SENATE

Tuesday, November 1, 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, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in him by paragraph (b) of section 40 (2) of the Constitution of the Republic of Trinidad and Tobago has appointed Mrs. Kamla Persad-Bissessar a Senator with effect from November 1, 1994.

I have also been advised that His Excellency the President has appointed Dr. Eric Baldwin Anderson St. Cyr to be a temporary Senator with effect from October 31, 1994 and continuing during the absence from Trinidad and Tobago of Sen. Prof. John Spence.

OATH OF ALLEGIANCE

Senators Kamla Persad Bissessar and Dr. Eric Baldwin St. Cyr took and subscribed the Oath of Allegiance as required by law:

PAPERS LAID

1. Twenty-seventh report of the Salaries Review Commission of the Republic of Trinidad and Tobago. [*The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith)]*

2. Report on the operations of the Road Improvement Fund Programme being undertaken by the Ministry of Works and Transport for the period January 1 to June 30, 1994. *(Sen. Dr. The Hon. L. Saith)*

SUPREME COURT OF JUDICATURE (AMDT.) BILL

Bill to amend the Supreme Court of Judicature Act, Chap. 4:01. [*The Minister of Planning and Development*]; read the first time.

Motion made, That the next stage of the Bill be taken at a later stage of the proceedings. [*Sen. Dr. L. Saith*]

Question put and agreed to.

CENTRAL BANK (AMDT.) BILL

[Second Day]

Order read for resuming adjourned debate on question [October 25, 1994]:

That the bill be now read a second time.

Question again proposed.

Sen. Ainsley Mark: Mr. President, I rise in support of the Central Bank (Amdt.) Bill, 1994.

As the hon. Minister of Finance stated in his introduction of the Bill, the proposed amendments do not change the philosophy or basic principles behind the functions of the Central Bank, but are essentially intended to streamline the functions of the bank. It is essentially a tidying up of the Act and an attempt to bring some provisions of the Act in line with the responsibilities of the Central Bank in 1994 and beyond. I believe the Minister has dealt very comprehensively with the various amendments, but there are perhaps two or three issues that I wish to revisit today.

Before I get into the provisions of the Bill, may I say that we on this side were quite concerned about one of the statements made by both Sen. Wade Mark and Sen. Surendranath Capildeo—that they did not have enough time to understand and assimilate the various provisions of the Bill. Those Gentlemen have always boasted of the tremendous research capabilities that exist within their party. We only hope that those resources are not being diverted from the important work of preparing Senators for their contributions to the Senate, to the internal problems within that party. It would be a tremendous loss, Mr. President, if this were to happen. So I hope that this issue of not having enough time to understand and assimilate the issues and provisions of these amendments would apply only to this Bill.

1.40 p.m.

Sen. Hosein: On a point of order. Mr. President, I believe that the hon. Senator is misleading the Senate. Unless he can show where the Senators concerned boasted about the capabilities of the research staff of the Opposition, then he should withdraw that remark.

Mr. President: When it comes to a question of misleading, there should be tangible proof. If the Senator is not stating what is correct, it is easy for someone on the other side to deal with the matter at a later stage.

Sen. A. Mark: The points I would like to address, first of all, deal with the need for a position of second deputy governor of the Central Bank. Sen. W. Mark said that he was not convinced of the need for a second deputy governor at this point. He even went so far to say that the reasons put forward by the Minister of Finance were airy-fairy, so I shall spend a little time treating with this issue of the need for a second deputy governor of the Central Bank.

There is no doubt that there has been a tremendous increase in the scope of the functions of the Central Bank. Perhaps even more importantly is the pace at which these developments are taking place. What we are seeing in the international financial world underlines the need for greater specialization and greater focus on the operations of commercial banks and other financial institutions. Financial systems and financial instruments are becoming, and have become, more sophisticated. The Minister dealt with one of these instruments—derivatives—and I want to spend some time treating with these.

I refer, first of all, to an article in *Euromoney*, September 1992, entitled "How to Exorcise your Derivatives Demons,":

> "The regulators' main concern is that some firms, unless they improve their controls, are going to take huge hits from derivatives. And the regulators are right. What is more, everyone in the derivatives business knows it.
>
> Rumours of a string of embarrassments at major banks are part of the derivative market's folklore. The rumours talk of losses and re-statements of earnings running to tens of millions of dollars a time, arising from back-office foul-ups, ... trading misjudgments and valuation miscalculations."

The article continues:

> "But what causes concern is that these hits were taken at some of the most advanced firms in the business, including Citibank, Chase, Chemical, Bankers Trust and First Boston. Most happened at a time when derivatives operations were comparatively small. They no longer are."

This was *Euromoney,* September 1992.

Let me now quote from an article in *Times* dated October 10, 1994, entitled, "The Devil's in the Derivatives":

> "Exotic securities spread financial wreckage across the U.S. in the wake of interest-rate hikes."

It continues:

> "Huge companies have taken big beatings. Procter & Gamble lost $157 million playing the derivatives market this year and ousted its corporate treasurer. British pharmaceutical giant Glaxo Holdings lost $115 million. Gibson Greetings in Cincinnati, Ohio, lost more than $20 million and last month sued Bankers Trust, which had sold the derivatives to the card company. ..."

This article continues:

> "Mutual funds have been a particularly fertile ground for unexpected casualties because investors often don't know the full content of the portfolios into which they are buying. Funds run by such firms as PaineWebber, Kidder Peabody and Bank-America have put up more than $500 million this year to bail out investments in derivatives. Just last week Arthur Levitt, chairman of the Securities and Exchange Commission told Congress that an $83 million fund run by Community Asset Management Inc. of Denver had become the first money-market fund to shut down because of derivatives losses."

In Trinidad and Tobago, we are seeing the development of a number of these new mutual funds. I am suggesting that that is just one example of these new financial instruments in the market.

The second point I should like to raise with respect to the need for more specialization and greater expertise within the banks has to do with a fairly new development which we are seeing in a number of central banks overseas, and that is the involvement of central banks as traders in the bond and foreign exchange markets. Let me read another article from *Euromoney,* September 1992, on how central banks play the market, to give some indication of what is happening in other economies.

> "As their financial muscle has increased, so central banks have had to become more sophisticated. Many reserve management desks are now regarded as profit centres and their performance is measured. The present economic climate has accelerated this development. With more governments running sizeable budget deficits, transfers of central bank profits to the finance ministry have assumed greater significance. Consequently, although still largely conservative, central banks are now far more likely to pursue active trading strategies in the bond and FX markets."

What we are saying here is that while the Central Bank's primary mandate is to safeguard the integrity and value of our currency, to maintain the stability of the banking and wider financial systems, and to promote efficiency and competitiveness in our financial markets, we are seeing in a number of areas greater and more sophisticated activity taking place both within the Central Bank itself and the Central Bank as regulator, so there is absolutely a great need for the strengthening of the upper management of the bank.

The second point I would like to address has to do with the inclusion of a new provision to prohibit a person who is a director, controller or manager of a bank or affiliated financial institution from acting or continuing to act as a director, controller or manager, or from being in any way concerned in the management of another bank or affiliated financial institution, unless the bank or the financial institution has first been granted a permit to be a controlling shareholder under section 39 of the Financial Institutions Act, 1993.

1.50 p.m

What are the issues here? One leading banker has already spoken out against this provision, on the grounds that certain institutions would be denied the expertise and the experience of bankers from other institutions. While there may be some merit in that argument, we believe that a few points also need to be made.

Firstly, it is not an outright, across the board prohibition, but a permit would be required from the Central Bank, which would first of all be informed, and would ensure that everything is in order, with reference to the other bank being a controlling shareholder.

There are, however, some other issues which need to be addressed. In making this point, let me first of all quote from the Bank of England's *Statement of Principles* with respect to the Banking Act 1987. On page 13 section 2.52, it says on the question of shareholder and indirect controllers:

> "First, it considers what influence the person has or is likely to have on the conduct of the affairs of the institution".

It continues:

> "The Bank also has regard in this context to whether there could be conflicts of interest arising from the influence of the shareholder on the authorised institution—this could, in particular, arise from too close an association with another company, the business or affairs of which could have a bearing on the institution's position.

It continues in section 2.53:

> "Second, it considers whether the financial position, reputation or conduct of the parent controller or shareholder controller or prospective controller has damaged or is likely to damage the authorised institution through 'contagion' which undermines confidence in it. For example, if the holding company, or a major shareholder, or a company connected to that shareholder were to suffer financial problems it could lead to a run on the authorised institution, difficulties in obtaining deposits and other funds, or difficulties in raising new equity from other shareholders or potential shareholders. The risk of contagion is not confined to financial weakness: publicity about illegal or unethical conduct by the holding company or another member of the group or a company connected to the institution in some other way may also damage confidence in the authorized institution."

That is what the Bank of England says about controllers. If we refer to *Regulation L, Management Official Interlocks* issued by the Board of Governors of the Federal Reserve System, section 212.3—General Prohibitions states:

> "(a) *Community:* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if—
>
> (1) both are depository institutions and each has an office in the same community;
>
> (2) offices of depository institution affiliates of both are located in the same community; or
>
> (3) one is a depository institution that has an office in the same community as a depository institution affiliate of the other."

The provision that we are addressing in the amendment—we are not casting aspersions on any person who might be sitting on the board of one bank, or more, or other financial institutions, but simply since the stability and integrity of the banking and wider financial system is one of the top priorities of the Central Bank, then the law must contain provisions which would reduce the risk of conflicts of interest, insider abuse, and contagion.

The last point I want to deal with, the provision where, with effect from December 31, 1979, the provisions of the Money Lenders Act do not apply to licensees. Mr. President, would you believe that we have the absurd situation

where some debtors have sought to avoid the payment of their debts through the use of the defence that the financial institutions have not complied with the Money Lenders Act Chap. 84:04? These debtors are not arguing that they never received the loans; they are not arguing that they did not receive these loans in good faith from the lenders; but they are attempting to use an obvious loophole to create what can only be described as an absurdity.

We do not believe that it is the intent of the framers or the arbiters of our laws to create absurdities. While I am as reluctant, as most people are, to pass laws with retroactive effect, if ever there was a situation to warrant retroactivity, this is it. It is my view, Sir, that it is patently absurd to take people’s savings—because that is what one gets from the banks, the banks do not have any money, it is people's savings that they use—use them, and then say one does not have to repay because of some loophole in the law.

I know that the Minister will deal with this in greater length, but I think it is important that I spend a little time dealing with certain provisions of clause 20 which generated so much discussion and debate. I want to repeat that primary mandate of the Central Bank. Firstly, to safeguard the integrity and the value of the currency. Secondly, to maintain the stability of the banking and wider financial system and the integrity of our payment systems. Thirdly, to promote the efficiency and competitiveness of our financial markets.

2.00 p.m.

Mr. President, if any functions are essential to peace, harmony and the enjoyment of life in Trinidad and Tobago, I would respectfully submit that the employees of the institution who have those responsibilities are—I think it was Sen. Diana Mahabir-Wyatt who made the point that certain other provisions seemed to be giving the impression that what we were dealing with here was some sort of quasi-military institution, but that, in fact, it was simply a financial institution, a relationship between the management and the employees of a financial institution.

But when we go back to the mandate of that bank—safeguarding the integrity and the value of the currency; maintaining the stability of the banking and wider financial systems; promoting the efficiency and competitiveness of our financial markets; I think not only are they essential, they are obviously workers, but they are a very special category of workers who must of necessity be treated specially, not differently.

Sen. W. Mark: Mr. President, on a point of clairification. Could Sen. Ainsley Mark indicate to this Parliament whether the mandate of the Central Bank differs in Barbados or Jamaica from what we have here in Trinidad and Tobago? Why are the Central Bank workers in Barbados and in Jamaica not treated specially? What is the basis or rationale for those workers having a union of their choice, as opposed to workers in Trinidad and Tobago, when they have the same mandate as he is speaking of?

Sen. A. Mark: Mr. President, I am not in a position to respond to that question; I do not know what are the mandates of the Central Banks of Barbados and Jamaica. All that I am saying is that the employees of a very important institution in this society, an institution which is charged with the responsibility of safeguarding the integrity, the value of our currency, maintaining the stability of our financial system, and maintaining the stability of our banking system, are special employees who have to be treated specially.

Mr. President, I thought it was necessary for me to make these few brief comments to emphasize and solidify some of the issues that were raised. I am in support of these amendments As I said earlier, as the Minister said last week, the proposed amendments do not change the philosophy, nor the basic principles behind the functioning of the Central Bank, but are necessary to tidy up the Act, to bring the Act in line with the responsibilities of a central bank in 1994 and beyond, and I hope that all Senators support this legislation.

I thank you.

Sen. Rev. Daniel Teelucksingh: Mr. President, one of the clauses which attracted my attention in this Central Bank (Amdt.) Bill, 1994 is clause 4(b) which reads:

> "Neither the Bank, a director, an officer nor an employee of the Bank is liable in damages for anything done or omitted in the discharge or purported discharge of the functions of the Bank ... unless it is shown that the act or omission was in bad faith."

As a layman, I consider it reasonable to question this very liberal immunity provided for servants of the bank. One would certainly ask: What may be the time frame? Or what machinery is there to determine whether an officer's action was done in bad faith? What provisions do we have for redress in the event that someone is involved, to use the Minister's term, "in some mischief"?

The public has not forgotten the collapse within the recent past of certain financial institutions; a very sad story of mischief which has left a disaster trail.

The years are passing, and for those who have suffered financial losses, hope for justice is also passing. It is our own horror story of how deadly executive immunity can be. Since we are aware of the possibility that certain directors and top executives may have known, and may have successfully and cleverly manipulated escape mechanisms to avoid liability for their mischief, who then would not be worried when a bank's personnel, even those of the Central Bank, are shielded with such peculiar and almost absolute immunity?

My concern brings to focus another clause, clause 45, providing for a code of ethics. This provision is certainly commendable; however, experience has shown that whenever there is a Code of Ethics, implementation and enforcement is easier where junior persons are concerned. It seems to be a way of life among us.

But I ask, and I am interested in knowing: What instruments will there be for monitoring the activity of the governor and deputy governors and others on the board of directors of the Central Bank?

I unreservedly endorse the warning by other Senators since the last day we met, that the matter of accountability and responsibility on the part of the directorate of the bank should not be taken for granted, neither be sacrificed on the altar of autonomy.

2.10 p.m.

The Bill makes no secret of the almost absolute autonomy given to the principal players in the nation's premier financial institution which supervises all other financial bodies in our land. For example, Mr. President, look at the almost unlimited, unbridled powers given to the Governor of the Central Bank in clause 37:

"In the event of a natural disaster, internal disorder or a financial crisis..."

I think the granting of such unqualified powers to the Bank's Governor and the vagueness of what I will call "the disaster clause" may itself be a prescription for further disaster.

If I support this Bill, it is with the reservation that Government, in subsequent legislation, shall address the question of accountability and responsibility. I believe that the weak link between the Parliament and the Central Bank is severely and perilously limited, and gives merely the semblance of supervision to

an institution whose monolithic features are being fashioned to make it a law unto itself.

I want to conclude, but before I do, permit me to raise, again, a matter equally significant to these various concerns regarding our financial system and the need for increased trust and confidence in the banking sector. At present, for several members of the public, confidence in the sector is still haunted by some measure of uneasiness, suspicion and weakened faith. One facet within the system which we must address in building confidence is the much-needed provision that we have been calling for, for the longest while—additional protection of public savings, either by raising the ceiling of deposit insurance beyond $50,000 or devising some similar mechanism to give immediate protection to people's savings entrusted to any financial institution for safekeeping.

I thank you, Mr. President.

Sen. Kamla Persad-Bissessar: Mr. President, with your leave I take this opportunity to thank Senators for the wonderful welcome and good wishes I received when I came into the Chamber. I thank you very much.

I trust that the commitment of this Senate to the democratic traditions of our nation, and the commitment of Senators on this side who envisage a better society for us all in Trinidad and Tobago, would continue to pave the way for constructive and productive debate. In that light, as this Senate is well aware, the role of those who sit in this Senate and in the other place, is the making of laws for order, peace and good government.

That power is given to Parliament under section 53 of the Constitution, and as my Friend on the other side, Sen. Ainsley Mark, has said, the Central Bank's mandate is to safeguard the integrity and value of the currency; to maintain stability of the banking and other financial institutions; promoting efficiency and competitiveness of our financial markets, and therefore Parliament can bring laws and enact legislation for peace, order and good government with respect to the Central Bank.

This side has no quarrel with that, but that same Constitution which empowers Parliament to make laws for order, peace and good government also emphasizes that it must do so only—it expressly says—when it complies with the provisions of that very Constitution. It is on this aspect that the concerns of Senators on this side have been expressed, and I join in expressing my concern, especially, with

various parts of clause 19, "Part IA—Personnel", of the Central Bank (Amdt.) Bill before this Senate.

It is clear that any legislation that comes to this Senate, if it is to be approved by all of us, must comply with the provisions of the Constitution; and to do so it must not infringe any rights that are entrenched and enshrined in the Constitution. If we look at "Part IA" of the Bill, namely, section 20H of clause 19, which is the one I should like to spend a little time on, it is my respectful view that this clause infringes the rights enshrined in section 4(j) of our Constitution.

As Sen. Wade Mark would have said, section 4(j) gives us the right to freedom of association. This right is highly prized in our democracy. It is an essential right in any democratic society and it is not simply the right to say that one can form an association. That is not what that right entails. The law has been developed to interpret what is meant by "freedom of association." What it implies is not only the right to form an association, but also the right not to belong to an association; the right to set up parallel associations, rival associations and to join those. This is what the right of freedom of association means.

So that, an argument which says that section 20H does not take away the right of the bank employees to belong to an association because it is saying you may form two associations, you have the right to form an association, that in itself is not enough because if we look at it carefully, in effect, what it is saying is that if you join any other association, your right becomes barren and meaningless. Why? Because you will not be recognized; you will not be met and treated with, as any bargaining unit should. And in that sense, section 20H seeks to restrict the right of freedom of association.

Is it that this Parliament cannot restrict or infringe rights? Again, the Constitution provides the answer for us. It can do so, but it must follow, procedurally and substantively, what the Constitution says. Procedurally, if we look at it, exception legislation, that is, legislation which seeks to infringe, abrogate, or restrict your rights, must fall within one of the categories which the Constitution provides. Section 6 of the Constitution refers to "existing law." The amendments are not, with respect, existing law. We can also infringe if we have "emergency provisions," and again, we are not in that situation.

Therefore, we would fall, really, within section 13 of the Constitution which deals with exception legislation, inconsistent with sections 4 or 5. The section is

very clear. With your leave, Mr. President, if I may read what section 13 says with respect to legislation that is inconsistent with sections 4 and 5. Section 13 basically says:

> "(1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5..."

I have seen the amendments by my Friend, Sen. Wade Mark. If we look at this Bill there is no expressed declaration such as proposed in the amendments from this side that this Act is inconsistent. So, procedurally, the Bill is defective, in my respectful view.

Secondly, the Bill, according to section 13(2) of the Constitution, must be passed by both Houses and supported by the votes of not less than three-fifths of the Members of the House. It needs that special three-fifths majority.

Thirdly, and perhaps most importantly, as contained in section 13(1)—these are merely procedural points which we must "expressly declare" inconsistent and we must get the three-fifths majority. But in substance, an Act that is "inconsistent with sections 4 and 5" must be—it is there in 13(1)—"unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual." So even if the hurdle of the procedural points are got over, the substantive point will still be whether the whole of section 20 is reasonably justifiable in a society like ours, which has a proper respect for the rights and freedoms of the individual.

Now, the point has arisen that these bank employees are special workers; they are to be treated specially, and in the little fracas that took place a moment ago, the point was made: Are not national security workers special? Do they not deal with exceedingly sensitive matters that go to the root of our security? Are they treated specially? Is it that this section is taking bank employees completely out of the purview, and out of the enjoyment of the benefits of Part III of the Industrial Relations Act? Why? I have yet, in the little time I have been here and from what I have read, to see that that is reasonably justifiable. The argument that this is sensitive, that this is essential, falls by the wayside when we consider that national security personnel are not given this, so called, special treatment.

2.20 p.m.

Further, as Sen. Wade Mark has said before, there are other central bank employees in the Commonwealth Caribbean. Are they not special? In Trinidad

and Tobago we say we are the elite of Caribbean society. How is it then that their central bank employees are not treated in this special way, and we are saying we must give our Central Bank employees special treatment, when that special treatment means infringing their rights? How can this be reasonably justifiable?

I submit that in its present form, both procedurally and in substance, this Bill will not meet with the approval of this side of the House, unless the amendments, as proposed, are made; unless we can find a way in which the substance would be such that it would not preclude bank employees from enjoying the benefits of Part III of the Industrial Relations Act.

Finally, in my maiden attempt here today, I should like to say that we must remember, be ever mindful that the Constitution is the supreme law of the land. It is not the Parliament. The Parliament is the supreme court, but it is the Constitution that is supreme. If we fail to comply with its provisions we would be tearing the very fabric of the society that we are attempting to enact legislation for; for peace, order and good government.

In that light, I thank you and may I take this opportunity to say, "Happy Divali" to all Senators.

The Minister of Finance (Hon. Wendell Mottley): Mr. President, before seeking to reply to the specifics, I should again reiterate that the Central Bank has a broad policy function to carry out, and that the underlying purposes for the Central Bank continue today, as they did originally when the first Bill was passed in this Parliament. Those functions continue to be that the bank acts as policy-maker and adviser to the Government; it conducts monetary policy; it is a banker to the commercial banks; it is a regulator and supervisor of the financial system; it promotes the development of the capital market and money markets and it is also a research institution.

Therefore, we should review the bank's operations in the context of continuity, albeit that in this modern world, especially with the very sharp and quick movements of capital flows, the role of the bank has taken on a different complexity in recent years.

We, on this side, have heard some very strong contributions from the other side. I disagree with Sen. Persad-Bissessar—and incidentally, let me congratulate her on her maiden speech before this Senate and commend her on her very articulate presentation—that there is any matter of a special majority required for this Bill, although some of the tangential matters might have caused her to raise

that particular matter. We, on this side, are under no compunction because of special majority requirements, but we nevertheless feel that there has been merit in some of the arguments raised on the other side, both from the Independent and Opposition benches. In the course of my winding up, I propose, especially on the personnel matters, to indicate areas of agreement and to propose amendments which will be circulated

Setting aside for the moment the personnel matters raised on the other side, let me deal with some of the more economic matters raised. They question what is the building fund. The building fund was set up by the Central Bank at the time that the towers were constructed. One of the towers, the Finance Ministry, in fact, is uninsured, as is the tradition with the Government, and therefore the Central Bank, which, in a way, owns both towers, sets aside a reserve to deal with these contingencies.

The other matters raised concerned, in particular, the capitalization of the Central Bank. The way the legislation is written here, it does give the capacity to the bank to accelerate that capitalization. In fact, I know that it is the Governor's intention so to do. So that the figures stated here, in a sense, can be accelerated and I give the honourable Senate the assurance that it is the Governor's intention so to do. Once the profitability is there, that will be the direction the bank is taking.

Again, in the way the legislation is written, it is contemplated that the bank must not be a losing institution. As to how strongly its profit potential is, is a matter that will vary with time and circumstances. Clearly, the bank has been profitable, although there has been some need over the course of the last several years for the bank to be involved in the restructuring of some financial institutions in difficulties, which will have impact on the ultimate profitability of the Central Bank. But it is not contemplated, from what we see before us, that there will be any stage at which the Central Bank will be in a loss situation, although its degree of profitability will oscillate from year to year, and this factor of support will be a draining factor on what otherwise might have been an extremely profitable situation for the Bank.

The question of section 46 and the limit on borrowings by the Central Government is a very germane matter and has excited the interest of this Parliament, in both Chambers, over several years. I believe that 15 per cent should not be varied upwards. That is my view as Minister of Finance. It is all too easy to

vary upwards and then make it easier for a central government to borrow money in circumstances wherein the sterilization of the effect of that government borrowing is difficult. I think, always, as a responsible Parliament, we should have that in focus and we should attempt to limit, for all times, the easy ability of Ministers of Finance to access the Central Bank for money which has consequences for the rest of the society.

In difficult circumstances, in unforeseen circumstances, the volatility of events in the international arena may cause problems for any fiscal management and one wants to have some insulation from that, otherwise the direct transfer to ordinary citizens might take the effect of massive layoffs, and so forth, as the Government attempts, too narrowly, to manage within too tight constraints, its fiscal situation. Therefore, one wants some flexibility, and to understand the past difficulties of adjustment which have caused that 15 per cent to be exceeded.

Having said all of that, I am still of the view that we ought not to vary it and that the pressure ought to be on the Executive to try to bring those borrowings back down within the limits, and especially as the economy looks forward to better times, to use those better times so to do. Therefore, we are not seeking to vary that 15 per cent.

2.30 p.m.

The other matter of a more general policy nature is this continuous tension between ministries of finance and the independence of the Central Bank. As I pointed out, there is a spectrum overseas: The Bundesbank in Germany is extremely independent; the Bank of England, compared with the Bundesbank, less so. We strive for somewhere in-between, and we are trying to set up the Central Bank here as an institution in Trinidad and Tobago that has a measure of independence and which has, over time, to win the support and acclaim of the financial community and the population at large.

I think the Central Bank ought to be congratulated. It has assumed a stature in our society. It has not always been without controversy, but generally, I think the Central Bank has achieved its ends and is a well-respected institution in this society, and we ought to be gradually giving it more and more independence as time moves on. For that purpose, having heard the debate, we on this side have no difficulty, for instance, in removing the Minister of Finance altogether from the question of salaries.

I signal that it is going to be a growing problem in the management of the whole public service where more and more it is not that Government has to do

less; it is that the role of government has changed and the regulatory, guiding and policy framework of the Government is no less important—in fact, it is even more important now—for the well-being of this nation, and to guide these several functions of government.

And whether in the central public service, statutory boards or in agencies like the Central Bank, one will need nothing short of absolutely the best talent in the future, talent that must be won away and competed against the private sector. This talent must be won and brought back from well-qualified nationals abroad who are earning US dollars. I signal that to attract that talent, win it and hold it in these crucial sectors in the public service is going to be a great problem of this country in the future.

At the same time, one has a public service that has a very broad base and there is the element of transferability of wages, and one has to watch it lest it cause inflationary tendencies to develop. Without that well-paid talent situated in our premier institutions in the wider public service, bearing in mind the mission that the country now has to face to interlock into the global world, we are going to be in much trouble unless we find a way of solving that problem. I would readily concede that power and pass it on entirely to the board of the bank.

The fact though is that in our system the Central Bank does report indirectly, through the Minister of Finance, to this Parliament. As is clearly indicated, the Central Bank's annual reports and so forth are tabled in this Parliament, and through that, the Parliament does have the capacity to ask questions and have questions related to the Central Bank generally answered or even discussed and debated in this Parliament.

I would now move on to answer some specific matters raised on the other side, especially by Senators Mahabir-Wyatt, Wade Mark and Martin Daly.

Specifically, with respect to section 49, the board is required to keep the Minister of Finance informed of the monetary and banking policy, and it is through this device that, ultimately, comes the report to Parliament on the workings of the Central Bank. The Minister of Finance is responsible to Parliament and, as I said, not only the annual economic review which is prepared by the Central Bank, but the annual report of the Central Bank is also tabled here.

With regard to section 4 (3), Sen. Daly felt that we were over protecting the servants of the Central Bank, in that we ought to extend the immunity so as to exclude reckless actions on the part of the Central Bank. I understand the drift of

Sen. Daly's arguments; however, it is the advice, based on experiences in court and so forth, that we would be exposing ourselves to the very dangers that we fear in introducing this amendment. It is possible that all forms of nebulous and spurious claims of recklessness can be introduced because of the very difficulty in defining the term "reckless."

If Sen. Daly is prepared to give us a tighter wording that would serve his purpose, we might be prepared to look at it again, but we have this concern for fear of not introducing much of the very actions that we are seeking to guard against under this umbrella.

The rationale for the two deputies, as I pointed out—Senators raised this on the other side: the complexity of the bank's operations and the need for specialist assistance and guidance. We have been strengthening the top staff of the Central Bank; and for reasons that I have just described in terms of the management of these very important sections of the public service, we believe that the provision of two deputies is not extravagant, bearing in mind that several other jurisdictions have up to five deputies for the same reasons that have driven them there. If one looks at American corporations, for instance, it is not unusual to find four, five or six vice-presidents operating.

As I have indicated earlier, I am prepared to deal with this question of relaxation of salaries from the Minister's control. I will point out, however, in answer to a specific matter raised in this Senate, that the Salaries Review Commission wrote to the Governor of the Central Bank stating:

> "63. With regard to the offices of Governor and Deputy Governor of the Central Bank, we observe that no post within our purview is similar or really comparable to these offices, in respect of functions and responsibilities. The structure of the Central Bank provides for a Board of Directors and the approval of the competent Minister is also required for the payment of a salary above a stated figure. The Central Bank controls and regulates the commercial banks and other non-bank financial institutions and in fixing the salary of these specific posts, the salary levels of the top managers of the commercial banks can form a useful and relevant benchmark."

The Salaries Review Commission really excused itself from fixing these particular salaries. Therefore, if this Senate agrees, this would now be a matter entirely for the board of the Central Bank.

Sen. W. Mark: Can the Minister indicate from what report he quoted? Is it 1994?

Hon. W. Mottley: I do not have the report, I just have an extract here. I think it is 1993.

2.40 p.m.

The proposal for removing the pension scheme at section 17 does not remove the requirement for the pension scheme entirely, but seeks to give flexibility to the Central Bank to provide deferred income schemes in addition to the existing pension schemes. The bank, in fact, is considering enhancing the pension benefits to such an additional scheme.

Sen. Wade Mark initiated personnel matters which found echo and agreement from other Senators. First of all, let me say in defence of the Central Bank that the Employees Association which was set up only in June of this year did receive a draft Bill—not in its present form—over three months ago. What they were complaining about was the amended draft Bill that came back out of the Legislative Review Committee of Cabinet, which is the ultimate review arm before it comes through to being tabled in Parliament, and that they received late, but, in the scheme of things, so did you. It was not in any way an intended offence.

They got this draft three months ago which is substantially the same and then it went through the process and came through the Legislative Review Committee. There were a few amendments made by the Legislative Review Committee and those amendments were then sent to the Staff Association before being tabled in Parliament.

Sen. Mahabir-Wyatt: Mr. President, I wonder if the Minister would comment on the code of ethics. The statement was that the code of ethics was what they had received late, not the Bill itself.

Hon. W. Mottley: Mr. President, the Government has no problem with the code of ethics for employees being discussed with the Employees Association, none whatsoever. However, there is to be a code of ethics for the directors and that would not be the subject of discussion with the Employees Association.

Now that the Senator understands how the Bill was transmitted to the employees, perhaps, I could go on to some of the more specific matters.

With regard to "Part IA" of clause 19, we are in agreement with the following: the deletion of section 20H; the Certification and Recognition Board of the Ministry of Labour being the recognizing authority and, therefore, in this Bill the "Minister of Labour" should read in place of the "Minister of Finance" as the person to whom personnel matters should be referred.

We also agree that a procedure be introduced for conciliatory talks before disputes are referred to a special tribunal; also to the suggested changes by Sen. Daly in respect of section 20B(1) of paragraphs (d), (e) and (f) subject to one change, mainly the deletion of the words "or non-employment" in paragraph (f). We are also in agreement with the replacement of "the Registrar General," in section 20I(2), by "the Recognition Board of the Ministry of Labour". All of these will be circulated in due course. They are being prepared, Mr. President.

With regard to the reserve fund of the bank, we do not agree with the deletion of the proposed section 35(8). The Central Bank wants to be assured that losses are met; and the provision is out of an abundance of caution to have some protection rather than leave the bank exposed in the event of such losses.

Section 44D. We are not in agreement with the amendment proposed by Sen. Daly. That amendment proposes that section 44A should read the same as section 44A II, that is: "The Bank, after consultation with the Minister,..."

With regard to some of the matters raised by Sen. Daly, and also referred to by Sen. Wade Mark, the question of what constitutes a grievance; and there is a two-tiered interpretation of a grievance that sort of implies that if a man is fired he is no longer an employee, and, therefore, he cannot have a grievance. That is a kind of devious interpretation. We agree with the arguments tabled and we agree with Sen. Daly's tabled amendments in (f) subject to the deletion of '(non-employment).' You will see that as our amendments are tabled.

Mr. President, I hope that these amendments will be tabled so we can have them considered during the committee stage; I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Hon. W. Mottley: Mr. President, in view of what I just said, I beg to move that the committee stage of this Bill be deferred to a later stage of the proceedings so as to allow us to have the amendments circulated and considered by Members of the Senate.

Question put and agreed to.

2.50 p.m.

SUPREME COURT OF JUDICATURE (AMDT.) BILL

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. President, I beg to move,

That a bill to amend the Supreme Court of Judicature Act, Chap. 4:01 be now read a second time.

Mr. President, as you and Members of the Senate are aware, for some time now the Government has been reviewing the procedures relating to the legal and judicial system. That review has, among other things, centred around the operations of the courts themselves, and in particular on two major issues. They are the question of the establishment of new court systems, specifically additional jurisdictions other than those established by the Act which are Port of Spain, San Fernando and Scarborough.

We have also considered and have been considering actively the establishment of specialized courts such as the proposed drug court. More recently, however, it has become apparent that there is the need to review the procedures relating to the sittings of the court in respect of matters where emergency situations may arise or where increased security considerations ought to be taken into account.

In respect of the establishment of courts outside the established centres, in view of the increase in litigation and the pressure put on the established courts, the Government is considering the establishment of a court to serve the eastern portion of Trinidad and Tobago. In fact we have now received full details involving considerations of cost with respect to establishing such a court to be sited at Arima.

With respect to the proposed drug court, again, having regard to the increase of these types of offences, the Government has been giving active consideration to establishing a specialized court to expedite the hearing of matters arising out of the drug trade.

As I said, more recently consideration has had to be given to provisions relating to special sittings of the High Court. I refer specifically to the relevant sections of the Supreme Court of Judicature Act which relate to the sittings of the Supreme Court and to the power and jurisdiction of its judges.

Section 73 which is not being amended but which is relevant, deals with the power of judges of the High Court and notes that their jurisdiction applies to any place in Trinidad and Tobago and allows them to sit and act for the transaction of any part of the business of the High Court.

Section 74 (1) states:

> "Sittings of the High Court for the trial of civil and criminal cases shall be held at Port of Spain, San Fernando, and Scarborough at such times as the Chief Justice with the concurrence of a Judge of the High Court shall appoint."

The geographical boundaries of Port of Spain, San Fernando and Scarborough are well established. The effect of section 74 is to limit what one may call the regular sittings of the High Court to those areas only.

Section 75 deals with special criminal sittings. It states:

> "The President may at any time, by warrant under his hand and seal, require the Judges of the High Court to appoint special sittings, to be held at such time or times as may be directed by the warrant, for the trial of any particular criminal case or cases or class of criminal cases; and the Judges shall appoint and hold sittings accordingly and, in order to comply with the exigencies of the warrant, shall lay aside all other business."

If one analyses those two latter sections carefully, one would see that in terms of what one may call its regular sittings, the court is confined to three areas only. In approaching the task of determining whether the eastern division, for example, should be established, one would note that an amendment to that section would be necessary having regard to its restrictive terms. Further, if one were to look at section 75, insofar as special sittings are concerned, again, that section is restricted, in that whilst the President may fix such time or times, he is not entitled by virtue of that section to fix alternative places.

What we have done is to introduce a simple amendment to both those sections to provide for the operation of the Judiciary that the Chief Justice may in respect of its regular sittings under section 74, designate such other places in Trinidad and Tobago, as venues for the sittings of the High Court. That provision is in clause 3 of the Bill which is before hon. Senators.

Section 74 (2) is also amended consequentially to provide for the gazetting of such designated places.

Clause 4 of the Bill provides for the amendment to section 75, that in addition to fixing the time of such special sittings, the President in his warrant may designate the place for the hearing of such matters, as he may designate. That amendment, quite simply, as stated in clause 4, says that the warrant may state such place or places as the President may direct.

[HON. K. SOBION]

In respect of section 75, you note that the marginal note describes it as special sittings. Essentially the President would have the authority in his discretion to determine whether the circumstances are such as to warrant the holding of a special sitting. One of the considerations which clearly come to mind is the circumstances where there would be the need for security arrangements to ensure that the smooth operation of the courts is not disrupted.

If one looks at the present venue in Port of Spain, the Hall of Justice—situated obliquely across the road from this place—has a complement of regular staff in excess of 260 persons.

3.00 p.m.

The persons who therefore use that court on a daily basis make up a significant number and they include the judges of the Supreme Court, the masters of the Court, the registrars and other court officials, and its clerical staff. In addition, on an average, over 500 members of the public on any given day use the precincts of the Hall of Justice.

Another factor one may want to consider is that over the last two years the operations of the courts at the Hall of Justice have been disrupted on at least 20 occasions because of bomb threats received during regular sittings. It is in these situations that we consider it necessary to provide a machinery whereby, in order to deal with special sittings, the power of the President be increased so as to provide some flexibility in permitting him to designate a place, other than the regular place of sitting, where the circumstances so warrant it. The rationale quite simply, therefore, for this amendment is to provide flexibility for those who manage the judicial arm of the state in regulating their affairs.

I should like to assure Senators that these amendments will simply provide the kind of flexibility which we consider necessary, having regard to all the circumstances, particularly questions of safety and security. What must be underlined, however, is that nowhere arising out of these amendments is there any effect on the due process provisions of our Constitution and our laws and there is no possibility that the constitutional or other rights of any individual will be affected. It is quite simply, Mr. President, an amendment which we feel can only serve to improve the due administration of justice.

In the circumstances, I beg to move.

Question proposed.

Sen. Surendranath Capildeo: Mr. President, the one dramatic, almost poignant, sensation which arises from this Bill is that our little country has aged so rapidly. We have become old without the exuberance and vitality of youth and the sweet gentility of maturity. Our nation has had no time to relax or to set its house in order. We live in chaotic times and our house is in shambles and this Bill is a clear indication of the shambles.

We are reacting to events over which we have no apparent control. All of us, collectively, and as the law would say, jointly and/or severally, have failed to prepare this country for the man-made disasters which have afflicted us, which are afflicting us and will afflict us in days to come. That failure is reflected in this Bill

What we are about to do is well within our law. In fact, in England, from where we have to take direction whether we like it or not, Caribbean Court of Appeal or not, the law states quite clearly:

> "The places at which the Crown Court sits and the days and times when it sits at any place, are determined by directions given by or on behalf of the Lord Chancellor."

We interpret that as an argument for the office of the Lord Chancellor.

I want to emphasize one aspect of the law which has been enunciated by the Law Lords of the Privy Council, an aspect which occurs time and again in English jurisprudence. The question, Sir, of the administering of justice in public which has found its way into our unique Constitution and I refer here to section 5(2)(f)(ii):

> "... a fair and public hearing by an independent and impartial tribunal."

I should like to quote Viscount Haldane, an English Law Lord in the Privy Council. This is what he says, and I am on the point of the administration of justice in a fair public hearing. I emphasize "public hearing" and I will develop the point later on.

> "While the broad principle is that the Courts of this country must, as between parties, administer justice in public, this principle is subject to apparent exceptions, ... But the exceptions are themselves the outcome of a yet more fundamental principle that the chief object of Courts of justice must be to secure that justice is done. ... As the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end, must accordingly yield."

3.10 p.m

The case to which I refer is a 1913 case of Scott v. Scott. In that case, another Law Lord, the Earl of Halsbury says:

> "I am of opinion that every Court of justice is open to every subject of the King".

We can interpret that to mean in Trinidad and Tobago that every court of justice is open, and should be open to every citizen of this republic. He goes on to explain the historical antecedent, Sir, which is interesting. He says:

> "I believe this has been the rule, at all events, for some centuries, but, as I will attempt to shew presently, it has been the unquestioned rule since 1857, unquestioned by anything that I can recognize as an authority."

This is the Earl of Halsbury, himself an authority. It continues:

> "My Lords, if this were merely an antiquarian investigation I might point to the treatise of Mr. Emlyn in 1730, as a preface to the second edition of the State Trials, in six volumes folio. 'In other countries,' Mr. Emlyn says (at p. iv.),' 'the Courts of justice are held in secret; with us publicly and in open view.'"

I repeat: "'In other countries,' Mr. Emlyn says (at p. iv.), 'the Courts of justice are held in secret; with us publicly and in open view."'

He is speaking of criminal trials.

In the same case I quote from Earl Loreburn:

> "I cannot think that the High Court has an unqualified power in its discretion to hear civil proceedings with closed doors. The inveterate rule is that justice shall be administered in open Court."

He goes on:

> "Again, the Court may be closed or cleared if such a precaution is necessary for the administration of justice. Tumult or disorder, or the just apprehension of it,..."

This is what the Learned Attorney General was speaking about;

> "would certainly justify the exclusion of all from whom such interruption is expected, and, if discrimination is impracticable, the exclusion of the public in general."

Mr. President, we are on sound ground. He continues:

> "And though the traditional law, that English justice must be administered openly in the face of all men, is an almost priceless inheritance,..."

I make bold to say, Sir, that in this country, it is not only priceless, it is the sine qua non of all of us in this country, because what we are watching here today, is the development of a style of life in which we can point out and say, "There goes a potential Raoul Cedras". We are seeing it happening in front of us. *[Interruption]* I dealt with the hon. Senator in the last debate, I cannot take him on always. If the Senator is in love with Ramesh Lawrence Maharaj, he should go and see him privately. *[Laughter]*

Mr. President, I want to read what I have to say now, because notwithstanding the trivia that come from trivial minds of inconsequential people over there; because they are the illegitimate heirs of the legitimate PNM—Madam, what do you say? You should be on the Front Bench. I want to read into the record so that history would understand where the UNC stood on this Bill. Far too often it is said that we are obstructionists, that we oppose for opposition sake, but here is a demonstration where we are given 24-hour notice, and we say because we understand the seriousness of the nature, we will come here and debate immediately. It was well within my right to say I cannot contribute to this Bill because I have not had time to study it.

I think it is essential that the authorities must bear in mind—I want to repeat this slowly because there are thick heads on that side. I think it is essential that the authorities bear in mind that for the protection of our fragile democracy, everything must be done to ensure that there is an open door to impartial justice in this country.

There must never be any secrecy where justice is concerned. The nation must be informed, at all times, about what is happening to the legal system, and why it is happening. It may appear insulting to some, but I believe that at every opportunity guidelines must be set out in our laws. You see, Sir, we cannot afford to rely on custom and convention. That is not working with us. An analysis of matters of serious constitutional nature would show that we are very weak in that area.

In constitutional matters an analysis will show that we still need to rely on the laws of the United States of America, on the laws of India, and on the judicial interpretation of the Privy Council. We still need that. Whether we like it or not,

that is a fact of life. The point I am raising here is that we need guidelines to help us.

Let me read the law as it would be, if it were amended.

> "Sittings of the High Court for the trial of civil and criminal cases shall be held at Port-of-Spain, San Fernando, and Scarborough and any other place in Trinidad and Tobago, designated by the Chief Justice, at such times as the Chief Justice with the concurrence of a judge of the High Court shall appoint."

[Interruption] As if it were amended.

Let us take the scenario, which is not impossible—and which does not come out of a Selvon or a Naipaulian novel, but which may yet one day come out—that a place is selected where a trial shall take place, and the security is such, that one must pass through four or five check points to get to that place—this is Trinidad and Tobago, Sir—and the family of the accused, who would be the first to want to get to that place of trial, would have to go through those four or five check points, and it takes them half an hour at each check point, what happens by the time they arrive at the trial? It is over.

We need assurances, we need guidelines, that this blanket opportunity given to the Chief Justice and one judge, would never be used in a manner in which our citizens would one day be subjected to persecution of any kind in the manner as I have just explained; and we have all been through it.

3.20 p.m.

Anywhere you meet officialdom—it has happened in the courts here, it happens at Piarco, it could happen right here—you could spend an hour trying to get upstairs here, say if you are coming in a certain way as it was in 1990, but it is not the question as the hon. Leader of the House is saying. We want assurances that it will never take place; we want the guidelines, we want it set out because customs and conventions do not work in this country; we have to spell it out, and spell it out in such a manner that if it is not followed we can go for a judicial review.

The courts are the last bastion, and if the courts can be used and if there is any way and any means, any little chink in the armour where a court can be used to be turned against the citizen, we of the United National Congress will oppose that. So I give the Attorney General fair warning about that. Wherever the places are designated, the times, and the sittings, we want the assurance that there will be

transparency so clear and the opportunity for citizens to attend so apparent that the fears which I have just spelt out will never take place. And these are real fears, because we do not live in isolation, we are seeing it happening all over the world. Although we would like to think that God is a Trinidadian, sometimes God himself must think something else about us.

I want to turn to the siting of the court. If we are to have what seems to be developing now, our own version of Nuremberg trials, then we ought to give careful consideration to the location and building of a maximum security court. Think about it seriously, because we seem to be having these 20-year itches; 1970, 1990—how many bomb threats you said over there? Now we have the celebrated trial which we cannot speak about. We ought to think seriously about building a maximum security court.

Sen. Barrack: Why do they not change the economic policies?

Sen. S. Capildeo: Well, they cannot do it—economic policies—sell out and collect.

Mr. President, I just want to demonstrate that building a court does not "make".

I want to quote from a book called: *Law—A Treasury of Arts and Literature* by Sara Robbins—it is a 1990 volume; The title of this article is headed the "Expanding Union by G. Edward White—'The Working Life of the Marshall Court, 1815—1835.' " It says:

> "When the 1815 term began, the Supreme Court had no courtroom in which to conduct its business.

The Supreme Court was therefore forced to hold court in a room in the Capitol, originally on the first floor, and, after 1810, in the basement. In 1814, the Court lost even these quarters when British troops burned the Capitol, seriously damaging the basement courtroom.

The uninhabitable condition of the courtroom forced the justices to hold court in a nearby private home for the next two years. In 1817 they returned to the Capitol in a room temporarily filled up for their occupation,' and by the 1819 term they were back in their basement courtroom. Even the refurbished courtroom was apparently unimpressive. A newspaper correspondent noted in 1824 that visiting the courtroom was like going down a cellar.' To find the room, '[a] stranger

might traverse the dark avenues of the Capitol for a week [seeking] a room which is hardly capacious enough for a ward justice.'

Inside the courtroom a rail separated the justices from lawyers arguing cases; another rail separated the lawyers from the public. The justices' seats, which consisted of chairs behind individual mahogany desks, were slightly elevated. From that elevation the courtroom sloped down about two or three feet to the chairs and tables for lawyers, then rose again, higher than the justices' area, to enable spectators in chairs, settees, and sofas to observe the proceedings.

Between 1815 and 1835 the Supreme Court sat from the first Monday in February or the second Monday in January..."

The point at issue, Sir:

> "During their brief sessions in Washington, the justices rendered an average of forty majority opinions per year. Although this is less than a third of the 139 opinions the Court averaged between 1970 and 1980, the Marshall Court had less than a fourth of the time the current Court has to consider a case."

We have the situation where the buildings really do not make the court; it is the men who inhabit the buildings who make that court work. And therefore, I would ask the Attorney General to seriously consider the point, that he construct a maximum security court complex with the latest state-of-the-art equipment, a building capable of incorporating all three divisions, because like it or not, the scenario with which we are faced in the criminal world today is the scenario we are going to have to live with for a long time. Because you have not yet convinced this nation that you have the police service in as fit and proper a manner as the nation would like it. In fact, what you have convinced the nation of is that the drug lords are in control, and therefore, we are going to have to live with this scenario, for a long time to come.

Consider the construction of a maximum security court incorporating all three branches, that is to say, the magistracy, the assizes, and an appellate division with supporting staff and facilities, and also consider, and make provision for expansion, if need be into a drug court, into a gun court, into a night court. By doing so, in one blow you would alleviate all suspicion in the mind of the public if for some reason one day a Chief Justice should say, "I think we ought to have a court in Toco; try them up in Toco." I lay open the suggestion to the Government

to put up such a structure in such a manner that it would not go down in history as a structure of infamy and notoriety.

3.30 p.m.

They existed in Russia, in Moscow; they existed in East Berlin; they existed throughout the whole of communist states; they exist in South America, and in Cuba. So that the one danger about that structure is that if we do have such a structure, such an institution shall be so run that it will not be an embodiment of infamy, but it will be regarded as a quasi sacred place—where justice is done and seen to be done.

This country is crying out for some measure of belief and confidence in your administration and, try as we might, we on this side cannot give it to you. You have to do it. You have got a credibility problem with this country as far as the administration of justice is concerned, as far as the control of crime is concerned, and as far as the drug problem is concerned. One of the ways around that is to listen to what we have to say on the question of the siting of such a court. Whilst we may agree, in principle, that the law exists, as it does in England, in general, all cases, both civil and criminal must be heard in open court, but in exceptional cases where the administration of justice would be rendered impracticable by the presence of the public, a court may sit *in camera*. A court may sit *in camera* either throughout the whole or part of the hearing where it is necessary for the public safety, or where the subject matter of the suit would otherwise be destroyed. Subject matter here could be both human or non human.

It is not James Bond I am speaking about, Mr. President, it is not Schwarzenegger. These people have the capacity to remove that Hall of Justice if they so desire. So you must assure this country that if you are going to set up a court in Teteron, that capacity would not be incapacitated down there, because you must assure me—and you cannot yet do it—that the capacity to remove the institution that you want down in Teteron does not exist out there in the drug world. It does! We do not fool ourselves about it. The international drug trade could swallow up the budget of this country ten times over, and one little "chief" lifting one little finger could remove us. You know that and I know that. The country knows it.

So what we of the United National Congress want from you is the assurance that if and when you get—work on it—if you get this right to site the court where you will, for the security of the nation, that you do so with transparency, decency,

honesty and openness. Because if you do not do it, then, I assure you we have no future in this country.

I thank you, Mr. President.

Before I sit, I must follow my lady Senator and as a good Brahman I ought to recite—

"Asato ma sad gamaya

Tamaso ma jyotir gamaya

Myrtyor ma amrittam gamaya"

Sen. Nanga: Could we have a translation?

Sen. S. Capildeo: For the benefit of Mr. Nanga who wants it translated:

"From the unreal lead me to the real,

From darkness lead me to light,

From ignorance lead me to knowledge,

From death lead me to immortality."

It comes from the "*Aitareya Brahmana*" Sir, and the Brahmana is an offshoot of the Vedas, and it is one of the sacred *slokas* of Hinduism. May I say *Shubd Divali*—Divali greetings to one and all, through you, Sir, to this Senate and to the nation.

Thank you.

Sen. Martin Daly: Mr. President, I hope this Bill will receive the unanimous support of this Senate. It is quite obvious, without any special knowledge, or without paying attention to any particular matters that are before the court, that it is not practical to have court sittings confined to Port of Spain, San Fernando, and Scarborough.

The only reason that I am making my support for this Bill in the form of a very brief contribution, is that I do have some concern about special sittings for criminal cases. They are not nearly as dramatic as those which, if I understand his contribution at all, Sen. Capildeo is referring to by going down long flights of steps, and so forth. But, I do have some practical concerns about special sittings that I would like to place on the record and urge the Attorney General to take into account.

The fact is that on the, so far, rare occasions that we have had really major criminal trials in this country we have, generally speaking, to put it colloquially "made an absolute mess" of them. On one occasion we attempted to cram an enormous number of people into what was the magistrate's court across the road in a cage, and that was a disaster, not only because the building was too small, but while I have no problem with the dock being secure—indeed, it is not very secure in the Hall of Justice at all; I think a design mistake was made in our criminal courts—I have a problem with a cage.

So that, if we are having special sittings I do not want to see any cages. We can have secure docks by all means, but I do not want to see cages! If that is what this is about, I would be very disappointed.

We have also made the foolish mistake, for which we very nearly paid in the amnesty case, of attempting to try people in batches when the numbers are large, and I hope that this Government is going to learn from those mistakes.

Last, but by no means least—and this is really why I speak on this laudable measure at all—is we have to ensure that when we have special sittings that we make the appropriate arrangements for the entry of the public and the media into the court house where the court is sitting. You see, however spectacular the case, if it is being held in a normal court building, members of the public and the media know where they must pass; members of the public and the media know where they must sit, and so forth.

But one of the things we made a terrible mess of when we have used buildings not normally appointed for the courts, is on the first few days of the trial when there has nearly always been mass confusion about the entry of the public and the media. I am particularly concerned about the entry of the media and I hope that whenever we have special sittings, whether sooner or later, that proper arrangements will be made for the accommodation of the media.

I do not feel very well disposed towards pleading for the media this afternoon, because in recent times they have been, in my view, demonstrating a degree of supineness which has me somewhat alarmed. But this is not the place to spend a lot of time on that. I just want to say, in passing, that I hope if proper arrangements are made for their seating in these places of special sittings that they will return to the robustness with which I was accustomed to read them in the not too distant past. I hope we will not, for example, in relation to these special sittings have national reports or anything of that kind.

Mr. President, let me explain my concern very succinctly. Wherever we have special sittings the building, subject to the appropriate security measures, must contain all the normal conveniences for the accused—because that is what they are. They are not convicted. I began to be concerned about the media this week, but, again, the less said, the better. The normal facilities must be provided for the accused because that is what they are—they are not convicts. The normal facilities must be provided for the public and for the media; and no matter what the special considerations of security are, those arrangements must be accommodated within the security provisions.

So I hope that, since the Attorney General has moved swiftly on this point in order to meet any possibility that may be encountered very soon, that we can look forward—whenever we have a special sitting, whether this week, this year, whenever we have it—to the normal amenities being afforded to all of these persons who play an important part in a criminal trial.

Thank you very much, Mr. President.

Sen. Carol Merritt: Mr. President, I will be very brief. I just have a few concerns I want to raise with the Attorney General, regardless of the fact that he has stated that it is a simple amendment and the Opposition has already given its undertaking that it will support it.

My main concern is that we need to have additional safeguards constructed and implemented at whatever planned new venues they are going to use for courts, especially when having any highly sensitive criminal cases taking place at specific venues. I would like to draw one example, the Convention Centre in Chaguaramas, which was used previously in 1970 for the mutiny trials; and more recently in 1990 for the trial of the Muslimeens.

3.40 p.m.

What I am saying is that if you are using that for a highly sensitive case, for instance a drug case—I am not referring to any specific one—what surveillance mechanisms do you have in place to prevent the colleagues or relatives of the accused from launching an attack on the specified venue? You have to take into consideration that the Convention Centre is fronted by the Gulf of Paria and backed by the Northern Range. We have a vast expanse of land there that is open season for anyone. So you have to take these things into consideration.

We have to look at security, not only for the witnesses, but also the jurors, the judge, the members of staff—especially when dealing with a sensitive criminal

case—who may be very traumatized. So you have to brief the staff. Are you taking these things into consideration? It is not as simple as you say. You have to take into consideration the human resource aspect, of shifting the staff from their regular base into an unfamiliar area. It is not a joking matter. I hope in this session we shall have fewer jokes and snide remarks. Let us get on with the issues facing the country. I am begging Senators to refrain from making snide remarks in this session and let us be serious. If we have nothing to say, keep quiet.

The reason I am raising these issues concerning security is that the people who are involved in the drug trade in the Western Hemisphere are fully equipped. They have helicopters, fast craft on the high seas, state of the art ammunition and telecommunication equipment. I do not think that the Ministry of National Security has been able to purchase some of this equipment as yet.

So there is need to look into all these areas. These people are not bankrupt of ideas on new strategies in pursuing their aims and objectives. If they want to get somebody out of your custody, they know very well how to do it. All I am asking the Attorney General is to give some assurance, as was stated by my colleague, that he is addressing all the very sensitive areas, where, in shifting from the main courts, like the Hall of Justice, the Supreme Court in San Fernando, and that in Scarborough, you brief the staff and provide proper security, because there is nothing to prevent colleagues of the accused from holding a member of staff hostage.

Thank you, Mr. President.

Sen. Wade Mark: Mr. President, we live in extremely dangerous times. Small countries are very vulnerable, particularly with respect to this powerful and evil drug empire. It has been estimated that the annual value of the international drug trade is close to US $1 trillion. And this is not peanuts. In fact, the total debt of all developing countries combined today is about the value of the total drug trade on an annual basis. So we are dealing with a very powerful and evil empire.

Before us is a Bill in which we are seeking today to arrive at a situation, at least, where the Chief Justice can determine the place where a court could be established to carry out matters of a criminal nature. We are, in fact, going through the three stages of this Bill and they say that we of the UNC, the Opposition, are not accommodating, that we are obstructionists. The fact of the matter is that we have facilitated—not as the Government in the economy, but

because of the importance of the matter that is before this Parliament, we have decided not to challenge it in any fundamental way, or the procedure.

What we want to indicate is that the planning of this Government is extremely sloppy. We cannot justify the haste and the pace that we are forced to engage in today because of the lack of vision of a supine, weak and arrogant Government that is called the PNM.

We would say that in going through the three stages of this process today—as I said, in principle, we recognize the urgency of the matter and therefore we are facilitating the Government in this effort today—but we would like the Government to demonstrate the same alacrity and commitment to other pieces of legislation, particularly as they impact on ordinary people in our country. Why not the same concern and haste to declare the minimum wages law?

Mr. President: Sen. Wade Mark, you are drifting from the Bill.

Sen. W. Mark: Not drifting in that way, Sir, but we are dealing with haste. We would like to get from the hon. Attorney General whether this matter has been properly thought out. We have some reservations about it, but in principle, we are going to support it, with a slight amendment.

Over the last three years this Government has been gradually constructing what I would describe as a terror apparatus. When we pass laws, we do not pass laws for tomorrow; we pass laws for centuries to come. We have laws on the statute books going right back to the 1800s. The Masters and Servants Ordinance is still law in this country, passed some time in the early 19th Century.

3.50 p.m.

Mr. President, this is a Government that we cannot trust. This is a Government that has threatened Members of Parliament with incarceration. This is a Government that has threatened Members of Parliament that special cells have been designed. We do not take these things lightly. Not at all; very seriously.

This Government has been developing a terror apparatus over the last three years. The latest addition to this terror apparatus is something that has been described as the Security Intelligence Agency (SIA). Mr. President, we have become the latest victims of this terror machine, as you know. Therefore, we are not taking chances. We want to ensure that when this Bill becomes law, one month before the election, the UNC's hierarchy is not arrested and a trial held in Toco. *[Interruption]* No, we are seeing this. We take this matter very seriously

because we have seen certain developments in this country over the last six months that make us extremely concerned about the future of our democracy.

Therefore, we should like the hon. Minister to recognize that this is a very critical matter, and we would like to have a slight amendment to clause 3 of this Bill to ensure that the power that is being vested in the Chief Justice of Trinidad and Tobago, particularly after his behaviour at the opening of the law term—

Mr. President: Senator, the conduct of judges cannot be raised in any debate except on a substantive motion.

Sen. W. Mark: I withdraw the statement, Mr. President.

I recommend to the hon. Attorney General that under clause 3 of the Bill, after the words "and any other place in Trinidad and Tobago designated by the Chief Justice", add the following words: "only if security considerations so demand."

We want to ensure that there is justification, and in this instance, the case that is before the court—we cannot get into that, but we want to ensure that the Government do not abuse this particular provision. We know that they are capable of abusing people's rights as they have been abusing workers and ordinary people's rights over the last three years of their rule.

We want to ensure that whilst we, in principle, recognize the importance of the measure before us today, that there is a proviso. *[Interruption]* If we had the necessary time to formulate specific guidelines, we would have done so, but again, because of the haste, our research staff did not have the time. *[Interruption]* It is three stages. Monday and Tuesday we are here and we have to go through first, second and the final stage so we did not have the time. Otherwise we would have been able to deal with some rigid guidelines since custom and convention do not guide us in our deliberations in Trinidad and Tobago in any fundamental way.

There is no doubt in the minds of Senators on this side that the drug menace is extremely dangerous in Trinidad and Tobago today. In the *Sunday Express* there is an article headlined "On the track of US$165 million cocaine shipment." The Republic of Trinidad and Tobago is being linked to that shipment *[Interruption]* No, I am dealing with the question of the dangerous nature of what we are dealing with. This Bill before us is seeking to get the authority to establish a court at Chaguaramas.

Sen. A. Mark: The Bill does not say so.

Sen. W. Mark: We know that that is the objective. We do not have to spell it out. We know what is the purpose of that.

The point I am making is that this question of the drug trade—which we know is really behind this Bill that is before us—we are making no mistake about it. This is a drug matter.

Sen. Daly: Mr. President, on a point of order. Are we not getting perilously close to commenting on matters that may be before the court? I seek your guidance.

Sen. W. Mark: I made no reference to the court, Sir.

Mr. President: I trust the Senator is not trying to make comments that would seek to change the judgment of the courts in any particular case. The Senator generally is straying from the real purpose of the Bill. He is talking about construction of other imaginary things and not dealing with the construction of the courts. He is even anticipating what the court is going to be used for and is developing the matter. Sen. Daly's interruption should serve as a warning to him that he should be careful in what he is saying.

Sen. W. Mark: Thank you, Mr. President. The fact of the matter is that there is an article that deals with Trinidad and Tobago as it relates to a US$165 million cocaine shipment. I was referring to this particular article in the context—

Mr. President: Please indicate the date of the newspaper.

Sen. W. Mark: It is on page 3 of the *Sunday Express* dated October 30, 1994.

We would like to ensure that whatever is done, the security of the people—whether they be witnesses, judges, lawyers or other people who are involved in the administration of justice—is, in fact, assured. We are clear about that. What we want to ensure is that the Government of Trinidad and Tobago—a desperate government; a despotic regime—does not use this particular provision to politically harass opponents of the Government. *[Interruption]* Not only the UNC. We have other forces in Trinidad and Tobago.

4.00 p.m.

Therefore, we should like the hon. Attorney General to insert in this particular amendment these words "to ensure that that matter is not abused by anybody in authority". This is a slight amendment. We could have been more comprehensive, but at this point we do not want to stall the proceedings. The matter is of extreme importance and on that basis we know that the hon. Attorney General is able enough to recognize the importance of our contribution and the amendment and,

therefore, he will give it full support. As Sen. Daly alluded to this earlier, we have unanimous approval of this measure that is now before the Parliament.

Thank you, very much.

Mr. President: Before I call on Sen. Mahadeo, I want to refer Sen. Daly to the specific Standing Order, which is 35(2):

> "Reference shall not be made to any matter on which a judicial decision is pending, in such a way as might, in the opinion of the Chair, prejudice the interests of parties thereto."

I think that is what you are concerned with.

Sen. W. Mark: I made no such reference.

Mr. President: I did not ask your opinion.

Sen. Carol Mahadeo: Mr. President, while looking through clauses 74 and 75 of this Bill, I thought to myself, this is plain sailing. This is rather a belated Bill being brought before the Senate. I had hoped two decades ago that something of this nature would have been presented, it is still heartening to know it is before us now. I do share and endorse all the concerns of Senators who spoke of a maximum security building. In this context I do support Sen. Surendranath Capildeo when he asked the hon. Attorney General: Would these buildings be secure, secure in the context of what we are hoping for?

I have heard suspicions being aired covertly as to the purpose for which this Bill has been introduced. I am concerned whether Chaguaramas, where some 100 persons were tried, is too near to Teteron where soldiers might be encouraged to keep tight security and surveillance on the accused and members of the public who have to be vetted, probed and checked three and four times through security. We go through that all the time at Piarco and the Hall of Justice. It would not be anything extraordinary that we would be going through.

I am really very happy that this Bill has come before us at this time. I want to let the Attorney General know that I do heartily endorse it—if not by way of amendments, but guidelines worked into this proposed Bill, that would assure us that certain measures are going to be taken to make sure that security is tight; and the public will be given the assurance that they can hear the proceedings fairly and squarely. The members of the media are also permitted to be there to give a fair and accurate account of what they see and hear.

If we can get these assurances, then why cannot this Bill be passed through all the stages and allow all these places to be designated by the Chief Justice as high courts for the time being for any special exercise?

My legal friends would support me when I say that at present the conventions are there. Procedurally and in practice the Chief Justice has the power at the magisterial level to deem any police station or schoolhouse or any other building a court for the purposes of emergencies and for special types of matters, criminal matters, particularly.

About seven years ago, the St. Joseph Police Station was deemed a court. One Sunday morning a certain magistrate had to be called in from the district to preside over a matter in which certain persons had to leave the country the very night, and for that purpose it was deemed. It is not something that is incomprehensible or something new that we are introducing at this point. It has been occurring at the magisterial level where the Chief Justice has used his discretion to deem certain buildings, in certain districts where offences may have occurred, a court for the time being.

It is being proposed by the hon. Attorney General that it be made a general thing and passed through Parliament and put into the books, that the Chief Justice would then be able to use his discretion and say, "at this point, I make Arima a high court," and a particular judge be sent to that court to preside over the proceedings. I see no problem with that. I should have thought that we would all be happy with that arrangement, especially with the spate of crime that is escalating in this country, and with people being bumped off.

We must not close our eyes and be like the ostrich and put our heads in the sand. We have to face it. Witnesses are being killed day in and day out. Even as I speak maybe some witness in certain very sensitive matters before the courts may be wiped off. We cannot say we know, and because of such and such an occasion and such and such a thing, that is being proposed, that this Bill is being rushed through.

I am very happy to be part of this discussion and I fully support the Bill, provided we get the assurances that my fellow Senators have voiced. Once those guidelines are so enshrined I heartily give my support to the Bill.

Thank you.

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. President, I thank Senators on the Benches opposite for the signal of support that they have given for this measure. I had hoped not to have had to say anything

today about the concept of the separation of powers, but having regard to some of the observations —and particularly, if I understand Sen. Capildeo correctly—I feel that I should at least say one thing. His concept of guidelines to be established, in my view, would be taking away a discretion which vests in another arm of Government, that is the Judiciary, to make decisions with respect to certain matters which fall within its purview.

This kind of discretion is not something strange, as Sen. Mahadeo observed. I know that Sen. Capildeo is noted for his research, and that he was able to refer to the position in the United Kingdom. I assure him as well that we on this side tend to look, not only at the larger Metropolitan countries, but also at countries which share the same kind of historical experience that we have, and that does include the island state of Tuvalu.

4.10 p.m.

It would be useful to note that in the Jamaican Supreme Court of Judicature Act, Chap 180 section 28 reads as follows:

> "The Chief Justice may from time to time make and when made revoke add to or alter orders appointing the times and places for the holding of circuit courts."

In Barbados, the Supreme Court of Judicature Act, section 11 reads:

> "The High Court shall sit for the trial of criminal matters at such times and places as shall be appointed by the Chief Justice."

It is not only in the United Kingdom that this discretion is vested in the judicial arm of the state.

Other concerns have been expressed on matters which are, to a large extent, outside the ambit of the Act in that—I think it was Sen. Merritt who wanted a blueprint with respect to all security arrangements that have been made in respect of some matter. I think that I can at least say to the Senate that the Government understands the concerns which have been expressed with respect to security and would ensure that within its power, matters relating to the security of witnesses, court officials and the safety and security of accused persons would also be taken into account.

If I also understood Sen. Capildeo correctly, he was labouring under the misapprehension that there was some attempt by this amendment or by acts

[HON. K. SOBION]
to be undertaken because of this amendment, to close the courts to the public and the media. That was expressed—

Sen. Capildeo: On a point of order. May I reassure the Minister that I am under no such apprehension. I was emphasizing that there must be openness and transparency in the courts; the right of the public to attend, and ease with that right.

Hon. K. Sobion: I thank the Senator for his clarification of my misunderstanding of what he said.

In concluding, let me say that when I introduced this measure I did state quite clearly that it was not the intention, and it could not be construed from the amendment, that there was any attempt to interfere with due process, which includes the right to a fair trial in an open court and with a jury selected in the normal way. Except where the judicial arm is of the view—and Sen. Capildeo quoted extensively from the learning in the area—that there is such an apprehension that the whole process of the court may be affected, the persons who are to be tried under whatever provision under the Supreme Court of Judicature Act, are assured of a fair and free trial and that due process will be applied.

In the circumstances, I may say that I have noted Sen. Capildeo's comment about a maximum security court. I am certain that it is a recommendation which we would look at as we go along.

With respect to the proposed amendment by Sen. Wade Mark, this amendment does not only relate to questions of security; there are all kinds of emergencies that may arise. An existing court building in San Fernando may be rendered unavailable because of some natural disaster and a suitable site might not be found except outside San Fernando. It would be extremely difficult for the Government, recognizing that there are other factors, to limit this amendment to matters relating only to security. Security and safety is just one of the factors which have spawned this amendment.

In the circumstances, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee..

Clause 1.

Question proposed, That clause 1 stand part of the Bill.

Mr. Chairman: There is a typographical error. Here The words "of judicature" were omitted between the words “Court” and "(Amendment)" in line 2.

Clause 1 corrected and ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Sen. W. Mark: Mr. Chairman I did indicate an amendment.

Mr. Chairman: I do not have it in writing. The Standing Orders tell you it must be in writing.

Sen. W. Mark: Do you know that I advanced it?

Mr. Chairman: During the debate I heard you say so. You made that mistake once before and I sought to correct you. I thought by now you would have learnt how to do it properly.

Sen. W. Mark: Mr. Chairman when these matters come in late, you have to understand that it puts us in a very funny position.

Mr. Chairman: I do not have a problem. From experience over many years, the Clerk would have serious problems when there are more complicated amendments than these that are just given without being signed. I have known this to happen. Six months after when the confusion starts up in the Supreme Court, the Senator would say that was not the amendment he did. He was misunderstood. We like to have it in writing and signed by the Senator, so that it would be there to support him if he says that is what he said.

There is an amendment proposed to clause 3 by Sen. Wade Mark.

Sen. W. Mark: Paragraph (a): Insert the words "only if security consideration so demands" between the words "Justice" and "and" in the last line.

Question put and negatived.

Clause 3 ordered to stand part of the Bill.

Clause 4

Question proposed, That clause 4 stand part of the Bill.

Mr. Sobion: Mr. Chairman, with respect to clause 4, I suggest that in order to be consistent with the preceding sections 73 and 74, the words "in Trinidad and Tobago" be added after the word "places".

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Question put and agreed to, That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment; read the third time and passed.

4.22 p.m.: *Sitting suspended.*

4.50 p.m.: *Sitting resumed.*

VENTURE CAPITAL BILL

Order for second reading read.

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

> That a Bill to provide for the establishment, regulation and administration of the Venture Capital Industry and for related purposes, be now read a second time.

The purpose of this Bill is to provide for the development of the venture capital industry in Trinidad and Tobago. In the *Medium-term Policy Framework* of the Government, we outlined a course of development that we have been trying to hold to for the resuscitation of the economy of Trinidad and Tobago. The first and essential pillar of that framework was to lay down a macro-economic policy which would be an enabling environment in which a number of things could happen.

Secondly, we looked at more micro elements, an essential part of which is the encouragement of investment through different devices, the opening up of capital markets, the other bits of enabling legislation, some of which we were considering earlier today, for example, the Central Bank (Amdt.) Bill. Among others are the Securities Industries Bill, the Mutual Funds Bill, and in that compendium of bills is this one, the Venture Capital Bill, which seeks to enable investment through a particular device.

Finally, in this panoply of instruments comes the hard promotion to make sure that the investments do in fact take place, through devices such as the Tourism and Industrial Development Company Limited (TIDCO) and the National Gas Company (NGC) going out and actively courting investments in ammonia and so forth.

We wanted this Senate to understand the range of Government policies and how this particular Bill fits into it, so that starting with the enabling environment—making sure that the Government's fiscal and monetary operations were enabling—then legislation and hard promotion, making sure that the investments flow.

Recent studies of Trinidad and Tobago's environment, done by local research and some of it by the Inter-American Development Bank, have identified equity financing as a gap in our enabling environment. The lack of an organized flow of equity capital has been pointed out as a serious gap in our investment portfolio, especially for exports, which is not new for a lot of activity in the non-oil sector and especially for small business.

This is not surprising, in that both culturally and enshrined in law is a bias against equity financing. There is a bias in the first instance in that many of the concessions that we give in the form of taxes and so forth, tend to favour loan investment and then, culturally too, businesses in Trinidad and Tobago in particular tend to overly favour the use of commercial bank financing and especially overdraft financing in instances that would be frowned on in other countries.

The concept of venture capital is an important one, especially for businesses in start-up mode, many of which have difficulties in their first year or two of operations, before they become established. In fact, the highest risk of failure for businesses both small and large is in those first two years of operation. In that mode businesses find it difficult to meet interest payments on time.

The danger of under-capitalized business in equity form is a significant contributor to business failure, because businesses that have to make those interest payments in those first few critical years in excessively leveraged situations are indeed imperilled. Much better would be the situation where the equity investment is higher and venture capitalists, people who have been found to provide that equity investment and to be patient and wait through those years when the infant business is going through its difficulties, can wait on better times in the longer term.

Clearly then, venture capital is long-term in its orientation rather than more short-term. Bank overdraft is the worst of all in terms of its short-term orientation. It is an extremely bad instrument for start-up business financing.

Therefore, two aspects of this feature of venture capital recommend themselves to business start-ups. One is the patient nature—the willingness to forgo the short run and wait on long-term returns; and secondly, evolving out of the business incubator concept, the notion of venture capitalists who have broad business experience and who can counsel the investee company in the short run to avoid some of the most obvious mistakes that small businesses and start-up businesses tend to make, where the entrepreneur may have a brilliant idea but gaps in his business experience. Those two features of the venture capital world are strongly recommended to the Trinidad and Tobago situation.

This is all the more important because investment is especially now required in Trinidad and Tobago in the non-oil sector. The Trinidad and Tobago economy has been growing but that growth has been propelled this year by developments in the oil and gas sectors and especially in the petrochemical sector.

We have been encouraged to see some growth as well in the non-oil sector, and it is in this sector that we need to see a rapid acceleration in growth because it tends to be less capital intensive and more labour intensive, and we want to avoid in Trinidad and Tobago the phenomenon which has been observed worldwide wherein growth has returned to many countries but unemployment has remained stable. Unless we deliberately target for growth, sectors of our economy that are known to have an impact on employment, with the propensity in Trinidad and Tobago to be capital intensive and geared towards oil, gas and petrochemicals, we could find ourselves with very significant and high levels of growth without pushing down significantly the levels of unemployment.

It is for all these kinds of reasons that this Government has been most interested in promoting venture capitalism in Trinidad and Tobago. It is a concept that has found its origins in our manifesto where we identified it clearly as an area that would be necessary. It then found its way into the 1993 Budget, when I made a statement that we would seek to promote venture capital legislation. Following that presentation, in 1993, Mr. Leonard Williams, who is presently the Managing Director and Chairman of First Citizens Bank was asked to come up with draft legislation for presentation to this Senate. You may well ask why the delay between 1993 and now.

5.00 p.m

We did receive that draft legislation, but after looking at it, it became clear to us that this country lacked in-depth venture capital experience and we ought therefore, to get consultants on board from countries that had successfully managed this instrument.

Again, with IDB financing we went out and got consultants' advice. The consultants came from Vancouver, Canada and they consulted widely in Trinidad and Tobago. They brought their highly successful Canadian experience and then consulted widely here. They met with the commercial banks; they met with the credit union movement—the credit union movement was especially involved with these consultations—they met with the non-banks. I am not now in a position to let Sen. W. Mark know whether they met with the trade union movement. *[Interruption]* I was anticipating the Senator. Therefore, Mr. President, after this wide consultation, their findings have been distilled into the Bill before us.

Venture capital companies are formed for the purpose of making equity investments in qualifying investee companies. These companies may be considered as high risk, and therefore, to compensate for that, they usually have a high rate of return. Those rates of return are got in two ways. Firstly, long-term high rates of return to compensate for the risk, and secondly, the possibility of capital appreciation.

Venture capital companies usually make investments for a specified period after which they divest themselves of such investments. This is an especially interesting feature, because it implies that the venture capitalist puts its money in, stays the course, advises, sees the business mature, gets his returns in the meanwhile, and then takes a capital gain and comes out of the investment. He would then take that investment and re-invest it in a bright new business idea.

While investors in venture capital companies are usually financial institutions with surplus funds, it is also true that the experience in the developed countries is that many high net worth individuals—professionals, financiers, doctors, lawyers and so forth—put money into these venture capital companies. So it is not only institutional but individuals' money that goes into these companies which we want to encourage here in Trinidad and Tobago as well.

Permit me to outline some of the more significant features of the Bill. First of all, an administrator is to be appointed by the President to oversee the registration and de-registration of venture capital companies and the issuance of equity capital

by these companies. To approve the grant of qualifying investee companies' status to those companies which satisfy the legal requirements, and to administer the tax incentives are an integral part of this legislation.

With respect to the investee companies, the Bill outlines clearly the areas of operation in which venture capital companies will be prohibited from investing. These include, for example, lending operations, investment outside Trinidad and Tobago and investment in land, except when the land is an integral part of the investment.

Under the provisions of the Bill, a venture capital company must have an initial share capital of at least $50,000, and an authorized share capital of between $5 million and $20 million. The objects of the venture capital companies must be limited by its memorandum and articles of association to assisting the development of business, by making committed investments and providing business and managerial expertise to investee companies.

The Bill also requires that any such investment be held for a minimum of five years and a maximum of 10 years. It is important that that five years be observed. Sometimes there are extraordinary provisions which would allow one to escape under five years, but the idea is to remove any short-term pressure from the investee company.

It must be emphasized that venture capital companies would not be allowed, under normal circumstances, to invest in securities on the secondary market, and their investment in deposits in financial institutions or other short-term securities will be limited to a small percentage of their portfolio.

As I indicated earlier, the attractiveness of the venture capital investment is usually enhanced by the provision of incentives intended to provide a more generous yield to the investor. Through the medium of this Bill, Government is therefore seeking an amendment to the Income Tax Act to provide for tax credits to the original purchaser of the shares in the venture capital companies, computed at the highest marginal rates of tax applicable to individuals in the year of income in which the shares are purchased. It is also contemplated that it is not only individuals, but also institutions.

In addition to short-term capital gains accruing to venture capital companies, all profits accruing to venture capital companies will be tax exempt. Moreover, since the tax credits to the investor are payable at the time the investment is made, Government has sought to safeguard its own exposure and to ensure that the

venture capital company's funds are channelled into the appropriate investments as intended.

Every venture capital company would therefore be required, by law, to establish and maintain an investment protection account at any financial institution licensed under the Financial Institutions Act, 1993. The venture capital company would deposit into this account a percentage of the funds raised for investments to the equivalent of the tax credit provided. Withdrawals from the account would not be permitted without the prior written authorization of the administrator.

In most developed and developing countries which have been successful in obtaining desirable levels of economic growth and development, it has been shown empirically, that the venture capital industry has provided the impetus for such development. We in Trinidad and Tobago could learn much by the experience, not only in the developed world, but also especially in some of the "tigers" in the Far East, who have very successfully used venture capital companies. I will cite two examples in the United States of America as examples of success generated by venture capital companies.

Not too long ago Federal Express was an unknown company name. Federal Express, starting virtually as a garage operation, has within the few years of its establishment grown from zilch to thousands and thousands of employees today, worldwide. They have zeroed in on this concept of not only moving packages of paper from country to country with accelerated customs and so forth, but also of saving manufacturing establishments the need for vast inventories of spare parts and so forth. Because they can draw on the industrial inventory of the United States overnight, in response to an overnight demand of a manufacturer in a remote location.

They have capitalized upon this market niche and with that initial injection of venture capital funding, they have transformed that company into a mega company in a few years. An even more significant example of success of venture capitalism in the United States, is the outstanding success of Apple Computer.

5.10 p.m.

We ask about what might be the prospects for venture capitalism in Trinidad and Tobago where we are going through phenomenal changes; the whole economic environment is being opened up; there are opportunities in downstream steel. Hopefully, we will get our ethylene cracker in when we get our condensate

production up, and that will open up enormous possibilities for investments in plastics.

There is a whole new thrust in tourism, that implies construction of not only hotels, but also service industries to those hotels, whether they be restaurants, tour operators, scuba diving outfits, whatever, you name it, there are vast opportunities.

We also see the whole field of telecommunications rapidly opening up, no longer capable of being monopolized. That will offer huge opportunities in this new economic climate in which we find ourselves today for venture capital to seed bright young Trinidadians and Tobagonians in new investment opportunities. I think the time for this Bill is ripe.

The legislation is highly recommended; it fits very well into our economic quiver of arrows for investment promotion. I will add that an important element of this is the regulations that are still being worked out by my ministry with the assistance of the consultants, and these regulations we hope to bring within a few weeks.

Let me say one thing on the administrator because, again, we do not have the experience here. It is clearly contemplated that we would have to seek an administrator from abroad; whether that administrator be a foreign national, or Trinidadian with experience in this field. Should he be a foreign national, we would immediately recruit someone to understudy him.

But the administrator's job is crucial to give the venture capital concept the stature that it requires, much in the same way as when we introduced originally, the Central Bank Bill, way, way back when. It was necessary to bring someone from abroad and attach the stature of his knowledge and experience to the Central Bank at that stage, and thereafter very, very high calibre Trinidadians assumed the position. So too it is contemplated that we need that experienced, expertise from abroad that would come here and sell the concept of venture capital and its proper regulation and the protection of the investors' funds inside the venture capital company.

That administrator through his stature would give confidence to investors to park their money in venture capital companies with the clear understanding that the whole thing was being regulated and supervised. It would also be the job of that administrator, not on the supply side, but now on the demand side, to promote the concept of venture capitalism and get out there and encourage people with bright ideas; maybe, returning nationals to Trinidad and Tobago who might have

seen something work in New York and, who are coming back here to promote a particular investment and entrepreneurship.

The job of the administrator would be to get out there and encourage these individuals and make them knowledgeable about venture capitalism and encourage them to seek this instrument to fund their businesses.

Sen. W. Mark: Before the Minister takes his seat, Sir, may I refer to the regulations. The first point I would like to raise is whether the regulations are going to be brought to Parliament and whether they are going to be subject to some negative or affirmative resolution.

Hon. W. Mottley: Mr. President, it is contemplated that they certainly will be brought to Parliament and they will be subject to negative resolution.

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

Question proposed.

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, may I seek the leave of the Senate to defer the committee stage of the Central Bank (Amdt.) Bill to the next sitting of the Senate.

Question put and agreed to.

ADJOURNMENT

Sen. Dr. The Hon. L. Saith: Mr. President, I beg tomove that the Senate do now adjourn to Tuesday, November 08, 1994. at 1.30 p.m. *[Hon. L. Saith]*

DIVALI GREETINGS

Mr. President: Before putting the question, I am sure that all Senators would join me in extending greetings to the Hindu community in Trinidad and Tobago and throughout the world, on the occasion of the annual festival of Divali which will be celebrated this Thursday.

It is my fervent hope that the apparent increasing involvement of many of our people in religious festivals other than their own, would serve as the catalyst to bring about the desired unity, harmony and peace among our multi-religious and multi-racial population, which is indeed, a requirement of the God we all serve.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.15 p.m.