank has addressed and recommended to the Minister. These regulations which I have now tabled were first submitted in December 1991, as the draft policy papers. Based on submissions from and discussions with the financial

institutions and revisions and further requirements of the policies, the final product is now before us today.

The Central Bank, the Inspector of Banks and his staff are satisfied that in the present form they now address the major concerns of all who have expressed their views. However, the major consideration remaining—and since it is prudential criteria that we are addressing—is that the solvency of the whole system must be of central concern, notwithstanding the particular concerns of the financial institutions.

1.50 p.m.

Let me give you some background to the development of these criteria which are now before us. After years of study, the Basle Convention on Banking Supervision and Supervisory Practices agreed upon a framework of measuring capital adequacy as well as the minimum standard of capital that should be maintained by banks. It was intended that by the end of 1992 these standards would almost be universally adopted by the supervisory authorities throughout the world, with amendments that they deemed necessary due to the peculiar local circumstances.

The primary objectives of the Basle Accord, which was adopted initially by the Group of Seven countries as far back, I think, as July 1988, was to establish minimal capital standards designated for debt against credit risk. Credit risk was, and still remains, the major factor affecting the solvency of banking institutions.

Basically, the Committee's proposals on capital adequacy were designed to establish minimum levels of capital that institutions are required to maintain—that is, a minimum ratio of capital to risk adjusted assets; in other words, there are assets but there are risks associated with them, and there are technical ways of trying to compare apples with apples by adjusting for the risk content associated with those assets. The ratio is currently established at 8 per cent, that is, for every $100 of assets a financial institution has, it must have capital equivalent of $8. The basic emphasis of the concept of the framework is that capital is assessed in relation to credit risk, as I have said, and capital comprises core capital and supplementary capital.

Changes in technology in the marketplace have been taken into account since the Basle Accord was written in 1988, and we, now doing our own thing, have taken some of those factors into consideration.

A feasibility study was conducted by the office of the Inspector of Banks here to assess the practicability of applying the Basle Accord to Trinidad and Tobago, and the study revealed that the majority of our licensed financial institutions have been meeting the minimum capital requirements, that is, 8 per cent, as recommended by the Basle Committee. To a very large extent, the proposed capital components, assets categories and their respective definitions set out in these regulations are the same as recommended by the Basle Committee and the Federal Reserve System in the United States. Financial data for individual institutions were sourced from various monthly statements of condition, which are standard forms of reporting used here between the Central Bank and the commercial banks.

That is the background to the regulations that are now before us. In seeking, under section 38, to have this matter debated, we are now faced with a particular problem in that these matters, as was explained during the course of the original debate, are highly complex financial matters. I am faced with some difficulty in getting into the individual items that are now before you and much detail and explanation are required for every one of them. I take your guidance on the subject, but I will give some information on some of the matters as an indication of what we are dealing with, as we go through it.

Let me again reiterate the fundamental importance of this matter. It is starkly highlighted by the events taking place in neighbouring Venezuela where they ran afoul on some of these very matters, where the stringency that we are seeking to apply, when it was not adhered to, led to the collapse of first one bank, then successive ones to the point where the Venezuelan Government and the Central Bank have virtually had to take over the whole of the banking system. This led to calamitous injections of liquidity into the system and the Bolivar going above Bs 200 to US $1.00; inflation and general economic and political instability. These matters are, therefore, to be taken quite seriously and it is in that context that I hope that the Senate will bear with me while I go into some of the technical details.

As explained earlier, Regulation 3 sets out the capital adequacy requirement of 8 per cent. Regulations 4 to 7 define the components of qualifying capital under two main headings: "Core Capital" and "Supplementary Capital." Tier one: capital or core capital is considered the key element of capital and comprises equity and disclosed reserves and is defined in Regulation 5(1) as follows:

(a) Issued and fully paid up ordinary shares and related surplus;

(b) Fully paid perpetual, non-cumulative preference shares and related surplus;

(c) Statutory reserve;

(d) Capital reserves;

(e) General reserves;

(f) Retained earnings;

(g) Retained earnings as stated in audited interim financial statements of the licensee.

Regulation 5(2) stipulates deductions to be made from core capital, and I will give you just a sample of some of the deductions:

(a) Current year unpublished losses;

(b) Bonus shares from capitalization of assets—revaluation reserves;

(c) Intangible assets.

Tier two is capital or supplementary capital as distinct from core capital, and is defined in Regulation 6 as follows:

Fully paid, issued perpetual cumulative preference shares;

Limited life redeemable preference shares;

Bonus shares issued from capitalisation of asset revaluation reserves;

Debt/equity capital instruments;

Subordinated term debt;

Asset revaluation reserves;

Undivided profits; and

General reserves or provisions for losses on assets.

Regulation 7 outlines limits and restrictions on the composition of core capital. These limits and restrictions are based on the Basle Committee's framework.

Regulation 8 specifies the methodology for estimating total risk adjusted assets of an institution, as defined by the Basle Convention.

I go on now to deal with on-balance-sheet assets. Regulation 9(1) is concerned with the risk weights to be attached to on-balance-sheet assets. You will remember, on my introduction, I talked about the necessity to compare apples with apples and the apportioning of risks associated with any type of asset. Therefore, Regulation 9(1) is concerned with the risk weights to be attached to on-balance-sheet assets. These are assets where the financial institution and the customer have a direct relationship of lender and borrower.

On-balance-sheet assets are classified according to one of five categories of risk weights, that is, they are weighted in accordance with defined categories of relative riskiness using weights 0, 10, 20, 50 and 100 per cent. The categories with the lower risk weights would, therefore, require that the institution hold less capital for them than for categories which have ascribed higher risk weights, or the riskier assets and transactions.

2.00 p.m.

These categories, broadly capture the perceived credit risk of the borrower and do not differentiate between the type or the quality of the individual obligations. However, for particular items qualified for classification in more than one risk category, it will be assigned to the category that has a lower risk weight.

Let me give you some examples of category 1, or 0 per cent risk weight. The 0 per cent risk weight category includes Trinidad and Tobago currency and foreign currency owned and held by the reporting institution. Another 0 risk weight category is deposits of the Central Bank of Trinidad and Tobago, Treasury bills and other Central Government securities; claims on Central Government and all Government guaranteed obligations including securities. Local Government securities and claims on local government. Obligations of statutory authorities; claims on foreign central banks and foreign governments and obligations guaranteed by these entities; claims characterized by cash on deposit at reporting institutions. All of these categories have 0 per cent risk weighting.

Ten per cent risk weighting: These categories include obligations of state-owned financial commercial entities. While it is recognized that in the final analysis these are obligations of the state, some allowance should be made for the inherent risk in commercial activities engaged by the principles attached.

Twenty per cent risk weights: In here, are claims on institutions licensed under the Financial Institutions Act 1993 and other private financial institutions, including the Home Mortgage Bank.

Fifty per cent risk weight: This category comprises loans fully secured by mortgages on residential properties that are owner/occupied by the borrower, or rented.

One hundred per cent risk weight: This category comprises loans to entities engaged in speculative residential building or property development; loans secured by commercial and agricultural properties; claims on the private sector; equity investments; other investments not classified under categories 1, 2 and 3; and fixed assets and other miscellaneous assets reported on the licensee's balance sheet. That is really where most of the normal banking transactions take place.

We also have, off-balance sheet items and this is something that is becoming of increasing importance in the banking world worldwide, but also here in Trinidad and Tobago—off-balance-sheet transactions.

Regulations 8(2), and 9(2) are concerned with the conversion factors set out in Schedule I to be applied to credit facilities, and the risk weights set out in Schedule III to be attached to off-balance-item sheets respectively. Off-balance-sheet exposures are also to be included within the capital adequacy ratio. Most of the off-balance-sheet transactions are related to bankers acceptances. Bankers acceptances are transactions where the bank acts as an intermediary, and puts together an investor or lender with a borrower in another commercial house.

The bank is the intermediary; the transaction does not flow through the bank and it therefore does not deal normally with the bank's deposits and depositors. Banks use these transactions because under this particular method of financing the bank is enabled, because of circumvention of reserve requirements, lower processing cost and so forth, to offer the investor a higher rate of interest and is also able to offer the borrower a lower rate of interest. This form of business has been gaining momentum in Trinidad and Tobago.

Nevertheless, the bank does stand at the end of the day as a guarantor to the transaction and therefore the bank is at risk, and we have to have sight of these transactions. In determining capital adequacy requirements, a two-tiered system is used for off-balance-sheet items. The nominal principal amount of the exposure is converted to a credit equivalent by multiplying by a credit conversion factor. The credit equivalent is then weighted in accordance with the status of the counter party.

There are, again, criteria developed for conversion factors to be applied where there is 100 per cent conversion and so forth, and I will not bore the Senate with these technical assessments as to how these conversion factors are applied.

Again, as with on-balance-sheet items, once one makes the conversion there are risk weights applicable to off-balance-sheet transaction in the same way. For instance, 0 per cent risk rate would be on behalf of Central Government, Local Government, Central Bank of Trinidad and Tobago, Statutory Authorities, Foreign Central Banks and Foreign Governments. Ten per cent risk weights would be on exposures on behalf of state-owned entities and so forth.

I now wish to deal with other prudential criteria and I am going to refer briefly to loans and other credit facilities. Regulation 11(1) seeks to ensure that financial institutions establish adequate records and systems of control in order to identify problem credits promptly and urgently, and to make provisions for losses thereon. Deterioration in the quality of a loan portfolio of a financial institution requires that proper provisioning be made for the losses.

Too often, it has been the case, that a financial institution overstates reported profits by not making adequate provisions. These profits are usually paid out as dividends to shareholders thereby reducing the institution's capital and impairing its ability to absorb unexpected losses, thereby resulting in a case of double jeopardy. Not only is the asset suspect, but you would go out and pay dividends on profits declared in association with that particular asset.

Regulation 11(2) requires financial institutions to report credit facilities net of any specific provisions made against these facilities. This requirement will allow for greater accuracy in the computation of the capital adequacy ratio. Furthermore, this requirement is in keeping with current international practice as we had discussed before.

Regulation 12 seeks to classify investments according to the management's intention when purchasing investments and to define the method of valuation in accordance with each classification. Investments are to be classified on the basis of the intended period of retention, that is, whether short-term for resale to customers and other third parties, or whether the asset is to be held until maturity.

This segregation will allow for better monitoring of an institution's liquidity position, in that short-term investments could be assessed as to their contribution from an institution's liquidity. From a prudential viewpoint, it is desirable that all investments be valued at the lower of the cost and market value. The method of valuation for investments held as medium to long-term assets would be the lower of cost or market value. This is necessary to ensure that financial institutions do not seek to increase the value of investments held based on market fluctuations of

a temporary nature and thereby reflect unrealized, and, in fact, unrealizable capital gains. This approach is a prudent one and is in line again with internationally accepted standards.

2.10 p.m.

I turn now to treatment on interest income. Regulation 13 seeks to prevent financial institutions from unwarranted accrual of interest income on non-performing assets, that is, credit facilities on which principal and interest are not being paid in accordance with contractual obligations. This is a matter that is experienced all over the world, and ruefully it is a matter which we have experienced here, and has caused no end of bickering and reporting of glossy balance sheets and performance, and investors lulled into a false sense of security. And then comes the day of reckoning.

The intention here is to prevent institutions from over-stating profits and to provide an incentive for appropriate follow-up on delinquent accounts. And note here, the limit of 90 days for consumer and commercial credit facilities, excluding overdrafts and 180 days for residential mortgages is the accepted prudential norm, and is already instituted by many financial institutions in the country. Once it goes over that, one cannot book any interest accruing to that particular asset and then report it as income.

Finally, Mr. President, let me turn to another vexed matter, and that is the treatment of loans to directors and controllers within the banking institutions. Regulation 14 proposes a minimum period for directors, controllers or deputy controllers of a licensee to regularize any credit facility granted to them by the licensee or the bank on which interest can no longer be accrued. They must bring it to order. That is between the bank and its high-up officers.

One of the main reasons for the failure of financial institutions worldwide has been insider abuse. The late repayment or non-payment of loans granted to management or directors of financial institutions is again one example of such an abuse. Again, we have some examples of this occurring in the not too distant past in Trinidad and Tobago. The objective of the provisions of this regulation is to prevent abuse of the authority vested in the management of any financial institution.

These in quick form are some of the details and technical matters before this Senate. Before concluding, it might be helpful if I indicated some areas of final

disagreement, after a long period of discussions between the Ministry of Finance joined with the Central Bank, and the banks to be regulated in this particular form.

I wish to report substantial agreement on most of the matters and substantial agreement with what is before us, between the Central Bank and the Ministry of Finance on the one hand, in the interest of the security of the whole system, especially in the interest of the depositors, and those to be regulated, in the banks. However, we were not able to see eye-to-eye on these items which I am going to bring to the attention of the Senate.

The banks have asked that we have zero rating of the obligations of state-owned financial and state-owned non-financial enterprises, that is, that we attribute no risk to the assets that the banks hold related to state-owned financial and state-owned non-financial enterprises. Again, I look at my colleague on my left, and I smile and I support the position of the Central Bank. State-owned enterprises are in commercial business.

Sen. Barrack: I will resist the temptation, Mr. President.

Hon. W. Mottley: Another item, equal treatment of credit facilities secured by mortgages on residential properties and those fully secured by mortgages on commercial properties, that is, 50 per cent risk weighting. Fifty per cent risk weighting for these items is the international standard. We believe that there is a lower level of risk associated with residential properties because of the nature of the house, the home, the willingness of a family to defend it above other assets and, therefore, 50 per cent is deemed respectable. It does not, however, apply where that mortgage security is related to speculative developments, because clearly, then that willingness to defend it to the hilt is not there.

Zero rating of claims collaterized either on cash on deposit at any licensee or a letter of credit from a prime bank: a risk weight of zero per cent is proposed for claims against which a licensee holds a cash deposit certificate issued by the licensee itself.

Experience has shown that when institutions have been wound up, the right of set-off to the extent of 100 per cent applies only to deposit certificates issued by the institution being wound up. All other deposit certificates held are subject to the limits of coverage provided under the deposit insurance fund. The zero weighting of a cash deposit certificate is, therefore, restricted to a certificate issued by a licensee which has been pledged as collateral for an obligation on the part of the same depositor/customer.

The suggestion that letters of credit issued by a prime bank as a form of collateral should be zero rated has not been accepted for two reasons. First, certain banks will have to be identified and defined as prime. Given the size of our banking system, we believe that would be an undesirable development at this stage. Prime banks would include also the international banks over which our own regulatory authorities have no control and, therefore, would be unable to vouch for their financial standing. It should be noted that claims on all commercial banks whether local or foreign are subject to a 20 per cent risk.

These, in summary, are the matters now before this honourable House. Some of them which are quite complex, I have attempted to simplify, and I hope that I have not gone to the extent of over-simplification. But I think that Members will be able to glean from it that:

(1) The matters have been studied a great deal;

(2) We are dependent upon criteria established by the Basle Committee, especially as a result of the very close working relationships between our Central Bank and the Federal Reserve System in the United States;

(3) The matters before us are weighty and one has to understand that at the end of the day one has to lean on the side of caution and prudence because of the extreme consequences that flow from risks taken and the damage that they can do to the whole economic and, indeed, the political system.

With these words, Mr. President, I beg to move.

Question proposed.

2.20 p.m.

Sen. Wade Mark: Mr. President, whenever we rise to engage in debate, one of the points that we always raise, very early, is the inadequacy of information that is made available to this Parliament. While the Minister of Finance has attempted to provide us with as much information as possible on this issue, the fact remains that the matter before us is an extremely critical and technical one; and I shall have much more to say on the need for mechanisms to allow parliamentarians greater access to information, particularly of the nature of the matter that we are about to debate.

Finance remains one of the principal forces driving the economy of our country and, also, internationally. However, the economy of our country has

suffered almost 12 years of consistent economic contraction, threatening at times to bring down the entire financial system.

The Government's declared intention to completely liberalize all the major markets, including the financial market, and its boast to make Port of Spain the business and financial centre of the region and gateway to Latin America, has led to the so-called floating of the TT dollar and subsequent passage of the Financial Institutions Act, 1993. That Act was designed to tighten the operations of banks and other financial institutions engaged in banking, and business of a financial nature.

The regulations before this Senate are aimed at contributing to the stability, safety, and soundness of the financial institutions and, by extension, the entire financial system of Trinidad and Tobago. According to these regulations—and the Minister's statement—financial institutions will be required to hold a minimum level of capital. This is necessary to ensure continuity both in terms of trade, as well as absorbing losses. The question must be posed: Are commercial banks and other financial institutions, but particularly commercial banks, really committed to practising prudence when they know that the Government would not allow them to go bankrupt without jeopardizing the entire monetary system of our country?

Risky lending continues unabated in the commercial banking system today, and it is the taxpayers of our country who are paying, or will be called upon to pay, for this kind of adventurism that many commercial banks in this country, both indigenous and non-indigenous, continue to practise. The banking system is still fraught with patronage, fraud, and bad debts, as examples.

The purpose of the prudential control over banks is intended to reduce both the risks and costs of bank failures which could threaten not only institutions, but the entire economic system. If we look at section 38(3) (a) to (n) of the Financial Institutions Act, 1993, we would see:

> " (3) Regulations pertaining to prudential criteria may include but shall not be limited to—"

and there are a number of elements outlined in this particular section of the Act.

When we look at these—I do not want to repeat because the Minister has already gone through some of these elements in his opening remarks—regulations before us we find them a bit inadequate. This is a very technical matter that we are dealing with this afternoon. When we examine the elements that go to make up

the regulations, according to section 38(3), we see the regulations before us treat with (a), the question of capital adequacy; we see (b) partly in, partly out; (c) is included in the regulations, "treatment of loans and other credit facilities"; as well as (d) and (e).

From our assessment, some other elements are not incorporated in the regulations before us, and we would like to know why. We are entering into a phase in which this economy is being opened up to international market forces, as the commitment of the Government is clearly identified in its programmes and policies.

We would like the Minister to indicate to us why some of the elements have not been incorporated in these regulations before us . For instance, what about the issue of "liquidity requirements and ratios?" I have some more to say on this as we proceed, because we find that these Financial Institutions (Prudential Criteria) Regulations, 1994 are a bit skimpy, a bit limited and, to some extent, deficient.

Strengthened and not deficient—and I want to repeat this: "strengthened and not deficient" prudential criteria go hand in hand with financial deregulation of an economy. If this Government is deregulating the economy, it should seek to strengthen prudential criteria and not come here with half-baked, limited, deficient regulations. Prudential criteria are designed to strengthen the banks' internal controls, especially in a weak and shaky economy in which deterioration in the quality of bank assets obtains.

2.30 p.m.

Our economy is extremely shaky and weak. It is suffering from economic constipation. Twelve years of unrelenting contraction is what is responsible for some of the difficulties that a number of financial institutions are experiencing today, and, therefore, these criteria as we understand them, are designed to strengthen the internal controls at the level of the commercial banks in particular.

The issue of liquidity has not been properly addressed in these regulations. In a practical sense and moreso in the short run, the liquidity of a bank is sometimes more important than the size and amount of its capital. I want to repeat this: In a practical sense and in the short run, the liquidity of a bank is sometimes more important than the size and amount of its capital. We find it strange that the Government has brought to this Parliament, regulations of a prudential nature to tighten operations at the commercial banks and other financial institutions, and this important element of liquidity—ratios and requirements—is not incorporated in the regulations before this Parliament.

As you are aware, Mr. President, well-capitalized banks, the balance sheets of which show substantial surpluses of assets over liabilities, can collapse if they cannot obtain the cash necessary to fund their operations. I think it is worth repeating this: Well capitalized banks, the balance sheets of which show substantial surpluses on the assets side over liabilities can collapse if they cannot obtain the cash necessary to finance or to fund their operations.

There ought to be detailed regulations governing liquidity in the financial system. We have not seen these regulations in the Motion before this Senate and we are dealing with finance. We are dealing with the virtual hub. It is the centre of economic activity and life in any economy and nation.

We would like the hon. Minister of Finance to tell this Senate whether the mere provision of adequate capital is sufficient and critical in preventing bank failures. I want to pose that question to the hon. Minister of Finance. Is it not possible that well capitalized banks can collapse if they are improperly or inadequately managed, or because risks are excessively concentrated? I think the Minister of Finance needs to provide us with some detailed explanation on the deficiencies which I have identified.

When we examine the concept of risk weighting as outlined in Schedules II and III of the Financial Institutions (Prudential Criteria) Regulations 1994, there is cause for some concern for new borrowers, especially potential small business entrepreneurs. Risk weightings essentially relate to the credit risk attached to assets.

I read in the *Sunday Express* of July 3, 1994, the headline "BANKS MAKING FIRMER DEMANDS OF BORROWERS." Two spokesmen, I think one for Republic Bank and the other for Royal Bank, indicated, and I want to quote here. This is all part of the tightening-up process.

> "Banks are asking some . . ."

Mr. President, the banks in this country are of a type that discriminate against the small people in favour of the big people in this country.

> “Businessmen to ‘put their money where their mouths are’ and to put up personal collaterals for loans if they are certain their businesses will be viable.
>
> Regional credit manager of Republic Bank, . . . said on Thursday that new and younger businesses needed a disproportionate level of security,"

Listen to what they are saying. These regulations before the Parliament are going to result in potential small entrepreneurs being driven out of the market, those who are in, and those who are trying to come in, may never get in. Because this banker is saying:

> ". . . that new and younger businesses would need a disproportionate level of security, sometimes more than what is normally required. This, he explained, occurs when the bank does not have a long-standing relationship with the client."

I am trying to drive home a point here because we have something called the Small Business Development Company (SBDC) that is supposed to be providing assistance to small businessmen. If the Government is tightening up the system—and I am not against that; I want to make it very clear. We on this side are not against Government tightening up the financial operations of banks, insurance companies, trust companies, and so forth. Because we, too, are concerned with consumers and depositors.

What we have some concern about, Sir, is that if new regulations are going to be imposed—as the Government has identified in these regulations here—which would cause the banks to ensure that whatever moneys they lend in the future must be adequately backed up by appropriate capital, we ask the question: Small business people who are seeking access to loans from businesses and banks, as the case may be, what guarantee are they going to have in obtaining these loans?

We know of instances where even the Small Business Development Company would send small businessmen to the commercial banks with good proposals and when they reach the commercial banks, they would be told the proposals are not bankable. We are therefore asking the question, Sir. We are seeing some difficulty in terms of the small businessman insofar as some of these regulations are concerned. Because, if a businessman borrows capital, a price must be paid. A price is paid for capital and a reasonable return is desired on capital.

If the SBDC is influencing commercial banks to lend at 12 per cent, which is below the prime lending rate in the market and they are borrowing capital at 15 and 16 per cent, with these regulations what is going to happen to those businessmen in the future?

2.40 p.m.

Is the Government of Trinidad and Tobago going to provide zero risk for those loans so that the banks would not have to look for capital to back up those loans?

These are areas we would like the Minister of Finance to clarify for us because we have some concerns here.

Any system that assigns risk weights to different assets is bound to influence the activities of the banks. Let us understand that. This is where we have some concern about the small business element in the society—those potential ones. Remember the Government is closing down everything; what they are not closing down, they are giving away; what they are not giving away, they are liquidating; what they are not liquidating, they are selling out.

What we are talking about is that the Government is placing more people on the breadline and it is encouraging people to get into small business to sell toolum, sugarplum, and sugarcake. It is also telling some people to get into other operations, but one needs access to credit to begin a business. We have some concerns, Sir.

The banks in turn will seek to restructure transactions. This is the point I was making about this new arrangement. If you assign risk weights to different assets, it is going to influence the banks' activities, and the banks in turn will seek to restructure transactions to minimize the size of capital that the transaction will require the bank to hold. This is the point I am making. The banks are going to restructure their transactions and it is the small people who are going to suffer as a result.

Banks are going to target classes of borrowers to whom lower risks are attached. They are going to target special categories of borrowers. Unless the state comes into the picture and provides a zero risk weight for those small businessmen who access the SBDC, these regulations are going to ensure that young potential businessmen do not survive; they will not see the light of day with this system. Those who are in may have to get out. These new regulations will stifle small people and I want the Minister to address this issue very seriously.

Sir, I must let you know that this Motion is technically complex and one that requires much more comprehensive information and details, for the Senate to make a proper and more indepth contribution. This is why when we repeat in this Parliament; it sometimes tickles the ears of many, but sometimes we have to let the other side know that it is the rationale we have been advancing for the establishment of joint parliamentary committees. We should have, Sir, a joint parliamentary committee on banking and finance to deal with this issue. This committee should have the necessary technical staff to deliberate on this Motion

and give us the technical information—and we have an esteemed colleague here from UWI. *[Interruption]* Look, look, let me make my contribution. I am going down good so far, do not interrupt me.

Mr. President: Sen. Wade Mark, would you like me to refer you to the amended Standing Order of the Senate, No.72?

Sen. W. Mark: To deal with what, Sir?

Mr. President: Joint parliamentary committees.

Sen. W. Mark: Yes, Sir. Thanks very much for the reference, Sir. I really believe that this is one area that the hon. Minister of Finance would certainly agree with. The Minister attempted to simplify for us, as he said, as much as possible the technical information that is contained in these regulations, but if we had such a committee in this Parliament with the kind of mechanisms where we could have summoned the Governor of the Central Bank to provide us with detailed information on the workings of the system, it would go a long way in, at least, making us more informed of the intricacies and the workings of this financial machinery.

Another area of concern to us in these regulations is the question of surveillance. These regulations have to be enforced by an agency. We are concerned about the question of surveillance and the monitoring of the internal controls employed by financial institutions on a day-to-day basis. We are also concerned about the quality of supervision because, as you know, that is essential to the success of these regulations. We are seriously worried about this.

I cast no aspersions, Sir; I want to make it very clear. We are worried about the capacity, the technical ability at times, of the Central Bank to efficiently and effectively enforce the regulations approved by this Parliament.

This is serious business; this is no joke. Right now, the Central Bank is a lord unto itself. We want the Central Bank to be placed under parliamentary control. We need it to account to us because we have new regulations coming into being and they must be enforced. We must never forget—as the Minister of Finance was so quick to remind us in his presentation—the sorry financial spectacle which visited us recently. We are deeply concerned about this question, Sir. Therefore, we want to place much emphasis on the issue of supervision, monitoring and

some degree of control over these financial institutions, given these new regulations.

2.50 p.m.

What is even more worrying is that the economy of the country continues to perform badly. It is that kind of non-performance or poor performance that would impact on the asset quality not only of commercial banks, but of the entire financial sector. Therefore, we feel that it is even more incumbent on this agency to pay particular attention. As parliamentarians, we do not know how this institution is monitored. We do not know if it is monitored on a daily, weekly, monthly, quarterly or yearly basis. We do not have the information. Maybe, they are monitoring. We are asked to approve regulations that an institution is supposed to monitor, but we do not have the kind of information that would leave us, as a Senate, happy, comfortable and satisfied. So, we have to be groping and speculating in the dark, because we do not have information.

We see these regulations as negative and defensive measures designed to address the difficulties of the past. But the horse has already bolted the stable!

As you know, Sir, the former indigenous banks were clearly undercapitalized. All financial intermediaries, including indigenous and non-indigenous, have difficulties with their asset quality. None is safe. This is why we are concerned about the quality of supervision. There is a concentration of risks in key non-indigenous banks in this country today. If people cannot meet obligations, what would happen? They will go through, just as the former non-indigenous commercial banks went through. This is understandable. I say it is understandable in an economy that has been on the decline for so many years.

Loans and investments have clearly run into trouble, and the quality of assets has declined. This is why we need to introduce growth measures. These financial regulations, in an effort to tighten the operations of financial institutions, cannot be seen in isolation of the economic malady; sickness, the AIDS that this economy is suffering from. It seems to me that we have no cure for the economic AIDS that we have. We need to introduce growth measures to stem the rising tide of economic stagnation.

All these regulations will come to naught if we do not have a strong, vibrant and robust economy. If we do not have growth, these regulations would mean nothing, because, banks are going to go through as they have gone through in Venezuela, and then we will have to re-nationalize them. When you say that,

people say you are a communist. Caldero is a right-winger. He had no choice but to nationalize them, take them over! I do not want to go off on that. I only said that in passing. I know that there are Senators on the other side, they just only—

Mr. President, whilst these regulations seek to address the issue of safety, soundness, stability and integrity of the financial system, more needs to be done to trigger the growth mechanism in our economy. We only have to analyze the recent situation that the hon. Minister referred to—the economic and financial turmoil that has gripped the economy of Venezuela—to understand the urgency for the Government of this country to change direction. In one of the newspapers of Friday, July 01 we see "Venezuelan Government takes control of banks." This is an economy that has experienced negative economic growth for the last six years. This is an economy that has gone through stabilization and structural adjustment programmes. They have removed subsidies. They have sold out the economy to foreigners. They have floated their currency, as we have. They have done everything that we are doing, and their economy has collapsed.

I am wondering if the Minister of Finance is not taking a cue. It is said when your neighbour's house is on fire, you must wet yours. But WASA does not even have water; it cannot even wet the Senate here. The same Venezuelan Government that took away and liberalized the consumer market, the retail sector, that allowed price controls to be removed, that removed subsidies, that floated the currency, had to take back the currency from the floater and fix it. They have been forced by the people to reintroduce price controls.

The Venezuelan government have been forced to take these steps by the state of the economy and the possibility of riots. Five coup attempts were made in almost fours years in Venezuela. We hope that the hon. Minister of Finance is taking note, and not only saying that what we are trying to do here is to plug things that they have not done there. I am saying that Venezuela had, and still have today, a deregulated financial order. The Minister of Finance must take note of this.

We warn the Government that the source of the difficulty in the economy is the continuous decline in national output. If you cannot address that question, this is a waste of time. It is economic development. Households cannot pay their mortgages in Trinidad and Tobago; yet, there is a mortgage portfolio of over $5 billion in Trinidad and Tobago.

3.00 p.m.

Investments and loans advanced by banks have not materialized as anticipated. People are not repaying. They cannot pay. The economy is in crisis. The Financial Institutions (Prudential Criteria) Regulations 1994 must take account of these special factors, especially those that deal with the quality of financial institutions' assets.

The matters raised here are extremely difficult, technical, and as I said, require more time for absorption and deliberation. It seems to me that because of the lack of proper supervision many unnecessary developments took place in the financial system. These are developments which maybe if we had a system that was seriously monitoring these institutions, if there was the kind of monitoring mechanism at the Central Bank, where, for instance, they would keep a daily tab on happenings and operations at those commercial banks in our country many of the things may not have taken place.

I indicated earlier that there is still a lot of patronage, corruption, fraud and bad debts in all the commercial banking systems today. In spite of what the Government may say, none of them is in good shape.

In this country there are so many instances of big shots who because of their name are able to get a lot of money without any kind of security. The Acting Prime Minister is aware of that. If we had the proper mechanism in the commercial banking system and if the Central Bank was doing its work properly, how could any person, whether it was Dr. Lenny Saith, or Sen. Wade Mark or Mr. Wendell Mottley the Minister, get that kind of money? Anybody! I am not casting aspersions here. I am saying that if there was the kind of monitoring mechanism to ensure that these things do not take place, they would not have taken place.

This is what we are concerned about because we have new regulations and we might have the same old personnel dealing with these things. Too much of taxpayers' money has been sunk into operations. I support the financial system remaining stable, sound and safe. I am also saying that it must be ensured that that element of risk in terms of how these people lend money is significantly reduced.

We would like to advance, and we hope, that the imprudence of the 1980s would force or ensure greater prudence in the 1990s and beyond. Prudential criteria are necessary and vital to ensure the security of deposits. That is what we are concerned about and I guess that is what all of us are concerned about. We want to secure the deposits of depositors. We also want to ensure the overall integrity of the financial system in Trinidad and Tobago.

Mr. President: Your speaking time has expired.

Sen. W. Mark: I would just take two more minutes.

For this to succeed we need a new direction and a new vision. We need a new economic order in our country that would require and would be necessary to ignite the economic system to facilitate meaningful economic growth and to ensure meaningful social development for the masses of our country.

Thank you very much.

Sen. Michael Mansoor: Mr. President, I shall not attempt to be as clinically medical or medically clinical as my colleague, Sen. Wade Mark in my short contribution, today, in that I would not attempt to diagnose AIDS or any other form of malady which Sen. Mark was so eager to diagnose.

I would say that it was a rather curious spectacle to see Sen. Wade Mark wade through what I can see or what I would call a sea of contradictions. On the one hand, he is trying desperately to protect depositors, and on the other hand, he is very anxious to require that the commercial banks take many capital risks. I sympathize with him in that contradiction. I can only tell him that it is an inescapable adjunct of the human condition that even politicians cannot be all things to all men.

My first difficulty with this Motion is what is contained in Regulation 3(1) which states:

> "...a licensee's qualifying capital shall not be less than eight per cent of its risk adjusted assets."

Regulation 3(3) says:

> "For the purposes of section 32 of the Act, the minimum capital adequacy requirement for a licensee is two per cent of its risk adjusted assets."

I have interpreted Regulations 3(1) and 3(3) to mean that it would be normally acceptable to expect a ratio of 8 per cent, qualifying capital being 8 per cent of risk adjusted assets, and that the Inspector of Banks is not required to seek to take charge of a commercial financial institution unless and until this ratio of capital over risk adjusted assets falls to 2 per cent or less.

I take it that this is the purpose of framing regulation 3 that way. Eight per cent is considered acceptable, but if the ratio falls below 2 per cent, the Inspector of Banks pursuant to section 32, would be required to advise his board, and his board in due course would decide whether or not the commercial financial

institution should be closed down or dealt with through whatever remedies are available.

I raise this point because I am very curious as to whether or not we should wait until the ratio falls to 2 per cent to allow the Inspector of Banks to act. We can be quite certain that if the Inspector of Banks decides to act under section 32 of the parent Act, his decision to do that and the decision of the Central Bank to do that are going to be possibly the subject of legal inquiry, injunctions and all sorts of manoeuvring that we have become used to in this country.

I ask the question: Is 2 per cent not too low? Should the Inspector of Banks not be allowed to act well before that ratio falls to 2 per cent? I would ask the other question: Is 2 per cent an international norm in these circumstances?

3.10 p.m.

Qualifying capital is defined as core capital and supplementary capital and it is possible under Regulation 6(c) to have bonus shares pursuant to an asset revaluation considered as part of a supplementary capital. Also, under 6(f)(ii) it is possible to have asset revaluation reserves as part of this supplementary capital. While I understand and appreciate that asset revaluation reserves have been limited to 1.25 per cent of risk adjusted assets, I would like to ask the Minister whether or not it would be possible to keep track of bonus shares that were issued out of one type of reserve as opposed to another type of reserve because once bonus shares are issued, they are issued.

It seems to me that to have bonus shares separately identified as supplementary capital would be somewhat difficult to administer. A bonus share is a share, so how would one keep track of the shares of any bank and determine which are bonus shares and which are normal shares issued for cash.

I ask the Minister to address that. Further, he should consider whether or not it is possible for an asset revaluation reserve to be created in one particular period and the commercial bank get around that ceiling of 1.25 per cent by creating bonus shares out of the asset revaluation reserve all in one accounting period. This may sound very technical, but it is something which just jumps out at you when you look at these regulations.

The other question relates to Regulation 6(h), which has to do with the inclusion of general reserves for unidentified losses as part of supplementary capital. Again, the drafters of this legislation have been sufficiently astute to put a limitation on the amount of these reserves. However, one has to wonder how a

reserve for an identified loss can be clinically considered to be capital as such. If it is a reserve for an unidentified loss one wonders whether it is capital. That appears to me to be a somewhat accommodating inclusion in the list of items under “Supplementary Capital”.

With respect to the weightings that have been put on assets, I appreciated very much the Minister's explanations as to why certain ratios or risk factors were put on certain assets. It does seem, however, that to put a risk weighting of 20 per cent on cash held at other banks is somewhat rigorous. Cash in transit and cash held at other banks are subject to a 20 per cent risk factor.

I accept the fact that other banks can go bad and, therefore, cash held by anyone other than oneself is possibly subject to risk, but it seems to me that this rigidity in terms of cash at one bank as opposed to another bank, if it is that all the banks had the same filing date with respect to these capital adequacy calculations, one may have some difficulty in banks deciding not to lend money to other banks because of the risk adjustment because of that particular requirement. If, however, these capital adequacy calculations will be done at different times of the year one can perhaps conclude that that will not be a particularly difficult hurdle to overcome.

There is one other technical difficulty. I think that the drafters of the legislation may not have perceived that in Regulations 7(d) and 10(b), there may be a calculation difficulty in deciding how to quantify risk adjusted assets, whether it is before or after; but that is a technical detail which, perhaps. will be worked out in the fulness of time.

I come to the other prudential criteria. Regulation 11 is very necessary, but one has to wonder what will be the objective criteria that one would use to determine whether or not it is being satisfied. It speaks about a licensee's records and systems being such that loan problems can be detected very early. That is necessary and required, but one wonders how that specific regulation, which is very judgmental in its nature would, in fact, be implemented.

Regulation 13, which deals with the inclusion of interest on non-performing loans, this clause very clearly states that consumer loans that are more than 90 days in arrears or residential mortgages which are over 180 days in arrears are to be classified. The specific requirement of this regulation is that all interest accrued on such lendings be reversed. This is, I think, a very prudent and necessary regulation. I only wonder whether or not the same criteria would be applied to the financial statements that these commercial banks put out to their shareholders. Are

these requirements with respect to the provision of loans going to be mandatory in terms of the banks' statutory financial statements which are used by stockholders for share evaluation purposes and all sorts of other purposes? It is not clear.

The parent Act speaks about audited financial statements but I do not believe that there is a link between Regulation 13 and the provisional procedures that would apply to financial statements for shareholder and other purposes. If there is not that requirement, that the two sets of provisions and criteria are the same, it is quite possible that the Central Bank could be worried sick about a particular financial institution's affairs whereas financial statements given to shareholders may not reveal the same picture. It is possible that there is something which makes it mandatory that the provision and the requirements are the same, but I have not been able to see it. I ask the Minister for clarification on the point.

3.20 p.m

With respect to regulation 14—a very necessary and a good regulation—one has to ask the question: What if the Deputy Comptroller or officer does not pay up? It is not very clear what would happen. Maybe there is something in the parent Act that deals with that, but I have not been able to ascertain what the provisions would be.

I wish to compliment the Minister on bringing these regulations in such a timely fashion, but I really would want him to explain to the honourable Senate the rationale for 2 per cent: capital over risk adjusted assets of 2 per cent. Is that not sailing a bit close to the wind? Should we not empower the Inspector of Banks and the Central Bank's Board, in their discretion, to act at an earlier stage? I repeat my concern: If this clause remains the same, and if it is that the Central Bank wants to act, but that ratio is just a notch above 2 per cent, there may be very real legal problems for the Central Bank and others.

I want to end on one particular point which I think is the source of unnecessary contradiction in Sen. Wade Mark's contribution today. On the one hand, institutions like the Senate would always want to control commercial banks so that they protect the depositors' money; on the other hand, we have the other imperative to encourage commercial banks to make risk capital available to businessmen and to the economy at large.

Sen. W. Mark: Mr. President, it is the second time that Sen. Michael Mansoor has referred to my contribution. I think he is misleading the Senate, and it is either that he has not understood—

Mr. President: Are you rising on a point of order?

Sen. W. Mark: It is on a point of order, Sir. I am saying that he is misleading the Senate in terms of my contribution and I would like to clarify it further.

Sen. M. Mansoor: Mr. President, I am being very sympathetic towards what Sen. Wade Mark has said. I am not misleading the Senate; I am saying that in what he has said, there is an essential contradiction on the one hand between the imperative to control banks so that they are perfectly secure, and on the other hand the imperative to have banks make loans available to risky business enterprises.

That is something that is common, it is real, it is a fact, and I want to suggest to the Minister, and indeed to Sen. Wade Mark, if I may be so bold, that he is perfectly right, that with this new set of criteria, banks may in fact be encouraged to stay away from certain types of loans. Now that will have on the one hand, the good effect of making banks financially more stable, and had we had that 10 or 15 years ago, we may not have had some of the problems that we have had to deal with in the very recent past. On the other hand, by forcing banks to be more careful in the lending criteria, there is undoubtedly going to be the fall-out that less capital as it were, would be made available by way of overdrafts and loan capital.

The solution to that problem is that we should so engineer our financial system that more risk capital becomes available. We have had, for example, a stock exchange in this country for many years and even now, after all the booms, and the financial good luck that we have had over the last 20 years, fewer than 50 public companies have been traded on the exchange. What that tells me is that we do not have a sufficiently large pool of risk capital available to businessmen, small and large, in order to propel our economy.

The question therefore arises: How does one increase that pool of risk capital? And how does one encourage the system to provide capital that is not necessarily just borrowed from banks? If one wanted to do that, one would have to institute a taxation regime that would encourage the formation of real capital and wean—if you will—businessmen away from banks as the primary source of risk capital.

Contrary to what Sen. Wade Mark may wish to think, I am supporting the fact that we need more risk capital, but I want to make the point very clear that we cannot have the best of both worlds. We have to make a decision as to how much risk we would allow commercial banks to take, understanding that once we limit the amount of risk that they can take, inevitably, risk capital would be limited.

Sen. Martin Daly: Mr. President, I would like to make a brief contribution simply to say that I hope that the introduction of these regulations marks a turning point in the sorry history of financial institution failure that we have had in this country. I always think it is important that we bear in mind that most of the failures that we have had were related to financial institutions, other than banks. I think we always need to be careful about that when we start talking about high levels of fraud and corruption in the banks and so forth.

I hope it marks a turning point, because I think that this is one piece of legislation—I repeat what I said in the debate on the parent Act—with which the Government has been very responsible in the orderly way it has brought it forward, and in the care that has gone into the process of bringing this legislation, and into the consultation process that has gone on. I see us making an orderly progression from the bad old days—and I believe that progression started when the Central Bank Act was amended originally to bring in the provisions for deposit insurance and so forth—about which I think we could be reasonably satisfied.

I, however, want to identify with Sen. Mansoor in what I think is a tremendous confusion in Regulations 3. I have very grave difficulty in understanding how the sub-regulations 3 relate to each other, and it seems to me that there are really no teeth in regulation 3(1), because there is nothing positively requiring a licensee to have a qualifying capital in the ratio that is mentioned.

Regulation 3(3) creates a further problem in that the regulatory authorities are effectively tying themselves to not taking any action. Certainly, under 32—they are tying themselves to not taking any action based on capital inadequacy, unless the ratio is 2 per cent.

I wonder whether there is not need for some re-consideration of Regulation 3 to do one of several things. My information is—and indeed I referred to it in the debate on the parent Act—that 8 per cent is a worldwide target. Therefore, I do not understand if we are following the *Basle Report* and 8 per cent is a worldwide target, why we are specifically legislating for a minimum requirement below 8 per cent.

I wonder therefore whether this regulation—the all important one in these regulations—does not have to be rethought in one of several ways which I am about to suggest. Of course, I will not bore the Senate by making a long contribution simply to raise the question. I wonder whether we are trying to provide one standard for two different creatures, namely persons carrying on the

business of banking on the one hand, and persons carrying on business of a financial nature on the other. Because one could see that if the business that you are doing is restricted to business of a financial nature, 2 per cent may not be too low, whereas it is too low for banks. It may be that the draftsman has not given sufficient consideration to the fact that we have two types of business and that is one way it may be dealt with.

3.30 p.m.

Another way of approaching it may be that the 2 per cent requirement should be for a certain period and that there should be some transitional arrangements. I made the point in the debate on the parent Act that in the case of the number of countries through parties to the Basle Accord, it took four and a half years to get up to the 8 per cent.

Yet, another way of approaching it, is to start off with a 2 per cent requirement for the purpose of section 32 and build up—I believe, are the words that are used—to the 8 per cent over a particular period. But I am very concerned that after all this work and parliamentary time that we spent on the parent Act and on these regulations, a fundamental mistake is being made. A handcuff is being put on the regulatory authorities by tying, specifically legislating, for the purposes of section 32, that 2 per cent is the right amount.

I appreciate that you have to make a regulation saying what the minimum requirement is, because section 32 requires that as a ground for the Inspector intervening to suspend business. You have to prescribe a minimum requirement. I agree with Sen. Mansoor that whether by prescribing it so low, and perhaps wanting to make sure that we were not doing violence to the person whose business is limited to business of a financial nature, we have not made a mistake by making the threshold too low for banks as well. I would identify with Sen. Mansoor's misgivings about regulation 3 and suggest those are, at least, two ways in which regulations 3 could be improved upon.

I agree that many of these regulations are certainly beyond my competence, but I do not subscribe to the view that there was any difficulty at all in bringing them to the Parliament, and I think the Minister was right to relent during the debate on the parent Act and agree that, at least, the first set of prudential criteria should come to the Parliament for scrutiny. I think that was an absolutely right

decision. The fact that they are technical does not gainsay the need for proper scrutiny. And, indeed, the fact that they will be examined by the parliamentarians will provide a stimulus for a proper set of regulations.

With those few words, Mr. President, I end my brief contribution on these regulations. Thank you.

The Minister of Finance and Minister of Tourism (Hon. Wendell Mottley): Mr. President, I must confess that I am caught short somewhat, in that I had anticipated some more loquaciousness on the other side. Frankly, the main item raised by Sen. Wade Mark concerned the question as to whether the liquidity requirements had, in fact, been downplayed in all of this. The answer to that is, they have not been downplayed and were more fully addressed in the parent Act and not in the regulations. In the Financial Institutions Act of 1993, section 25 deals rather extensively with the liquidity requirements.

The other item raised by Sen. Wade Mark is also dealt with in section 22 of the parent Act, that is, the question of the concentration of capital. There are prohibitions and the granting of credit facilities so as to prevent that concentration of capital. The Senator also raised the fundamental question—because he was arguing that illiquidity is the real threat to the financial institutions—why are we then concentrating so much on capital? Well, the answer is, yes, he is correct, liquidity is important and we dealt with it earlier However, if you go to the other extreme and you force the bank into excess liquidity, by that very action you have the potential for seriously impairing or diminishing its earnings.

Sen. Wade Mark asked the question: Is capital adequacy a sufficient factor? It is not a sufficient and only factor, but it is a very, very important factor, because an absence of capital removes that buffer—that layer of comfort—which when an institution gets into trouble it has that capacity to fall back on that capital there, to provide a degree of security. That is why the riskier a particular venture in ordinary commercial business, the greater the need for equity finance as distinct from loan financing. With this banking and financial business we must have that equity or that capital buffer under tight control.

Again, Sen. Wade Mark was correct, in that, much is forgiven in an enabling economic environment. To the extent that we have been going through a difficult economic period for quite some time which has brought on stresses and strains; to the extent that we can move into a growth mode, then the safety of the whole system is improved. Sen. Wade Mark’s analysis is correct, and it has been the

strong intention of the Government, translated into a number of policies, past, present and to come before this Senate, to encourage strong economic growth in Trinidad and Tobago.

The country has undergone and is still undergoing fundamental economic restructuring—that is inevitable—which process is not yet complete. There are optimistic signs that some of the major restructuring is complete, especially with the recovery of the petroleum economy which was a major problem last year, surrounding natural gas shortages and the diversion of gas that would normally have lifted oil to, in fact, supplement shortages of gas in the petrochemical sector. Those difficulties, together with lower oil prices, were largely the result of the negative growth last year.

We have, however, come to the end of this difficult period and we have seen the economy move from gas shortage to radical gas surplus. We have also seen strong recovery in domestic oil production and more recently some upsurge or recovery in oil prices. At the same time, there has been an increase in the petrochemical activity and encouraging signs in the agricultural sector and in other areas of the other economy. I am, at this stage, cautiously optimistic, that the prescription for success for the whole financial system as outlined by Sen. Wade Mark, that is, a resurgence of growth, is already being embarked upon.

In connection with Sen. Mansoor's concern about what ultimate action there is, in relation to regulation 3(1) and 3(3), section 32 clearly stipulates that there can be issued cease and desist orders, and it is upon these intermediate orders that we are relying heavily, rather than the ultimate action, when we get down to this two per cent and having to move in to wind up and close down.

Under regulation 6(c), bonus shares must be identified.

3.40 p.m.

Sen. Mansoor: Mr. President, on that point, might I ask the Minister to consider, if one is going to rely on cease and desist orders, which is another feature of the parent Act, whether it might not be better to leave out subregulation (3) completely, and one would rely on cease and desist orders to do what one had to do? The point I am trying to make is, if I may just repeat it, I see this as causing many difficulties for the Inspector of Banks. Might it not be better just to leave out subregulation (3)?

Hon. W. Mottley: Mr. President, I hear what Sen. Mansoor is saying. On reflection, it does cause me a little concern that we do not, in fact, unnecessarily

tie the hands of the Inspector of Banks. It is a matter that, perhaps, at committee stage we can reflect upon somewhat.

Also, there is a very good point made by both Senators Mansoor and Daly about the Central Bank, in all its wisdom, operating on one set of criteria, and holding the banks to those very stringent criteria, and yet financial auditors operating by different standards and, therefore, the capacity to mislead the investing public as a result of the statements they publish. That, again, is a very real concern.

Perhaps, we need to look at it at the committee stage to see if it needs to be tightened, but references to licencees' accounts means that there is a link to the financial statements as a result of the licencees' accounts being shown in the balance sheet. There is that requirement, but we may need to look at it more specifically to make sure that it is absolutely tightened down, and that there is no inconsistency between the two standards being applied.

Mr. President, I think these are the main points listed and—

Sen. W. Mark: Before the Minister takes his seat, I would like some clarification. He had indicated in his presentation that some detailed study for introducing the applicability of the prudential criteria was undertaken by his ministry or, maybe, the Central Bank. I was wondering whether he would be inclined to make such a report available to the Parliament in terms of the rationale, conditions and the basis for the introduction of the prudential criteria. That is the first request, Sir.

I would also like the hon. Minister to address the issue that I raised earlier when I made reference to the fact that any system which assigns risk weights to different assets is bound to influence the activities of the banks in question; and how such a development, would impact, let us say, on the small business community of Trinidad and Tobago, and what role the Government is prepared to play in this area.

Hon. W. Mottley: If the Senator would restate that, because I did not quite understand the distinction he was making.

Sen. W. Mark: I am just trying to get some clarification on the question about risk weights, and assigning them to different assets. To my mind, that is going to influence the activities of the banks and they are going to restructure their transactions to suit that arrangement.

My concern is, to what extent this development is going to impact adversely on potential business people, particularly of a small nature, in the banking community, given this new development that has taken place? To what extent the Government of this country would be willing to consider loans that are extended by the banks based on guarantees by the SBDC? To what extent would the Government be prepared to exempt such loans and put them under a zero risk rating, as opposed to 100 per cent risk rating? This is of concern to me, Sir.

Hon. W. Mottley: Mr. President, the SBDC, at this time, at least, is a Government majority company and the fact that a loan is guaranteed by the SBDC will considerably lower its risk, and, therefore, it would have that benefit in that the bank in having that SBDC guarantee, would have the asset value of it, so to speak; it would be considerably improved.

Sen. W. Mark: Is the Government guaranteeing 100 per cent of the loans accessed through the commercial banking system on guarantees, or otherwise?

Hon. W. Mottley: No, it does not 100 per cent guarantee.

Sen. W. Mark: Is it 75/25?

Hon. W. Mottley: Yes, it varies according to the particular parties, but the fact of a guarantee will impact, in some weighted way, upon the asset and how the bank is viewing it and how the Central Bank will view the particular asset.

Sen. W. Mark: But on a global basis, Sir, as the Minister of Finance, how does he foresee these regulations impacting on potential small business people, who may not have access to the SBDC and may have to go directly to the commercial banks? Does he not see some negative impact emerging? I want to get his view on this.

Hon. W. Mottley: I do not believe so, Mr. President, because the weighting list, as I showed you earlier, the prime ratings for Government-backed instruments, and so forth, and the 100 per cent risk became attributable to most of the normal commercial assets that a bank would hold; and these would be blind to whether it was a Neal & Massy or a particular small company; and, therefore, I do not see any radical discrimination between the two.

With these words, Mr. President—

Sen. W. Mark: No, Sir. I asked a question: Whether the Minister would make available to this Parliament the report, which was commissioned, a detailed study on the rationale for the introduction of the prudential criteria. I should like to know whether that could be made available to the Parliament so that we may study it.

Hon. W. Mottley: Mr. President, I am not entirely familiar with the details of that report. I could, certainly, make a synopsis of the report available to this Parliament, but I would have to study the details to see if there are any sensitive matters relating to any specific institutions, and so forth, that we would not want to have public property. But I could, certainly, make a synopsis available.

Sen. W. Mark: Any time frame?

Hon. W. Mottley: Oh, within a fortnight!

Mr. President: Hon. Senators, there is no committee stage on a resolution, and I see a committee stage developing. There are regulations before the House and, apparently, because of certain proposals put forward during the course of the debate, consideration is being given to whether amendments ought to be made, or not. In the circumstances, the parties concerned would like to meet, behind the Chair, to sort out these considerations. So we will take an early suspension—a slightly longer suspension.

3.50 p.m.: *Sitting suspended.*

4.30 p.m.: *Sitting resumed.*

Hon. W. Mottley: Mr. President, after consultation with other Members of the Senate, the Government is of the view that there is need for an amendment to one of the regulations concerning capital adequacy. That is PART II, Regulation 3 (3). This particular regulation seeks to define an automatic trigger below which there will be immediately triggered intervention, and it is felt that with the structure whereby the minimum capital adequacy for normal operations is eight per cent, and there are ways by which the Inspector of Banks can hold the banking institutions to that by several acts of intervention on his part, there is need for a definition of “absolute insolvency” which can be defended in a court and which is in the regulations in its present form defined as two per cent. I want to move an amendment to have Regulations 3(3) read instead:

> "For the purposes of section 32 of the Act, the minimum capital adequacy requirement for a licensee is four per cent of its risk adjusted assets."

The other significant matter raised by Senators Mansoor and Daly is this question of the possibility of divergence of accounting standards being applied between financial auditors and the Inspector of Banks, and the Inspector of Banks being the specialist, his standards ought to be the ones generally applied. In that respect, we take the point that there is nothing in the Financial Institutions Act, or

in the regulations, or in the Central Bank Act at present that forces such a convergence, and I wish to serve notice that this business of preparing the regulations is not yet completed in that what is before us deals mainly with regulations pertaining to capital adequacy.

Under section 38 of the parent Act, the Financial Institutions (1993) Act, it does provide for regulations being given under section 38(3)(j) on other reporting requirements. It does give the opportunity for regulations to be given and to be brought to the Senate that would specifically address the matter of converging accounting standards between what the Central Bank is doing and what auditors are doing, and making available to the investing public on the particular banks. We could address it there, or I have another opportunity in the not too distant future, because the Central Bank Act itself is being drafted in the Attorney General's Office, and with a very slight amendment it can address that particular matter and could be brought to this Senate in a matter of weeks.

I will, with further consultation, over the next few weeks, decide whether we take both opportunities or whether one is sufficient.

Therefore, Mr. President, I formally move that:

> Regulation 3(3) be amended by substituting the word "four" for the word "two" appearing at the end of line 2 thereof.

Further, that the actual resolution would be amended in its final form in that the last paragraph will be amended as follows:

> *Be It Resolved* that the Financial Institutions (Prudential Criteria) Regulations, 1994 be approved subject to the following amendment.

And take in the amendment to regulation 3(3).

Mr. President: The question is that the resolution be amended by adding the following words at the end thereof: "subject to the following amendment. In clause 3(3), substitute the word 'four' for the word 'two' appearing at the end of line 2 thereof."

Question, on amended Motion, put and agreed to.

Resolved:

That the Financial Institutions (Prudential Criteria) Regulations, 1994 be approved subject to the following amendment:

In Regulation 3(3) substitute the word “four” for the word “two” appearing at the end of line 2 thereof.

PROTECTION OF WRECKS BILL

Order for second reading read.

The Minister of Works and Transport and Minister of Local Government (Hon. Colm Imbert): Mr. President, I beg to move,

That a bill to secure the protection of wrecks in the territorial waters of Trinidad and Tobago and the sites of such wrecks from interference by unauthorized persons and for related purposes, be now read a second time.

The purpose of this Bill is essentially to lay proper claim to historical wrecks, to secure the protection of these wrecks and the sites of such abandoned vessels from interference by unauthorized persons, and also to prohibit the approach of unauthorized persons to dangerous and abandoned vessels. This legislation pertains specifically, however, to wrecks discovered in the territorial waters of Trinidad and Tobago.

Let me now refer to the Bill itself and specifically to the interpretation section to inform this Senate that an "abandoned wreck" in this particular piece of legislation:

> "means any wreck which has remained continuously upon the sea-bed within the limits of the waters of Trinidad and Tobago for a period of fifty years or more;"

The need for this legislation arose after the discovery of two cannon and other archaeological artifacts in 1991 when excavation works were ongoing for the deep water harbour in Scarborough. The finds tend to support historical records which indicate that several ships of European flags foundered and were sunk in the coastal waters off Trinidad and Tobago in past centuries. Many battles were fought around the waters of Tobago and a Spanish fleet, Appadocca's fleet, was burnt in Chaguaramas Bay. Such wrecks are of archaeological and aesthetic significance to Trinidad and Tobago, and the world in general. They are also of primary economic significance to us because of the value of the artifacts that may reside in them.

The question of the two cannon which were found in the Scarborough Harbour during construction activities and the control of their unlawful removal was referred to the Minister of Works and Transport in January, 1992 by the Ministry of Agriculture, Land and Marine Resources under the recommendation of the Tobago House of Assembly. The cannon have since been identified as being of French origin and estimated at a value in excess of $2 million.

4.40 p.m.

The ministry was requested to take steps under the provision of the Marine Preservation and Enhancement Act, Chap. 37:02 to designate the Scarborough Harbour a protected site for the promotion of scientific study and research. However, such provisions proved to be inadequate, since that Act—the Marine Preservation and Enhancement Act—was not specifically enacted to deal with matters of this nature. A dispute arose regarding the ownership of the vessels and the artifacts and it was found impossible to protect the sites of the wrecks in the Scarborough Harbour from unauthorized interference under existing legislation. It was therefore felt that legislation was necessary to preserve the right of property in such wrecks and protect the legitimate interest of the people of Trinidad and Tobago.

The Ministry of Works and Transport is of the view that the legislation before this Senate will effectively address the issue of naval archaeological wrecks, and the administration of the property in abandoned wrecks, so as to protect and secure our national interest. It is also felt that, given the nature of some of these abandoned vessels, legislation should also include provisions to address the approach of persons to dangerous or unsafe wrecks.

There is legislation in place in many countries around the world to address similar matters, and the Maritime Services Division of the ministry examined legislation from the Bahamas and the United Kingdom in order to prepare this Bill before the Senate. These countries have a long history of archaeological expeditions and investigations into historical wrecks and have taken steps to protect and preserve these wrecks for the benefit of their citizens.

Of specific concern were claims from a number of persons to the wrecks in the Scarborough Harbour, as I have mentioned, and the extent of the grey areas surrounding the right of several or joint parties following the discovery of these wrecks in the Scarborough Harbour. In addition, the question of the safety of

divers and other persons involved in investigations or expeditions was considered to be of paramount importance.

The Bill—I would summarize now—essentially seeks to achieve the following:

(1) To protect wreck sites and historical wrecks from indiscriminate and unauthorized access, and from destruction, theft and loss.

(2) To protect divers and other persons from dangers posed to them in wrecks of this nature which are often of a highly hazardous nature because of their very old age and the fragility of the material.

It was also necessary to institute a legal regime to properly establish the bona fides of any claims to property of the wrecks, and any relics that may be found in them. It was also thought very important to vest the ownership and property of historical relics in the people of Trinidad and Tobago; and to preserve these artifacts for the enjoyment of our citizens.

If I may go briefly to the Bill itself, the interpretation of "abandoned wreck" is in clause 2. In clause 3, there is a definition, and provisions relating to an Order which the Minister will make, designating an area around a site that is thought to be of historical significance, a restricted area. Clause 3(2) and (3), give further details on the mechanics and provisions of this Order. Clause 4 deals with consultation with experts and other interested parties such as persons who may very well claim ownership of the artifacts.

Clause 5 refers to a licence which the Minister may grant to persons who may wish to excavate or carry out archaeological expeditions in areas where they believe there is, or they have found, an abandoned wreck. Clause 6 deals with the question of danger to life and property. Clause 8 deals with revocation of an Order if the Minister is of the view that a person is not undertaking the excavations in accordance with the licence or has committed some other infringement. Clause 9 deals with emergency matters—if someone comes upon a wreck not through his own fault, he is not liable to prosecution. Clauses 10 and 11 deal with the offences and the penalties.

Mr. President, before I take my seat, may I say—

Sen. W. Mark: Mr. President, can I seek some clarification before the Minister takes his seat? Could the Minister indicate to this Senate how many wrecks are there in the territorial waters of Trinidad and Tobago? How many people have been interfering with these wrecks, and, where they are from?

Hon. C. Imbert: Mr. President, I was about to give some information relating to that before I was interrupted. There is substantial preliminary evidence that the seabed off the coastal waters of Trinidad and Tobago became the repository of numerous sinkings and shipwrecks over the years since the islands were first sighted by European flags.

We have actual evidence of five 17th-Century vessels in the Scarborough Harbour and there are other areas in Trinidad and Tobago where it is suspected that there are wrecks of archaeological significance. With regard to precise details, I am not in a position to give precise numbers, but it is widely believed that around the east coast of Trinidad, for example, there are a number of shipwrecks of archaeological significance.

Sen. Daly: Mr. President, before the Minister takes his seat, could he just tell me who is going to be policing this? Is there a permanent coast guard presence in Tobago? What sea-going resources are available today with respect to the policing of the Scarborough Harbour?

Hon. C. Imbert: Mr. President, I cannot specifically answer that, but I would expect that the various arms of the defence force, such as the coast guard, together with regulatory agencies such as the Maritime Services Division of my Ministry and other related organizations would assist in the policing of the matters the Senator has raised.

I beg to move.

Question proposed.

Sen. Muntaz Hosein: Mr. President, I am very pleased that this Government has seen the need to bring legislation of this kind to this honourable Senate today. It is a bit late, but I always say, better late than never.

It is unfortunate though, that this Bill is not part of a planned strategy to deal with the benefits of historical wrecks. This Government seems to have no vision as to how to make this Bill work, or how to develop our country. Therefore, dealing with wrecks without a planned strategy is barbaric.

We have identified five wrecks around the Scarborough Harbour under silt in shallow water and there may be many more around the waters of Tobago. Three cannon, and not two as the Minister indicated, and various other small artifacts were taken from the wrecks, which indicate that the ships were from the era of the 1600s and are of French origin.

4.50 p.m.

It must be noted that nowhere in the world can you find French ships from that period. That is a significant factor in this whole exercise. So, you can understand the historical significance and the potential for a world heritage site in Tobago. Already the looting has started. There is a suitcase trade operating in articles from the wrecks which are being sold to a museum in Florida. That is a serious matter. I am disappointed that the Minister either does not have the information, or has paid scant courtesy to it.

Those wrecks in the Scarborough Harbour, in particular, are of significance to Trinidad and Tobago. The price of $2 million for one of the cannon may very well be understated. I have a picture of the cannon in question. It is a very beautiful bronze cannon. It is something that you cannot find in any part of the world today. Therefore, I question the $2 million price on it. That cannon is perhaps, priceless.

I also have a drawing from the French Embassy which gives an idea of the kind of ships we are talking about. The wrecks identified are from a battle for Tobago between the French and the Dutch in 1677. When the first cannon was retrieved, the French ambassador to Trinidad and Tobago laid claim to the cannon. These wrecks have been lying in the Scarborough Harbour for over 300 years and the French had all the information about them. They gave us information with regard to the captain and the crew, even these pictures. It is puzzling to me that this Government which had all that information, never sought to get those ships that are sunk there. It is only when the cannon was retrieved by accident that they are now laying claim to it, and to the wrecks.

We have another problem: How to preserve the items from the wrecks. There is no conservation laboratory, which is important if we are to conserve these items that are retrieved from the sea.

At present these items sit in water in a bin in a warehouse in Scarborough, under guard, I am told. But, judging from the way we guard things in this country, I am wondering to what extent and how long that is going to stay under guard. I understand only yesterday there was a fashion show and a statue fell off and it was carted away; a very important statue of Lord Harris, a historical statue. That was in full view of the citizens of Trinidad and Tobago, and we are having difficulty to protect that statue.

I wonder whether there are proper mechanisms in place to protect those that come up from the sea and which are priceless. When these objects come from

under the sea, be they cannon or other artifacts, or even pieces of wood from the ships, oxidization takes place and they deteriorate and rot very quickly. We are going to look like perfect barbarians if we do not have a conservation laboratory in order to preserve what comes from the seabed. I was hoping that the Minister would have included in his contribution on the Bill, that he was putting in place such a laboratory.

It brings me to the point of our National Museum and Art Gallery. What role would the National Museum and Art Gallery play in all of this? A National Museum Bill should have been brought to this Senate a long time ago. I am advised that it has been sitting in the Attorney General's Office for the last six years. Imagine, it has gone through two attorneys general and has not been brought to this Senate yet!

The way this Government treats the National Museum, it would appear to me that it is the foster child of this Government. Every country—and there are many of them that do not have the kind of riches under the sea that we have in Trinidad and Tobago—has a proper national museum and art gallery running smoothly. If one takes the pains to examine our National Museum and Art Gallery one will see that it is short of staff, short in a big way.

During the time of the other regime, on the advice of the Organization and Management Division of the Ministry of Finance, the following positions were created for the National Museum and Art Gallery: a museum registrar, building and security manager, research assistant and curatorial assistant. These individuals were employed on contract by the Chief Personnel Officer. They received training abroad and were enjoying their jobs. However, in June 1992, which heralded the return of this PNM regime, the contract expired, and these people were not rehired up to this date.

5.00 p.m.

How could the Government be thinking of retrieving such treasures from the sea, then pay lip service to the body that should be looking after our national treasures? The Government seems hell-bent on starving the National Museum and Art Gallery of funds and staff. It has received no funds in 1994 for its recurrent budget. How can it do its work? There seems to be some spite directed at the National Museum and Art Gallery.

Today, some senior staff members have to pay out of their pockets for recurrent expenditure to run the National Museum. This is the scenario with the

body that ought to be looking at these things. The Minister comes before us and brings an important Bill and says nothing about how he is going to deal with these national treasures that come up. The National Museum and Art Gallery Board was able to get non-governmental organizations to give an undertaking to the tune of $15 million for a carnival museum. This Government has been unable to harness the funds and energies from this important body to put it to work for the good of the country.

I ask the question: How is it going to deal with these treasures that are brought up from the sea? Are they going to be brought up from the sea and left to rot and we become the laughing stock of the entire world? Or is it that the Government has a plan but it does not intend to share the plan with this Chamber?

I am very disappointed. Of the bad lot of ministers we have on that side, this particular minister has gained a reputation of being fairly good.

Mr. Imbert: What! I thought he was going to say the worst.

Sen. M. Hosein: When he comes here and gives us a wishy washy kind of Bill and he does not tell us how he is going to deal with it, he has disappointed me. Although he has a reputation for acting on what I tell him, perhaps a year and a half later, he still acts on it. I am very happy for that. I hope that he would listen attentively and take my advice and act on this matter; otherwise we would lose badly in this whole exercise.

I ask him again to tell this Senate in his winding up if he intends to lobby the Minister of Planning and Development and the Minister of Finance to release funds to the National Museum and Art Gallery, and if he is going to renew the contracts of those people so that they can run their business in a smooth and proper manner, so that they can look after these national treasures that would be coming up from the sea.

That brings me to the question of the National Trust Act. On December 1, 1991, Parliament passed the National Trust Act. To this date it has not been proclaimed. In short, this Act sets up a national body to locate and preserve buildings and sites of national importance, so one sees how important the National Trust Act is to Trinidad and Tobago. Therefore, I ask the Minister if he can indicate to this House whether the National Trust Act would see the light of day, and how soon.

I go now to clause 3(1) which states:

"If the Minister is satisfied with respect to any site in Trinidad and Tobago waters that—

(a) it is, or may prove to be, the site of a vessel lying wrecked on or in the seabed; and

(b) on account of the historical, archaeological or artistic importance of the vessel, or of any objects contained or formerly contained in it which may be lying on the seabed in or near the abandoned wreck, the site ought to be protected from unauthorized interference,

he may by Order designate an area round the site as a restricted area."

I ask: What of the protection of wrecks sunk more recently? This Bill talks about wrecks 50 years and older. If a week from now a ship carrying nuclear waste or nuclear warheads sinks, perhaps in a storm, what would happen then? Why are we not protecting the citizens from hazardous waste or any such thing?

There is another Act called The Shipping Act No. 24 of 1987, which does not properly cover the subject. It talks about a Receiver of Wrecks, whose job it would be to secure the wrecks and cargo of those wrecks. What happens if a ship sinks and the owner is not interested in getting it back out, especially if the cargo is hazardous waste? They may not be prepared to move that at all. What are we going to do as a government? Are we going to leave it at the bottom of the sea? This is a very serious matter on which I think the Government should exercise its intellect to find an answer. Perhaps the Minister can give some attention to that and tell us what he is prepared to do.

Let me now go to clause 4(1). I say from the outset that we are not in agreement with this clause and we intend to move an amendment at a later stage. Clause 4(1) states:

"Where an abandoned wreck is discovered the Minister shall, within one month of the discovery, cause to be published a notice of the fact at least twice in one daily newspaper of general circulation of Trinidad and Tobago."

Mr. Imbert: I thank the Senator for giving way.

Just for his information and the information of hon. Senators, the Caribbean Sea has been declared a nuclear free area. It is unlikely that any ship carrying

nuclear waste would be anywhere near our territorial waters. There are also laws relating to salvage which cover the matters which were raised.

5.10 p.m.

Sen. M. Hosein: I was only giving one example.

Sen. Rooks: We were diving on those ships in Trinidad waters between 30 and 40 years ago. As a matter of fact, some of the artifacts found was given to the Victoria Museum, and most of the ships, particularly the ones off Gasparee Island, had clay bottles of wine with wooden stoppers. I can show somebody where there are 11 ships around Trinidad of which nine were identified.

Sen. M. Hosein: You see, Mr. President, I was merely giving an illustration of what could possibly happen. Although the Caribbean Sea is a nuclear-free zone, you will recall recently that there was a big hullabaloo about a ship heading this way carrying nuclear waste. I do not think we have so much control. If there is a storm or a hurricane, a ship carrying nuclear waste could find itself in the wrong direction. We have to look at all these possibilities. We must take cognizance of that and our laws must provide for it.

Let me read clause 4(2) and (3)

> "(2) Any person having a legitimate claim to any abandoned wreck referred to in subsection (1) must establish his claim to the wreck within three months of a notice being published.
>
> (3) Where, within three months of the latest publication of a notice under subsection (1), there has been no claim to an abandoned wreck in respect of which the notice was published, the property in the wreck vests in the State."

We on this side of the Senate do not believe that we should allow people who have abandoned wrecks for 50 years and more to claim ownership now. Therefore, we will be moving an amendment that all abandoned wrecks should revert immediately to the state. I do not think that we should give up our national treasures.

Let us take the ships which were lost in the battle of 1677. For the French Government to come now to tell us that they are laying claim to the artifacts contained in those ships and to the ships themselves, is to my mind, wrong. They were aware that they were there; they abandoned them and now that we are

digging them up they are laying claim to them. Our laws should not provide for that at all. If you have abandoned your wreck, that should be end of the story.

These artifacts that come from these wrecks are of significant value to the history of Trinidad and Tobago and under no circumstances should we give them up. That is our national heritage and treasure and nobody should be able to claim it.

Sen. Robinson-Regis: But that is what the Bill is for.

Sen. M. Hosein: If it is the Government's intention, this Bill is not spelling it out and it needs amending. We are at variance with this clause in the Bill.

Let me now turn my attention to clause 5. Let me read it.

"(1) A licence granted by the Minister, shall be in writing and—

(a) the Minister shall in respect of a restricted area grant licences only to persons who appear to him either—

(i) to be competent, and properly equipped, to carry out salvage operations in a manner appropriate to the historical, archaeological or artistic importance of any abandoned wreck which may be lying in the area and of any objects contained or formerly contained in the wreck."

I want to draw the attention of the Minister to the question of competence to carry out diving and salvaging operations. Diving and salvaging of normal wrecks is a different cup of tea to diving and salvaging artifacts of national treasure. That kind of diver is of a special type. I am saying this because I think that, perhaps, the Minister may not be aware of this. The kind of divers who dive for these treasures are archaeologists, not the run-of-the-mill divers. In Trinidad and Tobago, as far as I know, we have no archaelogical divers. *[Interruption]* Sen. Rooks is aware that there is one. I am happy to hear that.

I am saying this because these people opposite are people who are hell-bent on breaking up the country. They are plunderers and, I do not wish to see them plunder the national treasure of Trinidad and Tobago. The words here are "salvage operations" and that scares me—although it says "in a manner appropriate." When the Minister comes here and does not tell us how he is going to deal with the artifacts that come from under the sea, he frightens me. Therefore, I am worried that if he does not understand the difference, he will send ordinary divers down

there and they will mash up the whole thing. There is a big difference. This is a job for the University of the West Indies. That should be the authority to deal with the research and manage the operation of getting these things out. This is not an ordinary job. It is not for sledgehammers. I hope that they will take note of what I am saying with regard to that.

Let us now go to clause 6. I will read this for your benefit.

"(1) If the Minister is satisfied with respect to a vessel lying wrecked in Trinidad and Tobago waters that—

(a) because of anything contained in it, the vessel is in a condition which makes it a potential danger to life or property; and

(b) on that account it ought to be protected from unauthorized interference."

When I read this, my antennae went up. Here we are talking about potential danger and protection for life and property, and I recall only recently, May of last year to be exact, that there was a village at Demerara Road, where the people came down with lead poisoning.

5.20 p.m.

Do you know, Mr. President, up to today that area is not protected, the people still live there and they are still suffering from lead poisoning, and this Government has not been able to protect those citizens from that?

Sen. A. Mark: Mr. President—

Mr. President: Are you on a point of order?

Sen. A. Mark: I am on a point of order, Sir.

Mr. President: Sen. Hosein, you will have to give way.

Sen. M. Hosein: Well, he should just say so, Mr. President, I thought he was just stretching his legs.

Sen. A. Mark: Mr. President, I think that Sen. Muntaz Hosein is being totally irrelevant. We are dealing here with the Protection of Wrecks Bill and I have difficulty in seeing what link this has with what happened on Demerara Road. I ask for your ruling on this point, Sir.

Mr. President: Point of order is taken.

Sen. M. Hosein: Yes, Mr. President, thank you very much.

Clause 11 of the Bill says:-

> "A person guilty of an offence under section 3(3), 5(2) or 6(3) is liable on summary conviction to a fine of five thousand dollars and to imprisonment for three months."

We are talking about bringing up millions of dollars worth of artifacts from the sea, and do you hear the fine? The fine is $5,000, and imprisonment three months. I do not believe that that is going to be a deterrent to the kind of piracy that goes on now. *[Interruption]* Sometimes, Mr. President, when there is a wreck and the tide goes in and out it makes a noise; that is the only noise that a wreck could make because it is a dead thing at the bottom of the sea.

I am suggesting to this Government, that the fine should be $100,000, and imprisonment five years. One has to make the fine and the imprisonment strong enough to deter people from getting involved, because what is being taken up is significant, and the price is very high. Some of these artifacts are priceless, I do not think that some of the people who are stealing them understand the value. *[Interruption]*

Hon. Senator: He likes licks too bad.

Sen. M. Hosein: You like that subject. Therefore, we have a few suggestions to make to the Government and they are as follows:

(1) Set up an institute for the preservation of material heritage at the University of the West Indies to do the research and manage the salvage operation.

(2) Give the necessary funding and staff to the National Museum and Art Gallery and to vest all material historical archaeological of artistic value to this body for preservation for future generations.

(3) To undertake aesthetics and a face-lift on the Scarborough Harbour and its surrounding areas, and to restore all buildings in Scarborough of historical value.

(4) To set up, in the long run, a world heritage site in Tobago.

We believe, that if the Government is able to follow our suggestion, they would then be able to come to this Senate, and say with some conviction, that

there will be a tourism boom in Tobago. That is the only time that this Government could really lay claim to some kind of tourism boom. Nowhere in the world could be found ships and artifacts of this nature of that time in history. Therefore, if we are able to restore and beautify that area we would be surprised at the number of tourists who would come to Tobago only to visit that museum and the area which we have set aside for that purpose.

The time has come for this Government to stop believing that it has all the answers; it should consider what others have to say, examine it and in it, will be found fruits that will help Trinidad and Tobago. The present regime should protect the population from the wreck of the PNM ship that sank in 1986.

I thank you.

Sen. Daly: Mr. President, before the Senator sits, does he have the amendments available for us?

Sen. M. Hosein: I have the amendments here. I can have copies made and distributed.

ADJOURNMENT

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, I beg to move that the Senate do now adjourn to Tuesday, July 12, 1994 at 1.30 p.m. when we shall continue the debate on the Protection of Wrecks Bill. Senate do now adjourn to Tuesday, July 12, 1994 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.28 p.m.