SENATE

Tuesday, October 03, 1995

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT in the Chair]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave to Sen. The Hon. Russell Huggins to be absent from today's sitting of the Senate. He is due to attend the CPA Conference in Colombo, Sri Lanka.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I have been advised that His Excellency the President has appointed Mr. Sankar Mahabirsingh to be a temporary Senator with effect from October 3, 1995 and continuing during the absence from Trinidad and Tobago of Sen. Russell Huggins.

OATH OF ALLEGIANCE

Sen. Sankar Mahabirsingh took and subscribed the Oath of Allegiance as required by law.

PAPER LAID

Report of the Auditor General on the accounts and financial statements of the Technical Assistance Loan Project for the year ended December 31, 1994 as required by Loan Contract No. 3153-TR between the Government of the Republic of Trinidad and Tobago and the International Bank for Reconstruction and Development. [*The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith)*]

ARRANGEMENT OF BUSINESS

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, I beg to move that the Senate proceed with item No. 1 under "Government Business—Bills Second Reading" at this time.

Leave granted.

COMPANIES BILL

Order for second reading read.

The Minister of Finance and Minister of Tourism (Hon. Wendell Mottley): Mr. President, I came into the Senate a little late; please do not say that I was waiting on the O. J. Simpson verdict.

Sir, I beg to move,

That a Bill to revise and amend the law relating to companies and to provide for related and consequential matters, be now read a second time.

The Bill before us is perhaps one of the more voluminous and far-reaching and I want to take a little time because there have been some accusations that the Government is pushing this Bill through in haste. I know that the Chamber of Commerce wrote to the Prime Minister on this matter.

The Bill has been in gestation in one form or another since 1989. The last government appointed a broad-based working committee on company legislation for Trinidad and Tobago, to prepare a detailed brief for the drafting of company legislation for Trinidad and Tobago, which is now in its near final form before us today. I propose to deal with a number of amendments right up-front in my discussion of this Bill. Hopefully, with the adoption of those amendments that have come up most recently, this would be the final form.

The working committee was appointed by the Secretary General of the Council of Ministers of the Caribbean Free Trade Association way back in March 1971, and the committee comprised representatives of the Government of Trinidad and Tobago; Barbados; Jamaica; Guyana; St. Lucia; St. Vincent; the Caribbean Development Bank; UWI; and the Caribbean Association of Industry and Commerce.

The harmonization project initiated by Carifta was continued by its successor, Caricom, in accordance with Article 42 of the annex of the Treaty of Chaguaramas whereby member states recognized the desirability to harmonize the law and administration of companies in these territories. The report, among other things, served as an extremely erudite and much treasured comprehensive analysis of West Indian company law at that time, and is still regarded in the region as a very important reference document. The model Bill, which was prepared by M. W. Murnury, a company law draftsman, embodies the first set of recommendations made by that working party.

Cabinet's decision in 1989 to appoint the broad-based working committee was indicative of the Government's support for the harmonization report and was the first major step forward to bringing this legislation before us.

The working committee comprised representatives of the Institute of Chartered Accountants of Trinidad and Tobago; Association of Chartered Secretaries and Administrators of Trinidad and Tobago Manufacturers' Association: the Law Association; Hugh Wooding Law School, Institute of Banking; Trinidad and

Tobago Congress; Employers' Consultative Association of Trinidad and Tobago; Trinidad and Tobago Stock Exchange; the Ministry of Finance and the then Ministry of Industry, Enterprise and Tourism, as well as the Law Commission and the Ministry of Legal Affairs. On that committee was represented then, certain Members of this present Senate who are here today.

In December 1989, the working committee requested that its terms of reference be extended to include the drafting of the Companies Bill and it submitted its final report and the Companies Bill in July 1991. So as far as being a Bill in its present form, this has been around since July 1991.

The Bill was drafted by Dennis Williams, the former Chief Justice of Barbados, and after the general elections in December, 1991, the present Government appointed a committee to review the legislation. We had come to a halt and wanted to make sure that all that had gone on before was now in conformity with this Government's outlook on company law reform. The Bill was before this committee, and there were not very significant amendments to that original Bill of July 1991, and the Companies Bill of 1993 was then brought before this Senate. It went before a joint select committee, and there were a couple of meetings but the Bill lapsed with the expiry of the then session of Parliament.

The Companies Bill 1995 is based on the 1993 Bill and there were some significant amendments between 1993 and 1995. The main amendments were to bring the present Bill in harmony with the securities legislation that was passed yesterday.

1.40 p.m.

The Bill that is before us was then brought before the subcommittee of both Houses of Parliament and, very late, a number of amendments to that Bill have been proposed. Before I get into outlining the terms of the Bill, I think it would assist this Senate considerably if I proceeded to let Members know where the Government stands on the amendments they have proposed.

If I could turn to the amendments proposed by Sen. Diana Mahabir-Wyatt and if Members could get these amendments, it would assist proceedings considerably. After dealing with Sen. Diana Mahabir-Wyatt's, I will then turn to amendments by Sen. Mansoor.

Sen. Mahabir-Wyatt has proposed a clause 65(2)—by inserting the word "or" immediately after the word "company". We do not believe that this is necessary. In clause 160(3), we agree with the amendments by Sen. Mahabir-Wyatt; 320(1),

we disagree; 320(2), we agree. With respect to clause 311(2) we agree with what the Senator is trying to do, but we are advised that it is unnecessary because in clause 14(2) there is a provision for non-profit companies not to be forced to use the word "limited" after the name of the company, and we think that addressed the concern raised by Sen. Mahabir-Wyatt.

Incidentally, there are some other matters that Sen. Mahabir-Wyatt raised with me even more recently—some of them were policy matters—and I hope the Attorney General will be able to assist us when he gets here later.

Many of Sen. Mansoor's concerns are related to the operations of external companies in this environment, and because of the very particular situation of Trinidad and Tobago, especially with offshore companies operating here, service companies related to our main business in the offshore line, we have decided to agree with Sen. Mansoor, in principle, in this matter and therefore to revert to the old position. Therefore, a lot follows from that, in that a string of amendments will put us back into "as you were" on that. Can I ask Sen. Mansoor if he understands what we are saying?

Sen. Mansoor: Yes.

Hon. W. Mottley: We agree with him in that with Trinidad and Tobago's peculiar economic situation it might, perhaps—even though Barbados has gone the other way, we feel that because of our present situation, on further consideration we will agree with Sen. Mansoor in all of these amendments that define the workings of an external company in this environment. So that under clause 4, (a) we will accept; (d) we will stop there and take off the rest, going down to "respect to registration."

Paragraph (c) we will accept, except it is not under section 529 but under section 2.

Sen. Daly: Mr. President, on a point of clarification, are we going to do this again when we get to committee, because suppose there is some point of—I hesitate to use the word rebuttal—some point to be made about what the Minister is proposing, are we going to do this in committee again?

Mr. President: During the debate on the second reading hon. Senators are with the general principles of the Bill, but because of the numerous amendments which are to be raised in committee the Minister, I believe, is trying to let the Senate know what Government's position is, so that Senators will know to

concentrate only on those with which he probably disagrees. When we get into committee we will have to deal with the details of the amendments.

Sen. Daly: Thank you, Sir.

Hon. W. Mottley: Thank you, Mr. President, that was my very purpose—so that hon. Senators do not spend time arguing on points that the Government has already conceded. When the Attorney General gets here, and especially during the committee stage, the details of law, drafting and so forth could be hammered out.

Mr. President: I do not want to interrupt the Minister, but remember yesterday in committee I said that we would approach the Bill clause by clause. I intend doing the same today. The Standing Orders require that amendments must be submitted in writing. We have amendments from Sen. Mansoor and Sen. Diana Mahabir-Wyatt. There are no other amendments. I will not be able to consider anything that is not in writing, in accordance with the Standing Orders. There are 500-odd clauses to deal with. Thank you. Continue.

Hon. W. Mottley: Mr. President, I am coming down on the points raised by Sen. Mansoor with respect to item No. (2), which deals with clause 8—the Government accept. Under (3) which is related to clause 12, we accept in principle, but we have a new draft which we will circulate. Item (4), Sen. Mansoor to note, incidentally is not clause 36 but clause 26; we accept (a) and (b). Item (5) which is a substitute for clause 27, we accept. Item (6) which relates to clauses 57 and 58, we are proposing to delete clause 58(b) of the Bill. *[Interruption]* We accept the rest. Under Item (7) which deals with clause 60, we accept. Item (8) which deals with clause 65, we cannot agree. Item (9) dealing with clauses 89-94, we cannot agree; Item (10), we do not agree. This matter deals with the business of directors having to take into account the employees of the company. We feel that this should be a consideration to which directors should be pointed. It is accepted in both the UK and the Canadian legislation and we propose to follow in that direction and therefore cannot agree to its deletion as proposed under clause 101.

1.50 p.m.

We accept item 12, the jury is still out. I need some further debate with the Attorney General on item 12.

Item 13. We agree. This matter is the very thorny one in which the financial affairs of private companies over a certain size would be made public. Originally, Sen. Mansoor had proposed over $10 million and they would have to provide financial statements and so forth, and a system of reporting. After consideration of

all the concerns and the views of some of the experts in the field, the Government has decided to delete these provisions altogether, that is, that we will not put the onus on these private companies to so report.

Item 14, which deals with clause 159, we accept.

Item 15, which deals with clause 199, we accept.

Item 16, we accept, which deals with clause 200.

Item 17, we are not in agreement.

Items 18 to 23, we accept.

Many of these clauses have to do with this matter of external companies and, therefore, these are follow-up items to that.

Items 24 to 35, we accept.

Item 36, we are not in agreement with.

Item 37, again, I would want to hold on this for a short while.

Item 38 and 39, we accept.

Item 40 refers to when this legislation would come into effect. We are proposing April 1, 1996.

Mr. President: If it is by proclamation, it is usually wise to leave it open.

Hon. W. Mottley: Not earlier than April 1. Would that be helpful?

Mr. President: Usually, legislation comes into effect when it is assented to, from midnight of the day when it was assented to. In other cases it can come into effect on a specific date, like the Appropriation Act every year, January 1, or by proclamation, because certain things have to be put into place. When you put a date you, sort of, put people in a straitjacket, because it might go beyond that date.

Hon. W. Mottley: I think what is operating in the minds of the hon. Senators is, that on further scrutiny, should anything crop up of a crucial nature, we have the time to so scrutinize it and have it amended prior to its coming into operation. The Government, on the other hand, has a lot of administrative things to do, and I agree with your concern about not straitjacketing by stating a specific date by which it is going to come into operation. But we can give Senators the assurance that the Government will not seek to have it operational before April 1.

With these words, perhaps I can therefore go back—

Sen. Daly: Mr. President, before the Minister leaves the amendments, clauses 57 and 58 are very important. Am I to understand, in relation to Item 6, that the redrafted clause 57 is being accepted in full?

Hon. W. Mottley: What is the Senator on?

Sen. Daly: Item 6 of Sen. Mansoor's list which the Minister just went through. He said clause 58(e) was to be deleted, but it was not clear to me what is the fate of clause 57. These two are very important clauses. Maybe the Minister can come back to it, but the only indication I have had is that clause 58(e) of the Bill is to be deleted, but I am not clear what is the fate of clause 57 that appears here.

Hon. W. Mottley: Mr. President, we do not accept the other items except insofar as we would delete clause 58(e) of the Bill. That is all we are prepared to do on that matter.

Sen. Daly: So clause 57 of the Bill stands.

Hon. W. Mottley: Mr. President, if I could continue. This Companies Bill, therefore, has its very honourable genesis and it has been long with us. Basically it is Canadian legislation that has been adapted to West Indian purposes by a very distinguished committee, then overviewed by a very distinguished panel of Trinidad and Tobago citizens and that gave us the 1991 Bill. Then came the 1993 Bill which put it in harmony with Government's policy, and the 1995 Bill which benefited from some of the criticisms that had arisen, but which mainly harmonized it with the Securities Industry Bill.

In the meantime I want to let Senators know that other jurisdictions have not been sleeping. Barbados has long since enacted its legislation, in January 1985; Guyana, even, enacted its legislation this year. A number of other Commonwealth countries, even New Zealand, have taken the Canadian legislation and basically adapted it to their purposes and gone with that legislation.

2.00 p.m.

I give Senators the assurance, firstly, that this Bill has honourable parentage. Secondly, many Caribbean countries have, in fact, stolen a march on us, and, thirdly, we have done much work on this Bill, even here in Trinidad and it does not come—as has been alleged by some parties outside—as something that we are rushing through this Parliament.

The facts are that it is very complex and I can well state that we could remain in subcommittee in this House, sitting once a week for a month of Sundays, and

probably not find every wrinkle and cover everything to the entire satisfaction of all Members of this House.

We believe that the time is now ripe. This Bill has lapsed before, and the Government would like to see this Bill put into operation, again with the safeguard that we would not seek to have it fully operationalized before April of next year.

The Bill, like the Securities Industry Bill yesterday, forms part of the modernization of Trinidad and Tobago's financial and business infrastructure. The old Act that we have been operating under goes back to 1938 and that Act was, in fact, an adaptation of the English 1929 legislation. So, the Bill seeks to replace an Act that is more than 60 years old. As we all know, after 60 years of age the public service is wont to retire people and we would want to retire the old legislation and bring in this new legislation.

A number of the provisions of the Bill, I now propose to outline. The Bill seeks to facilitate dealings in business; it proposes to simplify many old antiquarian ways of doing business; it proposes to remove unnecessary encumbrances, technicalities and inequities under the present law.

The introduction of the one-man company, for example, seeks to bring the law in line with reality by giving statutory sanction to what was judicially recognized almost one century ago, in the case of Solomon v Solomon. Hence, it would no longer be necessary for a person who desires to form his own company to issue nominal shares in order to fulfil the present requirement for a minimum membership of seven or two in the case of private companies. By clauses 63 and 66, however, all companies would be required to have a secretary and at least two directors.

It should be noted that a distinction is made in the Bill between "send" and "deliver". According to the interpretation clause, "send" includes deliver, but "deliver" does not mean or include "send". Deliver means bring in person to the Registrar, "send" includes deliver, but also includes sending by post, telex or fax. Documents attracting stamp duty and notices accompanying such documents would need to be delivered in person to the Registrar and not sent.

The Bill seeks to introduce constituent documents of a company similar to those adopted by the Canada Business Corporations Act. The memorandum of association would be replaced by articles of incorporation which would set out the name of the company; its classes of shares and the rights, privileges, restrictions and conditions attached thereto; any restrictions on the right to transfer shares, the

number of directors and any restrictions on the business of the company. The articles would be in a prescribed form and more easily altered than the memorandum.

Internal management and other matters of domestic organization, insofar as they are not related to the Bill itself, which makes extensive provisions on these matters, would be governed by a set of bye-laws which the company and directors would have wide powers to amend.

Unlike the memorandum of association, the articles of incorporation would not state the objects for which the company is being formed. Hence, a company would be able to engage in any enterprise it sees fit, unless expressly restricted by its articles of incorporation. Thus we would cut out all this long series of trivia now recited in a memorandum of association.

There are several advantages to this provision. For one, no company would be in danger of being wound up on the grounds that its main object or substratum has failed. Shareholders who are dissatisfied with the type of business a company decides to embark on, always have the option to carry their investment elsewhere. Those in the minority would, however, be able to enjoy added protection under the Bill. Shareholders may, of course, decide to voluntarily wind up the company, but they would not be forced to do so because the enterprise they originally hoped to embark on was not realized.

Secondly, the difficulty caused by the present restrictions on the alteration of memorandum under sections 6 and 7 of the ordinance would be circumvented. Hence, in this fast changing world, companies would be able to enter into new areas of business or investment freely, without having to petition the court. Thirdly, there would be no need for lengthy, complex and detailed objective clauses designed to overcome difficulties such as I have just been discussing.

The removal object clauses complement the intention of the Bill to abolish the ultra vires rules and the doctrines of constructive notice. A transaction outside the terms of the object clauses of a company is ultra vires, null, void and of no effect and cannot be validated even with the unanimous assent of all the shareholders. It is, therefore, unenforceable by third parties who, under the doctrine of constructive notice, are taken to have notice of the powers of the company at the time of the transaction since the company’s memorandum is filed with the Registrar of Companies. The question whether a third party actually read the memorandum is therefore immaterial.

The Bill would seek to abolish the ultra vires rule in clause 21, by giving a company the capacity and subject to the Act, the rights, powers and privileges of a

natural person. Restrictions may still be imposed on the business a company could carry on and shareholders could seek to enforce any such restriction by injunction or by invoking the provisions protecting minorities.

Another way in which the Bill favours trade and investment is via the abolition of the par value system as provided for by clause 30(ii). The difficulties arising out of the par value system, as simply explained in the harmonization report, include the difference in value between the capital of a company in terms of the money paid in cash or the value of services or property given or exchanged for shares and the true worth of the company's capital assets.

The no par value system originated in North America. No par value system shares were first authorized by the New York Stock Corporation law in 1912 and variations of the original system have since been in use in various states of the United States of America. Some Canadian states followed the American system of no par value shares, but retained the par value system as an alternative. Upon the proclamation of the Canada Business Corporations Act in 1975, the par value system was completely substituted by the no par value system.

No par value shares do not have a fixed monetary value attached to them. The price at which they are issued would be determined by the directors, under clause 33, who would be required to base their price on market conditions. The prospective investor would then be forced to look at the real value of the company's assets as his guide to investments estimating the value of the shares on his knowledge of the assets and the earning power of the company.

2.10 p.m.

A share would be no more than a fractional interest in the earnings and assets of the company. Shares would be issuable in different classes and at different prices depending on market conditions at the time of the issue. This would dispense with the need for issuing shares of a premium and share premium accounts. Moreover, the use of no-par value shares would relieve companies of the present difficulties and embarrassment involved in issuing shares at a discount. A company which needs new capital in adverse times would be able to market its no par value shares at whatever price it can secure without the necessity of applying to the courts or having to resort to subterfuges in order to circumvent the rules.

In the no-par value system consideration received for shares issued by a company is called "stated capital" and is reflected in an account known as the "stated capital account." The company will be required to keep a separate stated

capital account for each class and series of shares that it issues. Shares may be paid for in money, property or in past service that is a fair equivalent of the money that the company would have received if the shares had been issued for money. Promissory notes and promises to pay would not constitute money. Promissory notes and promises to pay would not constitute consideration. Where directors seek to issue shares for property or past service that is not a fair equivalent of the money that the company would receive if the shares are issued for money, interested parties would be able to apply to the court for a restraining order under clause 253. By clause 89, directors would be liable to make good to the company any loss it sustains in a case where shares are issued for consideration other than cash.

We turn now to the matter of reduction of share capital. The purpose of the stated capital account under the no-par value system is the same as the subscribed capital account under the par value system; that is, to provide a permanent fund in the interest of creditors. Hence, there is a general prohibition in clause 35(4) against adding to a stated capital account an amount greater than the amount of consideration that a company receives for its shares. Similarly, stated capital cannot generally be reduced except in the manner provided by the Bill.

Section 57 of the ordinance requires the court to confirm the special resolution of a company to reduce its share capital. The proposed legislation seeks to dispense with the requirement which is often time consuming, embarrassing, expensive and a hindrance to the legitimate activities of a company. In clause 48, a company may, by special resolution, reduce its stated capital by extinguishing or reducing a liability in respect of an amount unpaid on any share or by returning any amount in respect of a consideration that the company received for an issued share.

Connected with the provisions against the reduction of capital are those relating to the powers of a company to purchase its own shares and to issue redeemable shares.

The Bill also seeks to improve the protection or the rights of minority shareholders. According to the common law rule of Foss v Harbottle, ultimate control of a company rests with its members voting in general meeting, and members are presumed to have agreed to accept the decision of the majority of the members if it is taken in accordance with the constituent documents under general law. This principle would, if uncontrolled, permit the majority to ride rough-shod over the interest of the minority; for example, where the directors hold a majority of the voting shares or represent a majority shareholder. The courts have,

therefore, established that a minority could bring legal proceedings under certain provisions.

At common law, however, the only remedy a minority shareholder could ask for, is the winding up of a company on the grounds that it is just and equitable to do so. The minority may not, however, wish to wind up the company and, therefore, refrain from taking legal action. The Bill, therefore, would implement an alternative remedy already enforced in North America and the UK whereby the court, on the application of a complainant, would be able to make an order rectifying the situation on the grounds of oppression or unfairness to any shareholder, debenture holder, auditor, director or officer of a company. As mentioned earlier, a complainant would also be able to seek a court order under clause 253 where provisions of the proposed legislation or the bye-laws of a company are contravened.

Clause 244 would also provide market for the North American remedy known as a statutory derivative action whereby a complainant would be able to institute legal action in the name, and on behalf, of a company in order to protect or enforce the company's rights. Other clauses which make special provisions for the protection of minorities are clauses 75, 118-120 and 231-240.

The Bill seeks to introduce into our local law the offence known as "insider trading" and provide criminal and civil remedies therefor. The expression "insider trading" is generally used to describe situations, as I explained yesterday, where a person buys or sells securities when he or other parties related have knowledge that is confidential and that affects the value of the securities involved.

Clauses 307 and 308 establish who is an insider. "Insider" here, includes a director or an officer of a company; a company which purchases its own shares and a person who has access to specific confidential information in relation to a company.

The Bill would introduce a statutory provision with respect to takeover bids in clauses 205 and 216.

Clause 205 defines a takeover bid as an offer made to a shareholder of a company to acquire all the shares of any class of issued shares of that company and to include every effort by an issuer to re-purchase its own shares. Generally, it is within 120 days after the date of a takeover bid.

In several of these respects, as I mentioned at the outset, this new Bill has been brought in harmony with the Securities Industry Bill which was passed

yesterday. As indicated in the Explanatory Note, the winding up provisions are substantially the same as those in the ordinance.

The working committee of 1989 considered that the existing provisions are well established, well tried and relatively well understood rules.

This Bill when set next to the Securities Industry Bill will have the effect of bringing Trinidad and Tobago into the modern world of company legislation.

With these words, I commend the Bill to the Senate.

Sen. Prof. Spence: Mr. President, I just want to ask a question.

Mr. President: Go ahead.

Sen. Prof. Spence: This point was raised to me this morning. Would companies be required to re-register under the new legislation, the 25-odd companies that now exist and pay stamp duties?

Hon. W. Mottley: Mr. President, I am advised that there is a provision for compliance. There is a two-year period that would get around the problem that the Senator contemplates.

Sen. Daly: Mr. President, may I come back to clauses57 and 58? What part of clause 58 is it being proposed to delete?

Hon. Senator: Paragraph (e).

Sen. Daly: It cannot be paragraph (e).

Hon. W. Mottley: Mr. President, we can best discuss that at the committee stage.

Question proposed.

2.20 p.m.

Sen. Wade Mark: Mr. President, I want to commence my contribution by referring to a report on a symposium staged by the Institute of Chartered Accountants of Trinidad and Tobago and the Law Association in 1993. I refer to page 28 of this report which states:

> '"In any good companies legislation, the basic purpose must be to facilitate business dealings while ensuring the protection to shareholders, employees and creditors. It must be simple to read and understand and administer. It must also lend credibility and integrity to ensure adequacy of information to investors, employees and creditors to make sound business decisions."'

The Bill before us, as the hon. Minister indicated is a very voluminous document, in the making for, I understand, close to 24 years. It started with some working group in 1971. Of course, the PNM has been in power for 19 of those 24 years. We have to say from the very outset that the Bill before us is extremely flawed and deficient in many areas. It is our view that if fundamental alterations are not made to this legislation it may well lead to serious confusion, ambiguity and uncertainty among the major players in the economic community. I refer specifically to the business community and the trade union movement in this context.

This is what I call hodgepodge legislation. It is reckless legislation on the part of this administration. The Companies Bill 1995, from my reading and understanding, contains elements of the Barbados experience, most importantly the Canadian experience and some US experience, as well as our own. We have to recognize that the Canadian experience is dominant in this Bill that is before us at this time.

One of the main functions of this Senate is to ensure that proper legislation for the good governance of our country is passed—not reckless, deficient or defective legislation. We should approach with utmost care and deliberation the passage of any legislation so as to avoid placing on our statute books inappropriate, unworkable and oppressive laws. Our democracy is supposed to be based on consultation and consensus. When a government in a democratic framework or structure seeks to pass legislation for the good governance of a nation, it should do so at all times with the full support of some of the key players and, more importantly, it should consult with those whom the legislation will most seriously and directly impact upon.

The Companies Bill, as well as the recently passed Securities Industry Bill, is likely to impact in a very direct way on the business community, trade union movement and, by extension, the population. There seems to be widespread disagreement with this Bill among some of the key players in the economic system. Business is not happy with the proposed legislation that is before this Senate. I make reference to the Trinidad and Tobago Chamber of Industry and Commerce expressing some serious reservations about this Bill on behalf of the Chamber. I am also aware that the National Trade Union Centre of Trinidad and Tobago, the body representative of workers, is also not in support of many provisions of this Bill. There is a particular one which we would deal with in a very detailed and specific way as we proceed.

We ask the question: How can we seriously deliberate and seek to pass this Companies Bill when the joint select committee established to consider it has not completed its mandate? It is clear to us that there is no consensus on this Bill, particularly among the key players involved. Even the American Chamber of Commerce, as stated in a memorandum, is in disagreement with certain elements of this Companies Bill that is before this honourable Senate.

From very early the Government recognized that there were extreme difficulties in attempting to arrive at some position on this voluminous document. Even if the Bill is passed without our support, it is not workable and it would be extremely difficult to implement unless there are fundamental alterations to its content.

The joint select committee received two memoranda, one from a law firm and another from the American Chamber of Commerce. As I said, I was a member of that committee but I did not have the opportunity to sit throughout the meetings owing to illness. The committee did not see it appropriate and necessary to invite the Trinidad and Tobago Chamber of Industry and Commerce, the Trinidad and Tobago Manufacturers' Association, or the National Trade Union Centre of Trinidad and Tobago to at least assist in this important deliberation of the Committee, so that they could have found appropriate expressions that would be, at least, satisfactorily accepted by the majority of the population. Indeed, some of these organizations were unable even to obtain copies of this very Bill on which we are now deliberating in this Parliament.

2.30 p.m.

Not even the Institute of Chartered Accountants was invited to provide evidence or to put forward its views. The Law Association of Trinidad and Tobago which hosted a symposium in 1993, along with the Institute of Chartered Accountants, also did not have the privilege of appearing before this committee. It appears to us that the work of this committee is really incomplete, yet we are being called upon, as we were yesterday—but this time it is even graver—to accept a report and to support a Bill which will bring about fundamental changes to our arrangement in this country. Some of our key players in this arrangement would have liked to appear before the committee to advance their ideas but, unfortunately, they were unable to do so.

We on the Opposition benches submitted comments to the Chairman of the Committee pointing out our own difficulties in supporting the report and the Bill. We find great difficulty in supporting the report and the Bill. We find great

difficulty in supporting this matter in its present from, since it is our view that the matter is incomplete, and the Parliament should not support any legislation that is incomplete. We cannot support recommendations that tell us to pass a Bill today although we know that serious amendments are required to allow the Bill to work. Even the committee has admitted in its report that there were severe limitations in its capacity to treat with certain issues because of the bulk and highly complex nature of the Bill, and its not having at any time the benefit of the full breadth of talent that comprised it.

We understand that there were grave difficulties in actually arriving at a position on this matter. We on this side of the House, therefore, strongly object to the Companies Bill in its present form, since we are of the opinion that it is an incomplete exercise.

We would like to ask the hon. Chairman of this committee, and the hon. Attorney General, why they recommended a period of nine months. Why did the committee not summon or invite the various interest groups directly affected by this legislation? According to this report, many people were invited. Of course, the experts were invited to attend the deliberations of the committee that dealt with this very important Bill. There were Mr. Peter Clarke, Mr. Hamid O'Brien, another Permanent Secretary, and a whole list of technical personnel, who were invited to guide the work of the committee. However, the players involved in this exercise were at no time considered fit to attend these sittings. Why, Sir? We would like to know from the hon. Minister who chaired this session.

We are of the view that the Government, because of the manner in which it has approached this matter, has generated much reaction from a number of organizations. Even in the *Trinidad Guardian* of Friday, September 22, 1995, we have seen statements on this Bill coming from the Trinidad and Tobago Chamber of Industry and Commerce, where it expressed in no uncertain terms that the Bill was not going to work in the national interest. I myself was fortunate to receive a letter dated September 22, 1995 from the Chamber of Industry and Commerce indicating its strong reservations about many aspects of the Bill.

When one considers that an important organization in the country like the Chamber of Industry and Commerce objects in a very strong way to this particular Bill, we have, as a Parliament, to give this some consideration. This is why we of the United National Congress have indicated in no uncertain terms that in spite of the negative propaganda that has been spread by the PNM and some of our enemies in this society, when something is right, we will support it and when it is wrong, we will condemn it.

In the light of the fact that this Bill will be on our statute books for years to come, we want to ensure that it is implementable. In this context, we on this side offer our support and stand in defence of some of the reservations expressed by the business community, whether the Trinidad and Tobago Chamber of Industry and Commerce, the Trinidad and Tobago Manufacturers' Association or the National Trade Union Centre. We met with most of these groups in a consultation at the office of the Leader of the Opposition and they expressed strong reservations about certain aspects of the Bill. Our party's position on business, as you know, Mr. President, has always been distorted. We have been projected by this Government and by certain elements as being anti-business. We want to make it very clear in this matter that we are opposed to monopolies. We have always indicated this, but we shall always support business in its strivings and endeavours to move forward and grow and to develop our country. We would, therefore, like to indicate that today as the Government seeks to rush through this Bill. We believe that it will have serious adverse consequences for our people.

The United National Congress will treat everyone fairly. This is why we have indicated for the record that the Parliament ought to have referred this Bill back to the joint select committee of Parliament, having regard to the fact that the committee admitted that it was unable to complete its work because of severe limitations and difficulties.

2.40 p.m.

We would like to indicate to this honourable House that given all the circumstances, it is necessary for us when we are deliberating on matters such as these, in which the bulk of the clauses contained in the Bill was extracted from the Canadian Business Corporation Act, to adapt it as much as possible to our own local circumstances, conditions and provisions, so that we could continue to strive, grow and make progress. It is difficult for a nation to be copying, lock, stock and barrel, provisions of another jurisdiction to work in an environment that has a tradition of United Kingdom-based legislation in terms of our commercial experience. We predict that this legislation will not work. We do not believe it will work because it has not received the kind of support and input from the various business forces and the various important community organizations.

Whilst we support the concept of parliamentary committees to do work, we have to recognize that these committees need to be provided with the necessary resources and expertise, and there must never be a time constraint. A committee that is investigating and thoroughly analyzing any measure should be allowed the necessary time, resources and the necessary expertise in order to operate fully and

effectively, and in a manner that would draw the fullest expression of views from the various interest groups in our society.

The Companies Bill is supposed to streamline the procedures for the registration of companies. Is this achievable? As far as the Trinidad and Tobago Chamber of Commerce is concerned it is not achievable because of the manner in which the Government has chosen to approach this matter.

There is an argument—and I think the hon. Minister alluded to it in his presentation—that legislation should be based on a country's regional and international position in respect of trade and investment and consequently laws can be formulated to suit those conditions and to pursue those objectives. That is an argument that we find to be very flawed, highly dangerous and misleading. If that is so, we would ask the hon. Minister, since the United States of America is our major trading partner and Japan follows after the United States, as a nation, why do we not look at Japan's companies legislation, and seek to incorporate provisions of that legislation into our arrangement? *[Interruption]* It is an argument that has been advanced by the Government and if there are any comedians, they would have to be on the Government benches. These are arguments which have been advanced by the Government. As far as we are concerned, the argument has little or no merit whatsoever.

This Bill before the Parliament has, as far as we are concerned, many obvious deficiencies. If this Bill is passed in its present form, we believe it would add tremendous cost, particularly as it relates to its implementation. As you know, whenever costs have to be passed on, they are first passed on to the companies and then, ultimately, they are passed on to the consumers of our country.

This Companies Bill is completely new legislation to Trinidad and Tobago. We have no precedents for it. We are virtually on virgin ground insofar as this Bill is concerned. We are also concerned about the issue of the capacity of the Registrar's Office to implement this law when it eventually receives passage and it is enacted. It is clear to us that this Bill will require great resources and expertise with legal and accounting training at the Registrar's Office to make this legislation work. If we do not have that kind of expertise and those resources, we are afraid that this Bill will just be passed into law and it will not become operational. We predict that the Registrar of Companies would not be able to cope with this workload. The consequence of that would be disastrous for business activity in our Republic.

If one looks at this Bill carefully one would realize that there is an absence of rules and regulations to determine a number of matters. I refer to clause 153(1) of the Companies Bill. It says:

> "Subject to this section and to section 154, the directors of a company shall place before the shareholders at every annual meeting of the shareholders of the company–
>
> (a) comparative financial statements, as prescribed,…"

We are talking about financial statements as prescribed, but we are not seeing the rules. How can the Government seek to get parliamentary approval to pass such comprehensive legislation without the accompanying rules and regulations to operationalize this arrangement? We have some difficulty about that arrangement, Sir.

Clause 158(1) states: A company—

> (a) that is a public company;…"

It goes on to talk about revenue earning:

> (b) …exceed four million dollars or the assets of which as shown in those financial statements exceed two million dollars,
>
> shall deliver a copy of the documents referred to in section 153 to the Registrar, not less than twenty-one days before each annual meeting…"

It goes on to state that any company which exceeds the sum of $2 million or $4 million would have to file financial statements.

We understand that we have close to 40,000 companies operating in Trinidad and Tobago today. The question here is, whether the Registrar would be in a position to cope with these matters.

2.50 p.m.

I said to the Minister and the Government only a short while before I rose that I wanted to propose a deletion. The Government did not even think about that reality at the level of the committee. It was based on recommendations and amendments proposed by Sen. Michael Mansoor that the Government acceded to this particular provision. The point is, that would have had serious consequences for the operations of the Registrar General's Office. The Trinidad and Tobago Manufacturers' Association expressed grave concern and was highly disturbed about this provision. Most companies in Trinidad and Tobago are privately run

and essentially of a family nature. It was the view of the manufacturers that this would have, in fact, allowed an additional cost to the operations.

We are happy that the Government has seen it fit to delete this particular clause. When we go on to clause 159, which they have not deleted—I have done my homework in a very detailed way—we are happy that the Government has addressed this area because that was a strong view expressed by the Trinidad and Tobago Manufacturers' Association and is something that we are in support of.

If one goes to clause 160, has that also been deleted? Let me refer to Sen. Michael Mansoor's notes Sir. Clause 160 talks about the establishment of audit committees, and that a company would be mandated by this law to have what is called an audit committee. We ask the hon. Minister: What is the rationale for this provision? We suspect this is a case of wholesale copying. The Government has copied this provision out of the experience of Canada without trying to relate it to our own experience here.

In the companies law of Barbados this committee is not in existence; it is also not in existence in the United Kingdom law. We ask the hon. Minister: What is the rationale for seeking to introduce such a committee in our jurisdiction, when it does not exist in Barbados and that is a precedent; it does not exist, as we said, in the United Kingdom. This is absolutely new, and we would like to know what this provision is likely to achieve at the end of the day. We believe it is a duplication that is going to be merely a rubberstamping responsibility being carried out by this committee that the Government is seeking to promote in this Bill before us.

We do not know what the functions of this committee are going to be. Let us look at page 216, clause 345 of this Bill which talks about a certificate of continuance. It says:

> "Every former-Act company shall, within two years after the commencement date, apply to the Registrar for a certificate of continuance under this Act."

A business in this country would now have to apply to the Registrar of Companies to obtain a certificate of continuance if it has to pursue its business endeavours. Companies are given two years to apply to the Registrar for a certificate of continuance. We would like to know in a situation where there are close to 40,000 firms operating in this economy, how is the Registrar of Companies going to administrate this exercise? This is why we have some difficulties with this provision; we feel that the Government has not thought through this one properly

because the Registrar would not be able to cope with this burden. The Registrar of Companies would not have the resources to deal with this matter.

May I remind the hon. Minister that in the Barbados experience this particular provision was deleted and discontinued. It became very burdensome to implement it, so it was, in fact, deleted at the end of the day. We would like the hon. Minister to examine this question because provisions are introduced in this Bill and the Government, to my mind, has not really given them proper thought and therefore we suspect that it is an area that the Government would need to revisit. We are of the view that it will not work.

If one goes to clause 348(1) one would see that it says:

"Upon receipt of an application under this Part, the Registrar may, and, if the applicant complies with all reasonable requirements of the Registrar to the continued company accord with the requirements of this Act…"

Mr. President, this is why I keep mentioning the need for regulations. Could the hon. Minister indicate to this Parliament what "reasonable requirement" means in this context?" Who is to determine reasonable requirements? I would suspect that it should be contained in the regulations, but we are debating a matter without accompanying regulations. Therefore, if this is passed in its present form, it will not only lead to ambiguity, but it will also give too much authority and discretionary power to the Registrar of Companies. We would like this matter to be looked at very carefully in an effort to ensure that businesses do not go out of existence as a result of ambiguity. Why are discretionary powers being placed in the hands of the Registrar of Companies?

Mr. President, we on this side are extremely concerned about clause 440 of the Bill. It says:

"(1) In the winding up of a company there shall be paid in priority to all other debts—

(a) all rates, charges, taxes, assessments or impositions, whether imposed or made by the Government or by any public authority under the provisions of any Act, and having become due and payable within twelve months next before the relevant date;

(b) all wages or salary (whether or not earned…) of any employee, not being a director, in respect of services rendered to the company during four months next before the relevant date;".

Most importantly, subclause (c) says:

> "all severance benefits, including terminal benefits referred to in section 18(6) of the Retrenchment and Severance Benefits Act, 1985, not exceeding the equivalent of two months' basic wages or salary, due or accruing to an employee, not being a director, whether retrenched by an employer, a receiver, a liquidator or some other person;"

This is absolute madness, and I want to serve notice that we are proposing an amendment to this provision. The amendment is already here, and I will now pass it on to the Clerk to make copies to be circulated to the Senate.

3.00 p.m.

It is unbelievable that, first of all, a committee could sit and report to this Senate and not make mention nor object to this provision. The implications of this provision for workers in Trinidad and Tobago are extremely profound.

Sen. Mansoor: I just wanted to point out to Sen. Wade Mark that in fact there is an amendment on clause 440 and the matter was discussed at great length in the committee.

Sen. W. Mark: Mr. President, I am suggesting to this honourable Senate that this provision, if accepted in its present form—there is an amendment from the Lower House; I have another amendment.

This is an amendment to subclause 1(a) and (c).

> "…comes into effect on the expiration of two years after the commencement of this Act."

Mr. President, this is not what I am dealing with. What this is saying here is that if a company is wound up and an employer, a receiver or a liquidator is appointed, the maximum severance benefits that a worker would be entitled to is equivalent to two months' basic wages or salary.

This, if accepted, would in an implied way, repeal the provision of section 18(6) of the Retrechment and Severance Benefits Act. We are saying that under the existing Act, when a company goes into receivership, whether a receiver is appointed before or after, the worker is entitled under the floating assets of the company to 100 per cent severance payment and entitlement. We have a piece of legislation that is seeking to deny that 100 per cent because what it says is that if one is working for a company for 20 years, and I am working for 2 years and that

company goes into receivership, your 20 years is equivalent to two months pay, and my 2 years of employment is equivalent to two months' pay. This is what this clause is saying. I do not believe that the Government really would like to have such a provision in a companies Bill.

Sen. Barrack: Try them!

Sen. W. Mark: If we put this provision in, it is going to repeal the existing provision in the Retrenchment and Severance Benefits Act. That is my argument. That is why I am saying this is an utterly dangerous provision, because if it is passed, it would essentially repeal the provision of the Retrenchment and Severance Benefits Act which provides for 100 per cent severance payment and entitlement in respect of floating assets either before or after a receiver is appointed. Therefore, we have put forward an appropriate amendment to ensure that the workers' rights in Trinidad and Tobago under this Companies Bill are in fact protected.

I think there must be an oversight on the part of the Government to have incorporated this provision. If we take this to the workers of this land and indicate through the National Trade Union Centre and the UNC what this Government has proposed, and if this is passed in its present form, it can lead to social unrest in the country. I warn the Government.

Mr. President: The hon. Senator's speaking time has expired.

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

Question put and agreed to.

Sen. W. Mark: Mr. President, all we are saying is that this is a provision that the Government has not thought through properly, and we urge it to look at it again and deal with a 100 per cent entitlement. This is why the amendment that I suggested indicates that all severance benefits, including terminal, referred to in section 18(6) of the Retrenchment and Severance Benefits Act of 1985, shall be due to any employee.

So, we are talking about 100 per cent. We do not want two months', three months' or four months'. If one is working for 20 years, just as an employer or manager is entitled to his benefits, a worker is entitled to his benefits.

Mr. President, today in Trinidad and Tobago, unscrupulous, dishonest employers owe some $54 million to workers in this country, many of whom have

died and gone to another place. We cannot accept this provision at all; under no circumstances! We advise the Government to look at this thing very carefully.

The National Trade Union Centre, of which I am the Assistant General Secretary, is opposed to this measure. In a very serious way, Errol Mc Leod, the man whom you decided to run to the ground in that Petrotrin struggle—[*Interruption*] What is even more important is that in an environment of trade liberalization, and privatization and total chaos and confusion, we can expect hostile external competition rapidly invading our shores as it is doing presently, and it will lead to the closure of a number of companies. If that happens, we cannot allow a situation to exist where workers who have worked for 30 years would be entitled only to two months' maximum severance benefits. That is utter madness—nobody wants that, not even Sen. Martin Daly would want that.

Sen. Barrack: Sometimes.

Sen. W. Mark: Mr. President, I think that this provision is totally inadequate and we have proposed, as I said, the relevant amendment because it involves the livelihood of persons and we need to ensure—

The question of loans to officers and shareholders referred to in clauses 57-59—I think the hon. Minister said they are deleting clause 58(e). We are concerned about this provision, because we believe that it can be abused and we would like to know what kinds of provisions would be established to ensure that abuses do not take place. We are giving these companies' directors wide discretion to grant loans to officers and shareholders and we believe this is a provision we have to monitor very carefully. Clauses 57-59 need to be monitored very closely and carefully.

We go to clause 60, the issue of liability of shareholders. We would like to know the limits of the liability with respect to unlimited companies. This is an area, again, we have some concern over and we hope that the hon. Minister would be able to provide us with some clarification.

3.10 p.m.

Clause 65 of the Bill, Sir. We have no difficulty with professionalism; I think that is where we are heading. If we look at 65(1), it imposes an obligation on the person to be professionally; qualified in order to serve as secretary of the particular company. But we feel that this provision is a bit biased in favour of the professionals as against those persons who may have worked their way up in the company and who would be au courant with all the rules and regulations. Those

persons, according to this provision, would never be able to qualify to be a secretary of a company. Whilst, as I said, we have no difficulty with professionalism, we also have to recognize that we are going through a transitional phase and there are people who would come through the ranks and be very efficient, understand the rules and regulations, though they may not have the kind of professional qualifications to hold down a portfolio.

As you know, so many people are leaving UWI these days and come to work in factories and industries, and it is the very ordinary worker who has to train these so-called bright, young minds in the operations of these companies for which they are working. So that is an area about which we have some reservation. We feel there should be some room for persons who may not be fully qualified, but who may have complete loyalty and commitment to the company.

The Government of Trinidad and Tobago has a duty to listen to the fears, uncertainties and anxieties raised by various interest groups in this country. This Government seems to be prepared to use strong-armed methods and tactics, to ride virtually roughshod over the views of many important organizations in order to push this legislation through. As I said, Sir, after some 24 years of seeking to bring modern company legislation into being—of which 19 were served by the PNM—we have before us a half-baked, hodge-podge, incomplete and totally unacceptable Companies Bill before this Parliament at this very time.

This task has been going on for some time. Today we are totally sensitive to the concerns of the various actors and major forces. We have a deep concern as it relates to the proposals and views expressed by the Trinidad and Tobago Chamber of Industry and Commerce. We believe that their concerns are legitimate and valid. We, as the alternative government, cannot isolate any force in our country. We must seek to embrace all. That is why we say, in our Father's kingdom there are many mansions and we have a place for the Chamber of Commerce in our kingdom; a place for the Trinidad and Tobago Manufacturers' Association in our kingdom; and Mr. President, we have always maintained that if you have a valid concern or criticism, we are going to support you.

Mr. Draper: This is the comedy hour.

Sen. W. Mark: That is why when the Government made noise about the Leader of the Opposition appearing on a programme called *Insight* to talk about the kinds of situations taking place in this country and about the PNM party, the Government was so agitated that it wrote this letter attacking the Leader. What

was even more serious for this country, in terms of its international image, was when this Government declared a state of emergency to lock up a Speaker! That did more damage to the country's international image than whatever Basdeo Panday said to the media. But I will not go into that, Sir; we will deal with that on the platform.

Anyway, Mr. President, as I said, we are totally sensitive to the concerns of the business community. We believe that their concerns are legitimate and valid and we will provide them some audience as we have done, to listen and give them an opportunity to be heard. That is all they are asking for. Mr. Arneaud did not have to go to the newspapers to air his concerns. [*Interruption*] Yes, we offered him an appointment, but he said he is not taking it up at this time.

The fact of the matter is he had to go to the Trinidad *Guardian* to express his views on the Companies Bill! An important organization like the Trinidad and Tobago Chamber of Industry and Commerce which supports the PNM! We know that it supports the PNM, but look how the PNM has treated its own kind.

Sen. Barrack: As they treated Marshall.

Sen. W. Mark: Mr. President, it is amazing that the Government has to approach things in that manner. Maybe we can anticipate more investment from the Government of Canada, because we have adopted its legislation almost in full. Recently the hon. Minister, I understand, signed a double taxation treaty in that country.

We have to be even more careful with this piece of legislation, since we have to take account of the fact that our country is a member of the recently formed ACS and we are talking about many countries in Central America—countries that are washed by the Caribbean Sea. We have to be careful that we do not pass legislation that will conflict with the overall thrust that we are seeking to promote. Therefore, we wonder how many of these ACS members have on their statute books company laws that are based on the Canadian experience.

We say that this Bill constitutes virgin territory. We ought to be pursuing a path that is consistent with our own experience, tradition and practices. This is necessary to avoid ambiguity, uncertainty and to promote clarity of understanding because, at the end of the day, we all have to live here, and whatever laws we pass are designed to promote the social and economic welfare and well-being of the citizens of Trinidad and Tobago. We believe that such an approach will not only serve the business community well, but also the workers and the nation at large.

Government, therefore, should not seek to impose a foreign model of company law on us without the widest possible consultation and deliberation involving all the major parties interested in this particular matter.

We on this side recognize the need for changes, upgrading and review of our existing financial environment, and all the necessary legislation that make up this environment. But we do not throw out the bath water and the baby together—the water, the baby, the bathtub—this is what the Government is doing.

Mr. Collis: "Sprangalang" is in serious trouble.

Sen. W. Mark: We are saying what they need to do is to adapt those provisions to our situation, conscious of our traditions, practices, and forms of development. Once the Government is able to satisfy some of the key concerns expressed by the Trinidad and Tobago Chamber of Commerce; the Manufacturers Association; the National Trade Union Centre, we would be prepared to support this legislation—there must be fundamental alteration to the various provisions that are now contained in this Bill. We hope that, given that very fundamental proposal we have put forward, through which the Government would recognize that the 572,000 people who constitute the workforce of this country—although we have only close to 400,000 working—that question has to be addressed: the question of proper severance for those people in the event of receivership.

Mr. President, those are our concerns and contributions on this matter and I want to thank you very much.

3.20 p.m.

Sen. Martin Daly: Mr. President, I would like to deal, first of all, with the reasons, in my humble view, for the companies legislation becoming so controversial, for many condemnatory things have been said about those of us who have been involved in an attempt to reform the companies law over a very long period.

This Companies Bill became controversial for two reasons. The first is, that it was based largely on Canadian company law and not United Kingdom law, and for whatever reason, that became a point of great contention among certain persons in this society, and I would return to that. I, myself, do not think that there is any need for misgiving because it is based on a Canadian model, and I will explain why.

Secondly, in relation to this companies legislation, there has been a complete failure of the joint select committee system and that is the reason I did not sign the report, even though I was happy with the securities industry side of things. I

always get tired of the extremes, whether it is extreme optimism or extreme pessimism. It is no good the Government saying that the Bill has been out there for two years. Yes, it was out there for two years, but for that entire period of two years, it was the subject of a joint select committee. Therefore, people outside, including the Chamber of Industry and Commerce, for whom I do not speak, were entitled to feel that unless and until that Bill received the detailed attention of a joint select committee, the Bill would not be passed. The select committee system failed; it failed not once, it failed twice, as I would illustrate.

Therefore, when the community woke up one morning to see that the companies legislation was going to be passed in time for a reported October 14 deadline, when there had been a complete failure of the select committee, people said the Bill was being rushed, not unreasonably. Because although it had been out there for two years, it was the subject of a joint select committee process which failed, and in precisely the same way that the joint select committee system worked for the Securities Industry Bill. It is a great pity that it failed for the Companies Bill.

It is important to understand the expectations that were raised by this joint select committee system. If you look at the report of the joint select committee to consider and report on the Companies Bill, 1993, you will see that that committee was appointed on October 22 and 26 of 1993, respectively. The committee did very little, and it received submissions from five groups including the Chamber of Industry and Commerce, the Institute of Chartered Accountants, and it was envisaged that these people would be heard, and so on. That was not done. Three meetings were aborted because of a lack of quorum and at the end of the day, absolutely nothing was done by that committee. Indeed, I stated expressly and had it recorded, my view that the joint select committee did not work and it would be an exercise in futility to appoint another committee. I insisted on recording that because of my frustration with the fact that the first joint select committee did not work. That is really what it boiled down to. It did no work.

It turned out that it was an exercise in futility to appoint another committee, for good reason. The next committee ran out of time because all of its time was spent very fruitfully on the Securities Industry Bill. Therefore, by the time it was ready to get around to the Companies Bill, it was August, Parliament was on recess and this October 14 deadline had emerged.

I think it is unfortunate—and I want to correct the record—it is not that I did not sign this report because I felt I had not attended enough meetings. I attended all the meetings until August, when I went on vacation. So I did not attend the two

meetings that were devoted to the Companies Bill. I was on vacation. It is not my fault that they were called in the month of August. In fact, during that month, as the record will show, it proved very difficult to get a quorum, because people had made their arrangements on the basis that the House was on recess, and that is the popular month for vacation. So it is not that I felt I did not attend enough meetings; I always attend meetings. In fact, I attended meetings the years before to the point where I recorded my frustration.

Therefore, everyone was entitled to feel—certainly until a few weeks ago—that this Bill was not only being passed in a rush, but as the committee reported, did not receive the detailed and careful examination of the joint select committee as it should. Therefore, the joint select committee failed again, in relation to the Companies Bill, because it ran out of time and did not give it the necessary consideration, and admitted that in its report.

So naturally, people are concerned. How can you, as parliamentarians, now seek to pass a Bill, when you appointed a committee to deal with it and the committee was not able to give it its attention? I did not sign the report for that reason. I think it is very important, if we are going to pass this Bill, that people understand that it has received the attention that it deserves, otherwise I would not support it.

What has happened since the joint select committee system failed, and the Government announced its intention to pass this legislation by hook or by crook, is that people like Sen. Mansoor got busy and stimulated other people who hitherto had been waiting on a joint select committee and had been offering—wrongly, in my view—to buy a bill from lawyers and bring it for the Government. I think that was really a gross breach of etiquette, to tell the Government they will buy a Bill from lawyers and bring it for the Government.

Anyway, we have gotten over all that. It appears that not everyone is aware of this, that through the industry of Sen. Mansoor—he would not be able to tell you this himself because he is, apart from anything else, a very modest man—he has been able to put forward a set of amendments to the Minister to which the Minister responded today. So that I am now reasonably comfortable with process. I emphasize, "reasonably comfortable," because since the select committee system failed, through the industry of Sen. Mansoor the Bill has now received the attention of persons out there, including those who should have been interviewed by the joint select committee, and were not, and those amendments have been placed before the Government and it has responded to them today. So some of the

failure of the select committee system has been rectified and the country needs to know that.

Indeed, the next time anyone wants to make any comment about the Independent Senators in their absence, perhaps one of the things they will put on the list is the productivity of people like Sen. Mansoor who, really, has produced all these amendments with whatever professional assistance he was able to raise outside. It is very interesting that after all the song and dance, the major amendments, as usual, have come forward from this bench, and I make no apologies for saying so. Indeed, when people want amendments that are serious amendments, they know they have to rely on the industry of people like Sen. Mansoor.

It galls me to hear certain people say that there are many mansions in the house and they have room for the business community, when week after week, because Sen. Mansoor is connected with a large conglomerate in this country, not only is his employer mentioned, but his name every single time.

3.30 p.m.

The most recent example we had of it was in relation to the Securities Industry Bill where it was being suggested that that Bill was being passed to facilitate the making of profits, and Sen. Mansoor's name was called. Two weeks later, when the whole country should be grateful to Sen. Mansoor for his industry, we now hear, in some piggy-back fashion, that, "Well, we have many mansions in our house," and presumably, that includes Sen. Mansoor.

Sen. Mansoor cannot speak for himself, but I can do so. I pay tribute to the fact that he saved the day through his industry and those persons whom he had been able to stimulate to finally do some work and produce some amendments. So, next time we are talking about the Independent Senators behind their backs, remember the industry of Sen. Mansoor. Let us remember that.

I am now comfortable with the process in that some amendments and some dialogue have finally taken place over this Bill. There are two areas in this Bill about which I am still uncomfortable and I would come to those in an effort to get the Government to change its mind about what it has indicated in relation to the amendments.

I want to deal with this vexed question of the Canadian model. Mr. President, can I make the point this way? We have a major piece of legislation that is not based on any United Kingdom analogy. Do you know what it is called? It is called

the Constitution. That is what it is called. There is no United Kingdom constitution to which we can turn for precedents.

I well remember, I think it was in the Lasalle and Shah case, when the late revered Justice Clement Phillips cited a United States supreme court authority and wrote a judgment that was ultimately upheld by the Privy Council. Everyone gasped for breath, "What are we to do? We are going to have to read United States' reports."

What has happened in the development of our public law since? We read the Basu commentary on the laws of India and try as best we can to follow the major judgments of the United States supreme court. We go to Australia and sometimes to Canada to the Bill of Rights.

All of the developments in constitutional law in this country have been based on following precedents in other Commonwealth countries. We are still alive and the Constitution is still being interpreted by our courts. So, what is this problem about the fact that we have resorted to some other model?

As the Minister has pointed out in his presentation, it was not done by "vaps," it was part of a scheme under Caricom and under Mr. Brinmore Pollard's legal leadership to try to unify and make sure that everyone in the Caribbean had the same company law since that would help with the promotion of Caribbean trade. So, the Canadian model has respectable parentage.

Since the time that Justice Clement Phillips first cited a United States' supreme court authority, commercial lawyers, in particular, can now get nearly every precedent on this. I do not know what everybody is talking about buying books and shipping in books; one can get nearly every book of precedents which is offered in alternative forms. So what is this problem about following other precedents? It is not a problem as far I am concerned.

I do not regard that as a matter of controversy and I am very sorry that it has bedevilled the attempts to get new company legislation. Just remember that the Constitution is interpreted by reference to precedents all over the world even from Tuvalu in the case of presentations by the Government.

Mr. President, the Government must not escape responsibility for the failure in how it chaired the committee or for the failure of the select committee process twice in relation to this Bill, which is what caused the alarm in the wider community. But for the efforts of Sen. Mansoor, it would be difficult for any of

us, legally trained or not, to feel comfortable about the passage of the Companies Bill. Now, we can see that it has been subjected to some kind of process.

I then heard that there is a tremendous outcry because if this legislation is passed, certain amendments would come later.

I remember, after the Financial Institutions Act was passed, Minister Mottley returning to the Senate because something major had been overlooked and we amended it. Excluding myself, I suppose that makes us a good Parliament, or to be more precise, a good Senate. I think another supreme irony is that basically this whole problem was sent up to the Senate for resolution by amendment, by others who had to look at the Bill. I think it is important that we sometimes balance our perspectives on the hard work that is done by all my colleagues.

I still have some difficulties with the Bill in one or two things that raise important policy questions which I would like to advocate. May I just say also, in passing, on the Canadian matter that the rules of the Supreme Court were adapted from the Associated States—they were in the Barbados position, they had adapted the United Kingdom's rules of the Supreme Court in the first place.

In fact, in the front of the book—which is something I would recommend to the Government when it is printing the new Companies Bill—there is a table in relation to each order of the Supreme Court showing whether it came wholesale fro the Associated States, the United Kingdom or other jurisdiction. That is very helpful, particularly, when one is trying to trace the antecedents of this legislation.

Mr. President, there are certain specific things about which I am still unhappy and which raise important policy matters. That is why I would like to spend a few minutes on them.

First of all, I still have a problem with clauses 57 and 58 of the Bill. These are very important clauses which deal with loans by a company. If we are slack in how we legislate for loans by companies, a great deal of the good that is being done by the modern legislation would be lost. I mentioned this privately to the Attorney General; I think it is very important that subclause 58(e) not be deleted. Certainly not subclause 58(e)(ii), because then we would be getting rid of employee stock ownership and profit-sharing plans which are always well facilitated by loans from the employer to the employee for that specific purpose, being an exception to the rule against the company lending money for the purchase of its own shares. I think it is very essential we look again at the proposed deletion of clause 58(e).

I recommend to the Government that it go further, and, in fact, look again at the new clause 57 that has been proposed by Sen. Mansoor. That clause makes into one, clauses 57 and 58 of the Bill. It treats with all the things that are treated with by the separate sections of clauses 57 and 58 in one clause. The reason I would like the Government to look at it again is that first of all it deals, in my view, correctly with loans to employees for these limited purposes which we have always had—see section 47 of the existing Companies Ordinance.

Secondly, I, myself, have been informed—I have not been able to check it myself—that it does not represent an accurate adaptation of the Canadian model, in the form in which it is. What I have noticed about it, and what I do not like, is that it represents too great a loosening of the rules against the company lending money. The proposal that has been put by Sen. Mansoor is better, because it preserves the general prohibition against loans and then makes the exceptions including very importantly—limiting the use of the "fig leaf" circumstances prejudicial to the company."

What I do not like about the present clause 57(1) is that the company could lend unless there are circumstances prejudicial—I am turning it around. It is the fiat to lend unless something takes place. I prefer you cannot lend but there are certain limited exceptions, of which "circumstances prejudicial" is one.

3.40 p.m.

We do not have the enforcement mechanisms. We are not law enforcement efficient, as I keep saying. Therefore, I foresee that if we do it in this more liberal way, then there is going to be a section that will be a little too slack. I would prefer that the Government look again at the compendious clause 57 that has been proposed by Sen. Mansoor which deals only with circumstances prejudicial as the last exception to the general rule. It also has the advantage that, as a whole, it still echoes clause 47 of the Companies Ordinance which is a section that has worked well and for which there are ample precedents both in the United Kingdom and in other countries. I would like the Government to look at that very carefully.

The question of whether to permit loans to employees for the accommodation and the improvement of education is a policy question to the Government. I do not feel strongly about it one way or the other. I have a little doubt about housing plans at this stage of our development; not because they are not good things, but because of the problems of over-invoicing and controls, generally. My concern is to preserve employee stock ownership plans and profit-sharing plans as described

in Chap. 35 of the Income Tax Ordinance and, generally, not to make the exception about prejudicial circumstances quite so wide.

I have a concern about clause 440 which was referred to by Sen. Wade Mark. I once chaired a committee in the course of my association with companies legislation, which was trying to find some way in which claims for severance could be given some kid of priority—I put it as neutrally as that. It is important for the benefit of Senators that we spend some time on clause 440. Yes, it is true that 100 per cent of one's severance pay has priority in relation to the floating assets of the company but it has no priority in relation to the fixed assets and, therefore, in those cases where the banks and the other secured creditors, in effect, take all of the fixed assets in satisfaction of their prior charge, there is nothing left for the workers. The floating assets priority has proved to be very inadequate.

What is worse, and again we keep blaming the Privy Council for this, but all they did was reverse the decision of the Court of Appeal and uphold Justice Permanand's. The Privy Council and Justice Permanand held that if one were dismissed by the receiver that was not a redundancy and, therefore, one did not qualify even for the limited priority that was conferred by the Retrenchment and Severance Benefit Act. What my committee tried to do—and there was trade union participation up to a point, and then, they fell out with the then Government and did not come to any more meetings—was to say that at least one must find some minimum amount of money on which everyone can agree, even the banks, to give priority to, even over the fixed assets.

I know that four months' salary and two months' benefits are minimal indeed. In fact, I would have liked to see the severance benefits equated with the four months' salary. My committee was trying to say to everyone, including the banks, let us find some sum of money that the worker is guaranteed to get. What will you concede? It is important that you give priority, not only in relation to your severance benefits, but in relation also to unpaid wages which had a low priority under the old Companies Ordinance.

This clause attempts to give priority to a very small sum of money, even over the fixed assests charged, so that the worker is guaranteed of getting something, however small. My concern about this clause is its intention. I do not believe it impliedly repeals anything. I certainly do not agree with this amendment which I have just seen which really attempts to pre-empt the whole question of the priority of wages over fixed assets. If we slip these 10 lines in, there might be major revolution in the way we do business. I do not know who has been consulted

about this. I certainly do not think it impliedly repeals the Retrenchment and Severance Benefits Act. It is very easy to put in words to make it plain that it does not. I don not think it does. I am concerned because a young attorney who is well versed in industrial relations criticized—and I do not feel anything about it—the drafting of my committee and suggested that although our intentions were good, we may not have attained the objectives as a result of the drafting.

I hope that clause 440 has been checked as a drafting matter to make sure that it really attains its objectives. It is absolutely shocking when a receiver goes into a company to find that there is no payment, however small, to tide over the persons who are the subject of termination. As the Privy Council and Justice Permanand have said, it is not even a redundancy if the receiver does it because it is not surplus to requirements. It is by operation of law. It is very important that there be some guaranteed sum of money, however small, and I ask that the Government recheck with its advisers to make sure that clause 440 achieves that objective.

Mr. President, I would like to make a few other brief general remarks. Clause 440 is really designed to curb some of the evils of the "Swan Hunter decision" as it is known in legal circles.

This Bill, as the Minister indicated, gets rid of the ultra vires rule, which is an old rule that says if the company does something that deals with you unknown to you—I am probably over-simplifying it—there is some restriction on the officer to deal with you, then the contract is ultra vires and you cannot recover. The ultra vires provisions in the company law which remain in the United Kingdom are under serious attack by very respectable company law commentators. So, there is nothing revolutionary about doing away with the ultra vires doctrine as we are doing here. Even in the United Kingdom where it remains, indeed, as the law—do you know it is rather ironic when we say we must follow the United Kingdom when one of the problems we are having now in following the United Kingdom law, is that it is becoming so Europeanized and it is in turn subject to rulings of the various European courts. Indeed, the commentators are saying that the European court is going to strike down the ultra vires rule as being unconstitutional, or whatever language they use, in relation to the way business is done in Europe. The days of the ultra vires rule are numbered and there is absolutely no reason why we should not get rid of it. The fact that we are doing so via a voyage to Canada and Barbados does not trouble me in the least. I think it is a very progressive step.

Mr. President, I am much more comfortable now than when I did not sign the report for the reasons which I have said. I do think it is very important that we do

not permit the joint select committee system to fail in the way it has twice failed over this Bill, and it is important that we place on record the fact that there was this failure and that is what caused the alarm. All the time the Bill was out there people were assuming it was subject to the joint select committee process.

Finally, historically, so far as I am concerned, one has to take risks. You try to measure the risk and you always hope that the risk will not materialize against you. The fact is, every time there is an inquiry into my firm by foreign investors and they ask about the companies law, we either show them what it is or tell them it is 1929 company law, and you can actually hear them retreating from making an investment in this country because of some of the many safeguards that are contained in this legislation.

I am prepared, now that the process has worked to a degree, to say that we must pass this legislation because we have been waiting since 1929. It is a very grave embarrassment when one has to deal with people, particularly foreign investors, on the basis of 1929 legislation.

We came very close in 1967 when Professor Pennington came here, and for whatever reason there was an outcry and the law was not amended. I do not think, however late in the day, that we should lose this opportunity, but there is still much work to be done in committee, and we hope that Sen. Mansoor's stamina will permit us to get a Bill, which, at the end of the day, would not cause us to be accused of negligence. Because that is what was being said—that we were negligent in seeking to pass legislation which we had not scrutinized. Now it has received some reasonable degree of scrutiny, in my respectful opinion, we can take the risk and propel ourselves forward with what is a very important piece of legislation, for the old law is frequently abused and subject to all types of manipulation.

3.50 p.m.

I heard Sen. Spence express a concern about re-registration. That is what the certificate of continuance is about. I know there were problems with it in Barbados and they had to keep extending the date. I do not know whether they have abolished it. The fact is that we are supposed to be computerizing our Companies Registry, so there is room for some hope that we will succeed where Barbados has failed. It would not be feasible to continue to have two types of companies as the old Act and new Act type of companies. We have to make some attempt to bring all the companies under some kind of uniform code, not only for ourselves but also in relation to foreign investors. I do not know if that helps in relation to the misgiving which he has expressed.

I think it is very important that we do not make wild and loose statements about legislation being half-baked. As a result of sitting on joint select committees—I mean it has been a privilege to sit on these committees—I have seen how hard people in the office of the Treasury Department work. These people are not discouraged very easily. I would be very discouraged. When we use these wild statements about half-baked and we take out paid ads in the newspapers, do you know what it does?

Here is a document with 26 pages and in the fourth column on the Securities Industry Bill, certain amendments were submitted by Gerard Furness-Smith SC. The Treasury Department took away those comments and responded to each one in tabular form in about two weeks, so that all the Members of the Committee could see what Gerard Furness-Smith is saying and what the Ministry of Finance is saying. I think it must be very discouraging and disheartening when we use wild terms like "half-baked" when we have this type of output from government departments.

That is not a partisan statement because governments come and go and Treasury Solicitors remain. If this is what people are producing, I think just as it is insulting to always call Sen. Mansoor’s name on every occasion we debate something, and then turn around and say there is room for him in your house, I think it is equally insulting to the people who work very hard. [*Interruption*]. We are talking about work, Sen. Barrack, nothing you know about. I think it is very hard to say that this is half-baked when there are people who support this Parliament and produce this kind of work. If we are going to be fair to everybody I think it is important for the national community to know that when people are jumping up and down and saying that we are not doing our work, this is what comes from the relevant government departments.

This is the kind of thing that has taken place with this kind of legislation. It does not bother me. People call me worse names when I am on the other side in court. I think it is downright unfair to use these kinds of expression when this is the level of work that is produced and I am determined to correct the record. We may not do a great job with this Companies Bill, but I do not think it is fair to say that this Bill has not—it may have been late in the day—received some kind of decent treatment from the process with the able support of persons who have nothing to do with party politics. They happen to work for the Government. Sometimes we are very harsh on their drafting and sometimes they are very harsh in the way they brief Ministers. When they do work like this it is equally incumbent on us to acknowledge it.

Subject to the work that still has to be done in committee with the assistance of Sen. Mansoor and others, I will be prepared to support the passage of this legislation.

Thank you.

Sen. Diana Mahabir-Wyatt: Mr. President, I would just like to put Sen. Daly's mind at ease and say that during the eight months, people have been looking at this Bill. It has not been totally ignored for eight months. There were people who were not waiting on the joint select committee to come up with its deliberations. Like everyone else, I am grateful for the work which was done by Sen. Mansoor and his colleagues. I think that it is going a little too far to say that nobody looked at this Bill for eight moths. At least, I hope that people were looking at the Bill.

There are some areas that I do not quite understand and I wonder if I could ask the Minister, for my personal edification and perhaps for public edification, to reply to some points in his winding up. From the Preamble to the Bill and what the Minister said in his opening remarks, it seems that this Bill has followed very closely on the Caricom working party on the harmonization of company law recommendations. It is not that I am disagreeing with what has just been agreed, but I wonder if the Minister would explain why we are now going to differ from Barbados in relation to the external companies which have been requested by Sen. Mansoor's work—just for educational purposes I know that we are part of Caricom and we have to do business with other Caricom countries, but I am not quite sure about the extent of the import and the difference between us in relation to external companies.

Secondly, I agree with the stand that has been made by the Minister in relation to clause 101. I am happy to see that the interest of company employees in general has been included in the ambit of the "best interests of the company" where it comes to the duties of directors. I think that this is greatly overdue and I am glad that it is going to remain in the Act.

While I agree with the need for standards of performance for directors and I am glad to see that the common law provisions have been put into the Bill, I am just wondering, in clause 101 again, who is going to decide what is in the "best interests of a company" and what a reasonably prudent person would do in the circumstances. It may not be answerable but it occurred to me that it is one of those "who judges the judges" kind of thing.

I think that in other jurisdictions those who would be called upon to make such a judgment would be a jury of one's peers. In other words, in this case

business people who themselves understand business. Business people very often find it difficult to get bank officers to understand business. They understand banking but they do not always understand business. It crossed my mind that it might be a little difficult in certain circumstances for a public servant, as expert as the Registrar General may be, to decide what a prudent business decision will be. I am just wondering if he would comment on that when he is winding up.

There were some other points which I had raised and the Minister said that he would come to them. I am not quite sure where we are at this point. One of those had to do with clauses 95-98. This has to do with a director's interest in material contracts. These clauses do not define what a material contract is. I think there are some very strong, ethical considerations to be taken.

4.00 p.m.

I know that there is the need to balance the legitimate self-interest of people who are directors of companies. In a country as small as Trinidad and Tobago, a person who has the expertise to be a director of one company is very often chosen to be the director of another company and naturally tends to have various financial and material interests which are quite legitimate and probably cover a wide range of activity. There are other people we may want to have as directors of companies. I am not suggesting that we have too tight restrictions in terms of what people can do, but I do think it is perhaps a good idea so that people can make the sort of decisions that are in the best interests of the company. I have mentioned that in clause 101 there should be a clearer definition of what "material contracts" means. I know that this is not the final incarnation of this Bill, and that there will be a chance to make amendments in the future. I am just hoping that at some point attention will be given to this particular provision and to a clear definition of "material contract." Since we have been waiting 24 years to get this one, I am not exactly optimistic about an early return to make amendments to whatever is passed today.

I would just like to thank the Minister for his consideration in the matter of the audit committee reporting to the entire board, which was raised in the amendments that I proposed. I think I would have been even happier if some of these could have been attached to the misuse of the functions of those committees, but I am not going to push it.

I would like to ask some questions on a few specific provisions and make some general comments in relation to those arguments that I had in relation to

various things in the Bill. Clause 351(c), which is a penalty clause and which has to do with the winding up of an Act, says:

> "Every director or manager of the former-Act company is liable to a penalty of one hundred dollars a day for each day during which the former-Act company carries on its undertaking thereafter"

if it has not applied for a certificate.

It has occurred to me that including "manager" in that provision could be unnecessarily harsh. I am quite willing to admit that directors should be personally and individually liable, but managers nowadays are employees and they may have neither the responsibility nor the authority to do anything. In fact, they might not even know that this has not been done. They may not even be aware that the company has not been registered. One cannot expect the marketing manager, for example, or the human resource manager, to share equally in the responsibility that the directors would have for non-registration of the company. I wonder whether the Minister would consider removing "manager" from that particular clause.

I have one brief comment on clause 352(2). I will not go into it in detail because I think that Sen. Daly did mention it. It appears that this is one of those provisions in this Bill which will mean that the company will have to operate in certain circumstances with a knowledge of both the old and new Acts. If this is true, I would like to make a formal request that the Government Printery be asked to reprint the old Act because one cannot get it anywhere and copies of it are sort of bandied about behind closed doors as though they are gold. People will have to refer to them. It has been out of print for such a long time that copies are not even in the book stores or in the books of laws given to Members of Parliament.

There is one other query which has to do with clause 440, to which both Sen. Wade Mark and Sen. Daly have referred. Clause 440 refers to the winding up of a company. I agree with Sen. Daly's stand on this and I do not think that the amendment suggested by Sen. Wade mark will be useful. When it speaks about the "wages or salary … of any employee", does this mean managerial employees as well as non-managerial employees? It refers specifically to the Retrenchment and Severance Benefits Act and that Act, at the moment, does not cover employees under the definition of the Industrial Relations Act. In other words, managerial employees are excluded under section 105 of the Constitution, so are public officers, so are teachers, workers at the Central Bank and people who work in and around dwelling-houses. There are various categories in the Industrial

Relations Act which are excluded from the definition of "worker." It does say here, in subclause (c) "accruing to an employee, not being a director" and refers to the Retrenchment and Severance Benefits Act. I am asking for clarification on whether a formula for the calculation equivalent to what would take place under the Retrenchment and Severance Benefits Act is to be applied to people other than those covered under the Retrenchment and Severance Benefits Act.

I have two other points for clarification. In clause 65(2), in deciding who will be the secretary—and this is a drafting point—I would like to know whether (a), (b), (c) and (d) are conjunctive or adjunctive. The way I read this is that in order to be a company secretary, without putting an "or" under each of these subsections, they are saying that someone:

(a) "who, on the commencement date, held the office of secretary, assistant secretary or deputy secretary of a public company;

(b) …for at least three years immediately preceding…held the office of secretary;

(c) is "in good standing of the Institute of Chartered Accountants of Trinidad and Tobago, and is an attorney-at-law; or"

As we do not have the "ors" at the end of (a), (b) and (c), it would appear that they are conjunctive, not adjunctive. I realize that this is a technical drafting point, but I think that this relates to what Sen. Wade Mark was saying about the position of people who are company secretaries now. I am concerned about it from a business point of view because there may be some small companies that do have experienced people as company secretaries. I know as a personnel recruiter how difficult it will be to find somebody who fills all the qualification at (a), (b), (c), (d) and (e). This is a question I would like to have resolved.

4.10 p.m.

There is one other question on clause 86(2)(e). I am asking for clarification because I am not sure what the intention was. It reads:

"Nothwithstanding subsection (1), no managing director … may—

(e) purchase, redeem or otherwise acquire shares issued by the company."

This is a company that they work for. What happens to those managing directors who presently own shares in the companies that they work for? Do they have to choose between their job as managing director and the shares they already

own? Would this not discriminate against people who are managing directors of companies in which they own a major part of the shares?

Perhaps, I am not understanding this. Clause 86(2) says:

"Notwithstanding subsection (1), no managing director … may—"

And 86(2)(e) says:

"…purchase, redeem or otherwise acquire shares issued by the company;"

That worries me, because one of the incentives to get and keep managing directors is to allow them to purchase shares in the company. I would not want to see that incentive lost. We have enough trouble getting good managing directors for firms in Trinidad and Tobago.

In closing, Mr. President, I would turn to the section which deals with non-profit companies. Again, I do appreciate the Government's acceptance of certain amendments which I proposed.

I would now refer to non-profit organizations in Trinidad and Tobago which include most charitable organizations—religious, cultural, sporting, and I would imagine political organizations—command enormous resources and they affect the lives, very profoundly, of a great number of people in this country. I am glad to see that consideration of non-profit organizations and how they are run is included in the Companies Bill. It is a recognition of their importance. I was a little amused, therefore, at the wording of clause 311(2) which states:

> "When a provision of this Division is inconsistent with, or repugnant to, any other provision of this Act, the provision of this Division in so far as it affects a non-profit company to which this Division applies, supersedes…"

It looks as though we are waving the red flag and saying from upfront that one will find inconsistencies and things that are repugnant to other areas of the Bill. I thought that was a little touching.

There are some peculiar anomalies or inconsistencies on which I am seeking the guidance of the Minister. For example, clause 318. I may be asking about drafting points. I work with a large number of non-profit organizations and these matters are of grave concern and great importance to non-profit organizations because they cover such a wide spectrum, so one wonders why clause 318 was included. Clause 318(1) says:

> "Subject to subsection (2), each member of each class of members of a non-profit company has one vote."

Well, that is great. But then subclause (2) cancels subclause (1); Clause 318(2) says:

> "The articles of a non-profit company may provide that each member of a specified class has more than one vote, or has no vote."

I wonder, why put it in? There is a peculiar use of the word "may" in these clauses. Clause 315(1) is fine; it says:

> "A non-profit company shall have no fewer than three directors."

That does make a direct provision. But clauses 315(2), 317 and 318, as I have just pointed out, slate that they may provide for individuals to become directors, they may provide for more than one class of membership, and I am wondering about the use of the word "may" here, because it is neither enabling, regulating nor restricting and there has to be a purpose for it. I wonder if the intention was to keep it optional? All it is saying is that you have an option. Maybe you had not thought of this, but now we are going to put it in here so that you may think of it, but you do not have to do it if you do not want to do it. In fact although each member is only supposed to have one vote, one can say that a member cannot have any votes. I am just wondering if this was intentional and whether it is a peculiar nature of non-profit companies that cannot do this or just were not sure.

The first one of the two other questions that I have relates to clause 320(1). That clause again, uses the word "may" but it is different in this case. As I recall the rules of English grammar, as I was taught then, where you have "may" here followed by a list, it means you are in fact limiting your choice to those bye-laws which are listed here. Non-profit organizations, and non-governmental organizations can be as fiercely political as any other organization when it comes to dividing resources. These things are extremely important to directors in these kinds of organizations. It seems to me, if I understand the rules of English grammar, that clause 320(1) is limiting these bye-laws to those which are listed in (a) to (j). If that is so, it seems to be contradictory that sub-clause (2), therefore, brings in more bye-laws. This is why I asked, why not put in, "among others," in clause 321, but this is not acceptable to the Government. This was really the basis on which I asked the question, because of the rules of grammar.

The last question—if the Minister would be so kind—is particularly important with respect to the non-profit organizations. Is there another inconsistency? According to clause 311(3)(d) "the provisions of Parts VI and VII" also apply to non-profit organizations. I wonder whether the draftsmen could point out whether

or not there may be another inconsistency that needs to be cleared up between clause 313(3), which says:

> "…the approval of the Registrar is not required for the continuation under this Act of a former-Act company that was registered by licence of the President pursuant to section 20 of the former Act."

Is that consistent with clause 477 which says:

"The Registrar shall maintain a Register of Companies in which to keep the name of every body corporate—

(a) that is—

(i) incorporated under this Act;

(ii) continued as a company…"?

This is simply a question about consistency and I wish the Minister would clarify that.

When we get to the committee stage, I would make suggestions in relation to the inclusion of the wording of section 20 of the old Act in the new Bill. The reason I suggested this was that there is one clause in particular in this new Bill, clause 21(2), which restricts property owning by a non-profit company to those companies that have a President's licence. If we do not have some provision in the Bill for a President's licence—that clause says that one cannot own more than two acres of land. My proposal was that we put the old President's Act in. I take entirely the Minister's point where it comes to not using the word "limited" at the end of the name of the non-profit company. That is irrelevant, because the Act takes care of it. The other parts of that do not and I would make suggestions at the appropriate time as to how we can limit that. I really do not think that the enabling provisions in clause 522(2) and clause 313(3) are sufficient to cover this particular point.

As you know, a number of non-profit companies own land and may want to, in the future, own more than two acres of land for sporting reasons. Servol already owns more than a number of organizations probably do, because they operate in different places throughout the country. I did not think that the enabling position, those provisions in clauses 522, 352 and 313 were sufficient to take care of that.

4.20 p.m.

Mr. President, with these few points I would just say that I am grateful that this Bill has come to the Senate so that we could correct some inconsistencies,

and that those points which Sen. Mansoor has raised could be taken into consideration. I think that we have been handling it so far with considerable dispatch. I recommend that we continue to do so.

Thank you.

Sen. Junior Barrack: Mr. President, I had very little reason before a particular discussion a while ago to participate directly in this debate. In this Parliament, since I am here, it has always been my policy to deal with matters which I believe there is need for me to deal with; that there is some contribution that I can make that someone in this Parliament has not made. Therefore, when I am in this Parliament I do not just get up and speak for speaking sake.

I just want to put to rest one or two misgivings, misunderstandings, misrepresentations that were made a while ago about the UNC's position with respect to the Chamber of Commerce and what was meant by "in our Father's house there are many mansions."

The fact that the United National Congress can find objections in the way in which a group of individuals or an important organization in Trinidad and Tobago functions, and also can find areas to commend that particular organization, or to support the views of that particular organization at a different time, shows that there is some measure of objectivity in our behaviour and the way in which we approach people and things.

I believe if we examine very closely the UNC's enlightened approach to the Companies Bill, we would find that the UNC has supported the views of the Chamber of Commerce in this respect. What many people do not know, and should know, is that the UNC, apart from offering the Chamber of Commerce an opportunity to sit in the Senate and make its view heard here—which is public knowledge—on finding out that the Chamber of Commerce might not be interested in this particular endeavour asked what were the things that it felt were objectionable.

We knew that Sen. Mansoor would have brought significant amendments. We knew that based on our communications. There was no need for duplicity, Mr. President. Therefore, we came here [*Interruption*] he is being clarified, why does he not sit and wait?

Sen. M. Daly: That is all right.

Sen. J. Barrack: Therefore, we wholeheartedly supported the amendments brought by Sen. Michael Mansoor.

Someone in this Parliament finds that to be very objectionable. Somebody believes that the UNC should not commend someone for doing something good. It appears that way. Sen. Mark in his contribution—

Hon. Senator: Please say Sen. Wade Mark.

Sen. J. Barrack: I did not hear a contribution from Sen. Ainsley Mark. The Senator is versed in redundancy. Praise! Sen. Mansoor and the Senator did not seem to be perturbed or hurt when a little praise came their way from the UNC benches.

There is someone in the Parliament who behaves like a little girl. A release was made to the press; someone said something, presumably from the Opposition benches and for the last three sessions of Parliament one particular individual keeps harping away at it as though his ego has been bruised. We are not in the business of psychotherapy here, if the man has a problem he would have to see a psychiatrist. [*Interruption*]

Mr. President: If you are referring to a Senator you can say "if the Senator," not "the man."

Sen. J. Barrack: Thank you, Sir. What we are concerned about is to pursue the business of this Parliament. For your work in the breaking up of the people of Tobago—splitting the people of Tobago—that would be entertainment before elections, I can tell you that one. It may not be a pang to the myopic, but if one thing is certain, it is that the actions of the United National Congress are consistent and are appropriate for the development of Trinidad and Tobago.

While we are attacked in a particular way, the very person who made these remarks, the chasm between his words and his action is implicit. As an example, in the debate on the T&TEC Bill he spoke one way and voted another. He took the Opposition by complete surprise. We have not been able to recover from that as yet. And many other pieces of legislation.

Sen. Capildeo: The campaigning has not started yet.

4.30 p.m.

Sen. J. Barrack: When the United National Congress makes enlightened comments on the promotion of the protection of companies and the way in which they are run and so forth, and we are looking at this piece of voluminous legislation, and we are saying this is right and this is wrong, we do not need to be condemned.

The Chamber of Commerce sent a particular letter to one of my colleagues—apparently the Chamber of Commerce does not believe I could make a contribution on its behalf, but maybe I am going to defend the Chamber of Commerce here today. A particular Senator who sits on the back bench and makes all kinds of condemnation against people who interfere with his inflated ego, or sometimes over-inflated ego—

Mr. President: Are you going to be long?

Sen. J. Barrack: I have to read this letter from the Chamber of Commerce into the record, Mr. President, and there are some other comments I would like to make.

Mr. President: How long do you expect to be?

Sen. J. Barrack: About 15 minutes, Sir.

Mr. President: I will hold you to that.

Sen. J. Barrack: If you wish that we go for tea, Sir, I would not have anything against that.

Mr. President: We are going to suspend for approximately half an hour. I just want to remind Senators that we have a serious task to get through 500 clauses before we reach the committee. We will resume at 5.00 p.m.

4.33 p.m.: *Sitting suspended*.

5.00 p.m.: *Sitting resumed*.

Sen. J. Barrack: Mr. President, it was intimated to us in a contribution earlier that the statements by individuals inside and outside this Parliament which suggested or suggest—I do not want the media to pick me up on this one again—that statements to the effect that the Government's legislation on the Companies Bill was cavalier or half-baked, were wicked, insensitive and so forth.

Mr. President, I will read a statement which I was about to read before we took the break. It states:

> "The Chamber strongly objects to such a cavalier approach to the passage of any legislation, since the conduct of citizens is governed by laws passed in Parliament. It is beyond recklessness to knowingly pass into law, an instrument which it is admitted has not received careful consideration and analysis, one in which a significant number of defects have been identified, and one which will govern the business and therefore economic

> life of the country. The Chamber condemns, in principle, the manner in which the Companies Bill is being handled, and indeed, would do so for any other legislation dealt with in a similar manner."

I see that the person who was making these comments is not here at this time, and it is very unfortunate because I would have liked to draw his attention to his opening remarks based on the Companies Bill and the Securities Industry Bill, where he said he did not sign the report because he was not satisfied with the way in which the deliberations went on the Companies Bill, in the first instance; also supporting what the Chamber of Commerce has said here; but strongly condemning the UNC's position on the matter and for the way in which the UNC has put forward its case.

Mr. President, if a Bill is half-baked and someone says it is half-baked, you cannot condemn him when you yourself refused to sign the report, as a member of the committee, because of the deficiencies in the Bill. It is rank hypocrisy for any Member to have chided the Opposition in the way in which a certain Member did a while ago, knowing full well that that Member himself refused to sign the report of the committee of which he was a member. The people are saying it is half-baked legislation. He was a member of the committee that said: We do not want that because it is half-baked. As a matter of fact, he did not believe it was baked at all, because he was not going to sink his teeth into it.

Mr. President these are the kinds of things—

Sen. Spence: Mr. President, on a point of correction, my impression is that Sen. Daly was concerned with the process and not with the Bill.

Mr. President: That is the impression I got myself.

Sen. J. Barrack: Mr. President, Sen. Daly was not called upon to sign the Bill; he was called upon to sign the report. The report would have been the result of the process that had occurred during the deliberations of the committee. He did not identify with the process—not the Bill. He also had severe objections to the Bill which I recognize, and the Chamber has recognized, and the UNC recognizes. What Sen. Daly did by not signing the report is to say: I object to the process, because the report is a product of the process.

Mr. President, we therefore have no excuse for that kind of double-speaking, what I consider to be a kind of behaviour that is unbecoming of someone who holds high office. When that person takes time off to cast aspersions upon me and my party, he has to come in for a little attention; and this is what he is getting here now. This attention is important, because—

Sen. Capildeo: The man say you don't work, you know.

Sen. J. Barrack: I have worked on one committee in my life and Sen. Diana Mahabir-Wyatt, who was a Member of the committee, stood and told the Parliament that I am a very hard worker. Did you not ? I do not think Sen. Diana Mahabir-Wyatt was trying to *mamaguy* me. Mr. President, I take everything I do seriously; that is why I am approaching this matter in the way that I am.

Sen. Capildeo: The man run. He run!

Sen. J. Barrack: Sen. Daly has proved himself to be a kind of—

Mr. President: Let me make it clear. I have a written excuse from Sen. Daly, which I received before we suspended the sitting saying that he had an engagement and he would not be able to be here after the suspension.

Sen. J. Barrack: Mr. President, I am glad to hear that, but I did not chide him for not being here, I merely said it was unfortunate. So I am glad to know that he would have liked to remain and hear the various errors that he was making during his contribution earlier. It is unfortunate that he is not here, Sir, and I continue to hold that position. I do not believe that he ran, because I saw him walking out there. *[Laughter]* I would not accuse him of doing that.

Sen. Spence: Mr. President, I believe that under Standing Order 35(1) Senators shall confine their observations to the matter under discussion. I think the hon. Senator has really got away from the matter under discussion.

Mr. **President:** From the discussion that I am hearing from certain benches this afternoon, it has to deal with rebuttals. I do not know if the result of the O.J. Simpson case is encouraging everyone to deal with rebuttals, but certain quarters have not dealt with the Bill. I would not question why or why not, or venture to guess, but as I have indicated, we have 500 clauses to deal with in committee, and I can remind you about the Standing Order. We have not touched it for a long time. It deals with repetition of one's own arguments and the arguments of others.

5.10 p.m.

Sen. J. Barrack: Mr. President, thank you, and I thank Sen. Prof. John Spence. He must be quite pleased with his interruption a while ago. I believe, in a nutshell that we cannot have people making accusations against other people, when the former, because of the perception of a tight constraint or the urgency of a matter before us, are prepared to leave matters hanging. It is unfair to everyone

involved. I am not saying that we do not have something urgent to deal with; I am dealing with it urgently, but we cannot leave these matters hanging.

So I take into consideration the urgency that we have to proceed with in this matter. Five hundered-plus clauses have not come to us for such a long time, but again, certain remarks were made about us and we had to take care of them.

At this point I would like to say that I made a few remarks about these areas here and I hope they were taken in the way in which they were meant to be taken.

With these remarks I say, thank you very much, Mr. President.

Sen. Michael Mansoor: Mr. President, I am going to be extremely brief in my remarks, mainly because what I had intended to say had to do with the list of amendments, and since several of those amendment have, in fact, been accepted, there seems little point in trying to debate them or argue their merits or demerits.

There are, however, just a few points I would like to make. Firstly, I think, I owe it to this Senate to make it very clear that I did not produce those amendments. When the select committee met, the way it was comprised and the skills that we were working with, the select committee really did not have the manpower to deal with as complex a piece of legislation at this is, complex in the sense, not because of the issues involved, but because of the fact that secretarial practice, as it relates to companies, is not something that you learn in a couple weeks. It is my experience over the years that a company secretary becomes a good company secretary only after many years of study, and perhaps more importantly, many years of detailed experience.

Therefore, the committee had a lot of difficulty dealing with, for example, the use of a seal, the very detailed provisions with respect to the transfer of shares. It was virtually impossible, I think, for us to really come to grips with the detailed type of review that each clause and each subclause required if we were going to do a good job.

So that the conclusion we came to was perhaps the only conclusion that a set of reasonable people could have come to. We took the position that we would report to the Senate precisely how we felt about it. I think it is a bit unfortunate that the joint select committee did not distinguish very clearly between the Bill we dealt with yesterday and the Companies Bill. That perhaps, is an error of communication. I think that it is important to understand why the joint select committee could not complete its work with respect to the Companies Bill. It, perhaps, was an impossible task.

So having regard to the belief which I hold, and I think most Senators hold, is that a 1929 Act is just not good enough for Trinidad and Tobago in 1995. The question really arose: How does one salvage this Bill and make it law? I think what has happened has been very fortunate. The Chamber of Industry and Commerce, as several Senators have indicated, took a position, and I basically went to them and I said: If that is the way you feel, why do you not have a detailed review of the Bill? They immediately agreed that they would have to retain counsel to do that for them because of the complexity of the task. They did that. In fact, I do not think I would be letting out any secrets. They retained former Sen. Gerald Furness-Smith, Senior Counsel, and a man who is very well known in these quarters. I believe he was recently decorated by the State. He, in a very short period, looked at the Bill as we had it then, and came up with a set of amendments, and those are the amendments which are in my name today.

I had intended, as I said before, to talk about those amendments. I do no think there is need to go into any detail, so I would say very little about them. But I wanted to place on record my gratitude and appreciation to Sen. Furness-Smith and also to the Trinidad and Tobago Chamber of Industry and Commerce for getting this review done, and done in a very short time.

I would, however, like to make a few comments with respect to the amendments that the Minister of Finance indicated that the Government would not be taking up. With respect to clauses 89-94, that deal with the liabilities of directors when dividends are badly paid, or when shares are issued for consideration other than cash, I believe that those clauses would really have the effect of, perhaps, discouraging people from taking up directorships in companies. Believe it or not, one of the real problems that we have in the private sector in Trinidad and Tobago is finding good directors. I believe that the liability of directors that we deal with in those clauses is, perhaps, very well dealt with under the common law, and the other provisions of the Bill that require directors to exercise due care. It is not a make-or-break matter, but it is a representation which I think I would like to make.

Clause 101(2), which puts a rather onerous requirement on directors, says:

> "In determining what are the best interests of a company, a director shall have regard to the interests of the company's employees in general as well as to the interests of its shareholders."

We had suggested that that subclause be deleted, not because there is anything intrinsically wrong—as a matter of fact, there is a lot that is right about looking after employees—but when you have something like this in the law, one wonders

how directors would really deal with the affairs of a company. How does one, as a director, legally undertake to have regard to the interest of the company's employees when, for example, there is a bank with a preferred liability that he has to look after? My own view is that clause 101(2) introduces some complexity and perhaps difficulty for directors who have to operate on a day-to-day basis.

Those were the two amendments, which were not taken up, that I specifically wanted to speak about, in addition, of course, to clauses 57 and 58 that deal with the question of companies making loans to officers, directors and employees. I believe that the way the provision is stated in the Bill, it perhaps encourages the making of these loans, rather than doing it the other way, saying that a loan should not be make except in these circumstances. I would recommend that the Minister and his advisors look at it again, because I think it may encourage the making of loans and the giving of loans in circumstances that would be not in the best interests of all.

I have basically done what I had intended to do, which is to recognize the contribution of the Trinidad and Tobago Chamber of Industry and Commerce and former Senator, Senior Counsel, Gerad Furness-Smith, and that really brings me to the end of my contribution, except to say that this Bill has really been long in coming but there are very many good provisions in it to do with reporting, the appointment of auditors, the powers of auditors, the treatment of minorities. These are new provisions, essentially.

5.20 p.m.

Just for example to take one, the treatment of minorities. Before as a minority shareholder, the only option one really had was to go after the liquidation of the company if one was not happy with what was going on. In this Bill—I think it is clause 246—there is a provision whereby one could become a complainant and go to the court which could force the company to buy ones's shares; and there are other remedies.

This is essentially a very good Bill. It may not be a perfect Bill, but it is a good one. I believe with the amendments that have been made and considered it is a very good start. I say very good start because it has to be implemented, and I know that the Government is very aware of the job of implementation. It is not going to be easy to have all these documents and data for several thousands of companies in such a way that just about anybody could access it within a matter of a few hours, but there are people who could access it within a matter of a few

hours. There are precedents for this being done in other jurisdictions and there is no reason why it cannot be done here.

Mr. President, thank you for the opportunity to make a contribution.

Sen. Dr. Eric St. Cyr: Mr. President, I would like to make some very brief remarks. The first thing I want us to be very clear on is that the existing Companies Act has not been working very well at all, to put it mildly, and we have known this for a quarter of a century, and we have been moving towards today. I am happy to see that at last we have found the courage, and the energy, to step out, perhaps, somewhat by faith, but then anything we do into the future requires some of that.

We could have waited much longer and got it a little more refined, but I do not know if that would have served the country any better than this step is going to. So, I think we should brace ourselves and together take this step with some confidence.

There are a number of things I would like to comment on, but time would not permit. I am not very happy about single person companies and I would really like to ask the hon. Minister whether such companies would enjoy limited liability status because if they do, it gives, perhaps, a little more protection to an individual than I am happy with.

I do know that the major issue in business enterprise is to exchange risks and information in the society at large, but I do understand the practical side of moving to single person companies. I, myself, would have preferred to see us stay where we were and let those who violate have it on their conscience, but now we make it possible. That is one of the things I am not very happy about.

Similarly, I am not entirely happy about companies being able to purchase their own shares. I know we have put some restrictions on this possibility, and we hope that people would behave in a responsible and proper way, but that too is an area which could open up behaviour which could be detrimental to the wider interest of the society. I must say that in the stakeholders' concept there are not only shareholders and employees to look after, but there is also the interest of the wider community to the extent that permitting companies to purchase their own shares could be detrimental to the wider interest of the society. I think we want to be cautious there.

I do not know why I feel very partial to the Canadian model. I do not know if it is because Canada is one of the smaller First World countries, or larger Third World countries—somewhere just at the break-even point—but I think there are

many issues which Canada, as a nation, has faced and grappled with, which countries like our own could do very well to emulate. I think, myself, that it has had a great deal of experience in this area and I am happy to see us looking in that direction.

Mr. President, there is a perspective that all new things are bad. I am sure that if we lived in such a perspective, we would make no progress.

I see the need for this revised legislation and while seeking to do the best we can, and put restrictions to errors, I think we should move boldly and without reservations. I am supportive of this measure.

Thank you, Mr. President.

Sen. Ainsley Mark: Mr. President, I am very happy to be a part of the deliberations on the introduction of this new Companies Bill. We are all aware that the existing Act has been, and continues to be, inadequate, so I think the step that we are taking today to introduce this new Bill is certainly a momentous one. I, like the Senators before me, would try to be very brief. There are a few points I want to deal with.

Being a Canadian-trained accountant I was, in fact, taken aback by some of the comments being made out there about the adoption of this Canadian legislation, as they called it. One was getting the impression that Canada was some sort of backwater, and that the font of all legislation—all things good and wonderful—had to be the United Kingdom. I want to spend a little time dealing with the introduction of this Canadian model.

I would be quoting from a little publication *The Canada Business Corporations Act: Implications for Management and The Accountant* by Robert W. V. Dickerson. In his overview, he states:

> "With the passage of the Canada Business Corporations Act, Canada now has on its statute books the most modern and best drafted corporation law in the English speaking world."

That is how he opened his discussion on this.

He goes through the approach that they took to their reform and says:

> "The reform of the corporation law at the federal level in Canada began with a recognition that the Canada Corporations Act (enacted in 1934…) was so out of date that piecemeal amendment was not practical."

I think this is important. When we think about the legislation that we have on our books, piecemeal amendments which were suggested in some quarters were really not practical.

5.30 p.m.

In terms of the basic objectives that guided the Canadians in coming up with their legislation—and we should point out that this legislation is 20 years old—this whole process was going on in the 1970s; it is not anything new and novel that we are dealing with. These are the basic objectives that they kept before them at all times in the drafting of their legislation. Firstly, they said:

> "The new law should be clear, practical and comprehensive, and should reflect the best synthesis of substantive and administrative concepts set out in contemporary corporation laws of other modern states."

It is interesting, that as part of their review, they looked at the laws of the United Kingdom, Ghana, Australia and the United States.

The second objective that they identified was:

> "A corporation law is an enabling law. Its purpose is to create a practical balance of interests among shareholders, creditors, management and the public: a balance that ensures both adequate investor protection and maximum management flexibility in the overall context of the public interest. A corporation law cannot be used to achieve broad economic and social reform, and it is a delusion to pretend that it can."

The third objective was:

> "Administrative discretion has no place in a corporation law. The law should be administered according to clear rules and standards, and all administrative decisions should be appealable to the Courts."

There are a number of objectives, and the last one says:

> "The law should be administered in the open according to the provisions set out in the Act and regulations. It should not be operated according to the policy guidelines or whims of the responsible officials. The law will thus be accessible to all, not merely to a select priesthood of lawyers and others who know what the officials like."

Let me just repeat that last sentence:

> "The law will thus be accessible to all, not merely to a select priesthood of lawyers and others who know what the officials like."

This is the genesis. This is where the model came from and some of the best legal, commercial, financial minds in the Caribbean area including Trinidad and Tobago went to work on this model and have modified it to come up with what we have before us, the Companies Bill, 1995, an excellent piece of legislation. Sen. Mansoor said it is not perfect. We would not expect it to be perfect, but it is an excellent piece of legislation because there are several very good, positive and forward looking provisions in it.

Mr. President, the lawyers who were objecting to the introduction of this piece of legislation—and I am of the view that good lawyers will find the law, whether it is UK, Canadian, or New Zealand law. We would find the law even if it is Tuvalu, just to allay the fears of those persons who might still have some concerns about this piece of legislation. At a symposium on the Trinidad and Tobago Companies Bill held by the Institute of Chartered Accountants of Trinidad and Tobago Law Asociation in 1993, H. Bernard St. John Q.C., an eminent lawyer from Barbados had this to say:

> "We have found that although—like you are finding—there was an initial resistance to the radical change that took place, now that the Bill has been in operation for a ten-year period people have become convinced that no great harm was done and, indeed, many beneficial effects have occurred as a result of the introduction of the Bill. I have absolutely no doubt in my mind that your experience will be the same."

A company seminar was held in Port of Spain on July 7 and 8. I will read the quotation and then I will tell Senators whose words they are:

> "Generally speaking I don't agree with David Collens, not to say that I never agree with him, but with regard to his general theses here this afternoon, that is, we better stay with the English model. Because after all, we know Lord Denning and others and those are good boys….Well the amount of respect we have for these English judges really is mind boggling; we will not let go their hands. We have to have the security of the Privy Council…The point has already been made there: are very good judges in Canada. There are a lot of Provinces and each has its State Courts, so in terms of the volume of precedents in Case Law, textbook writers etc., I don't think we need worry that we are going to suffer if we change from the English model to the Canadian. And I'm sure there will be issues in which we will be able to use both. So I do not think that we should be overawed by that prospect as to whether in relation to a

> particular provision we should adopt one form of words to another. Certainly if there was a form of words which had already been used somewhere else and which had been subjected to interpretation, I would say that was a strong factor in favour of using it, if we like the interpretation and it made sense that had been given to it. But if we are simply anticipating an interpretation which may develop as a result of the introduction of a new form in England, I think the argument is weakened. I would say that we shouldn't be deterred from switching to the Canadian model on the basis that we need to continue to rely on English precedents."

That was the Chief Justice, Michael de la Bastide, while he was still in private practice.

Mr. President, I hope that we would not hear any more talk about this Canadian model and its inapplicability to conditions in Trinidad and Tobago.

With respect to some specific provisions in the Bill, I am very happy about the new financial disclosure requirements set out in the regulations and I am particularly happy about the strengthening of the auditor's position in the corporation. For practising auditors, we have found in the past that we had to be invited to meetings; we had no rights. The duties and responsibilities of the auditors have been substantially strengthened in this Bill.

I just want to address some of the points raised by Sen. Wade Mark. If there was any doubt about the bankruptcy, the barrenness, the uselessness of the official Opposition, it was demonstrated here today. There is a Bill as important as the Companies Bill—528 clauses, 320 pages—dealing with what is perhaps one of the most important aspects of the national life, and the official Opposition comes with one single amendment. Useless waste! We are not surprised. This is all par for the course.

5.40 p.m.

Just for Sen. Wade Mark's enlightenment. He made some mention about the audit committee and the fact that he did not understand why we felt it was necessary to introduce audit committees into this legislation. The requirement that public companies should have audit committees is not new, and certainly in the past decade and a half we have seen this provision put into more and more companies legislation.

The fact is that the purpose of the audit committee is to ensure that at least one independent person, outside the director, is knowledgeable about

the corporation's financial position because he would have direct access to the auditor. We have found that a properly run audit committee is of tremendous support to the external auditor, to the extent that provisions for the committees are not included in other pieces of companies legislation. It would be a deficiency in those pieces of legislation and the inclusion of audit committees is certainly a very commendable step.

There are two concerns that I am going to raise in closing. The first of these deals with the upgrading of the Companies Registry, because there is absolutely no doubt that, given the tremendous responsibilities that the the Registrar of Companies would have, the activities, operations, processes and procedures of that department will certainly have to be upgraded. There is absolutely no way that the Companies Registry in its present form would be able to handle the volume of transactions that are contemplated under this Bill.

The second organization that we would have to look at may not be in this legislation but in the old legislation: the Institute of Chartered Accountants of Trinidad and Tobago. We are seeing that tremendous responsibilities are being bestowed upon them and they would have to do some work to get their house in order to be able to fulfil those responsibilities. As I said in the opening, this is not a perfect Bill. But it is certainly a vast improvement over what we have had and it can only but augur very well for financial and commercial activities in Trinidad and Tobago.

Thank you.

The Minister of Finance and Minister of Tourism (Hon. Wendell Mottley): Mr. President, I must say that many of the details that were requested will be provided during the committee stage. However, I place on record, for the benefit of this Senate, the recent history of the Companies Bill.

The draft Companies Bill was first tabled in this House on July 24, 1981 by Sen. Mervyn De Souza. The Companies Bill was again presented to the Senate as Bill No. 13 in 1993. I give you some of the history between 1981 and 1993. The Bill was first laid on May 14, 1993 in the House and for the second time on May 21, 1993. The Attorney General apologized for the delayed presentation of the Bill, but several companies and individuals had to be consulted and recommended that the Bill be presented to a joint select committee of both Houses.

A joint select committee was appointed by the Senate on June 1, 1993 and by the House on June 4, 1993. The joint select committee did not report and the Bill lapsed and had to be reintroduced. It was reintroduced in the

House on September 15, 1993 and read a second time on October 8, 1993. Again members of a joint select committee were appointed in the House on October 22, 1993 and in the Senate on October 26, 1993. The Bill lapsed again.

The report of the joint select committee was finally presented in the House on March 8, 1994. In the House the special report of the joint select committee was adopted and on March 10, 1995 the Bill was reintroduced in the House. After the second reading the Bill was referred to a joint select committee. The report of the joint select committee was presented on September 13, and adopted in the House on September 22, 1995.

I did this to give an idea of how long Parliament has been labouring as a Parliament with this Bill. It gave rise to an important matter raised by Sen. Daly. It is regrettable that he is not here at present. He talked about the workings of joint select committees and their severe limitations, some of which are reflected in the report of this joint select committee on these two Bills but, in particular, the Companies Bill. I think it would do this House and the other place well to reflect on the limitations of committees when they are asked to contemplate Bills of this complexity and length.

I think for the benefit of the Senate we ought to raise some of these concerns here now. The fact is that committees labour under circumstances where they have to be serviced by parliamentary staff and then by staff of the specialist ministries the Bills involve. All members of staff have a far wider application of work to perform than the particular matter before the committee. The question of how fast the committee can work and how concentrated an effort is a matter in question.

Then again, even more important, at least that staff is a professional staff and is available. The issue of expert witnesses and how long we can keep them involved, unpaid, in situations where they are away from their particular jobs, also comes into question. This is a small society and many of these persons are not always supported by vast establishments that can afford that generosity of time. We have the individual members who sit on the committees and are drawn from both Houses. In cases where they are Ministers, the same considerations apply to the professional staff drawn from the Parliament and the different ministries. Where they may be Independent Senators or Members of the Opposition benches who have but a fraction of their incomes made from their contribution to the Parliament and have to run businesses or law companies, how is this time best utilized if we are to do justice to a Bill like this?

I would volunteer safely that we could have spent no less than 100 working hours in committee on a Bill like this, that has already been before the House in one form or another since 1981, and its more recent appearance since 1993. These are serious matters that I think we all ought to reflect upon.

5.50 p.m.

The way this present impasse was resolved, as mentioned by Sen. Daly, was that the Government had paid professional advice, and that was before the Parliament. But then, how was this to be tested? Obviously, this committee could not provide that detailed test on a Bill of this size and Sen. Mansoor resorted to the Chamber—but one institution—which was able to provide paid technical help to test the Bill. What about other institutions that may be affected? I do not know. Maybe Sen. Wade Mark had the trade unions test it in a similar manner. They might have been able to afford it. I raise these matters so that we might benefit from the experience which we have had. I would say that the committee dealt with the Securities Bill and that was on the edge of the capability of a select committee. This, I would say, for that framework was beyond the edge.

I will, therefore, revert to some of the matters, recognizing clearly that the committee stage will deal with some of the more detailed questions. Let me say that on this question of the external company, we are moving away from what prevails in Barbados and we are doing so with some trepidation. However, we know that Trinidad and Tobago is in a different situation, largely because of its oil and gas inward-bound investments. In this realm we respect the experience of Sen. Furness-Smith and others who have to deal with these companies, especially since the Government, at this time, is strongly pro-attraction to investments to support the growth and employment creation required.

Hopefully, some time early next year the Government will bring to this Senate an Investment Promotion Bill to replace the old Foreign Investment Act. It will be turned around on its head and it will be a Bill which will deal with the many aspects of investment promotion and the things that exist within our legislation that detract from investment promotion. The Government, therefore, cognizant of that direction, heeded the experience and is reverting to the old situation and is viewing the external company in this particular way rather than as was originally drafted. I would say that during the period and until April, we will have a chance to look at this even more closely, but rather than send any wrong signals, we will revert to the external company.

The question of the transition is a pragmatic matter and the Senators were correct in pointing out that much of the smoothness of the transition will be

greatly assisted by what happens in the Registrar's Office. There is a serious programme of on-going reform much of which is funded by a specific IDB loan. The computerization, I have been assured by the Attorney General, is well on track. There are personnel there at this time and he is absolutely confident that during the two-year transition period, the new systems will be up, running, tested and amended, and that we will not have the nightmare contemplated by, I think, Sen. Mahabir-Wyatt where all 40,000 companies under the old Act are seeking transition to the new system.

Sen. St. Cyr asked why we are moving to this single person company and whether they will be allowed to be limited liability companies. All we are doing is legitimizing a situation which already exists, because everybody knows how to form a company with two shareholders under the present arrangements and to set up what amounts to a sham limited liability company.

Sen. St. Cyr is unhappy about companies purchasing their own shares; and, indeed, there are great dangers in that. That is recognized, but we believe that we have so severely circumscribed these actions, and so restricted them, that it would not present the dangers that he contemplates. There is strong Canadian precedent for this and we can bring to the record some of these Canadian precedents for his perusal.

Sen. Wade Mark expressed concerns about whether this Bill would overturn the Severance Act. That was dealt with by both Sen. Ainsley Mark and Sen. Daly. Again, as to his very specific worries about the drafting itself, I think we can have a second look at that at the committee stage.

I think it was Sen. Mahabir-Wyatt who raised a concern about clause 351(c) and the burden being placed on any and every manager. That appeared to be a reasonable concern, so that simply the directors should have the onus and responsibility of making the transition. As to whether that should be restricted simply to the CEO, who should know, this is something that we can consider.

6.00 p.m.

Clause 86, on superficial reading, appears to be a real concern. It appears to restrict the capacity of the directors and managers to purchase shares. On closer reading, Sen. Mahabir-Wyatt will understand that clause 86 is talking about delegated powers from the board to subcommittees of the board or to the managing director. The board has the capacity to make decisions about sales of stock to its employees. But any subcommittee or the managing director of the

board is expressly being prohibited from authorizing purchases to acquire shares in the company. It is not realizing the fears which she has. If she reads the Bill closely she will see that.

Mr. President, that appears to be all that I have to say at this time. I believe that the Senate would benefit greatly by a detailed discussion at the committee stage.

With these words, I now beg to move.

Question put and agree to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Hon. Senators, before we start I would like to ensure that everyone has, in the first place, the list of amendments made in the House of Representatives, which consists of one sheet, back and front; and another amendment proposed by Sen. Wade Mark.

Are there any other amendments to be proposed? I did say before, that any amendments proposed would have to be done in writing and these are all I propose to deal with, unless I get others in writing. As I said yesterday, we will proceed section by section. We will deal with the clauses of a particular section, part by part, and we will deal with any individual clause that needs amending in that part.

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

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

Sen. Mansoor: Mr. Chairman, when the Minister made his address, I listed the amendment which he indicated he would accept. Would it be appropriate to deal with it that way? If the amendments are accepted, I have nothing to say, except to propose them.

Mr. Chairman: Is the first amendment on the list by Sen. Mansoor, acceptable? The amendment reads:

In clause 4:

(a) Replace the definition of "external company" by "External company means any incorporated body of persons that is formed under the laws of a country other than Trinidad and Tobago";

(b) Add a definition of "Firm" as follows:-

"Firm" means an unincorporated body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit and which if individuals are in compliance with the requirements of the Registration of Business Names Act, Chap. 82:85 and if corporations are in compliance with the provisions of this Act with respect to registration"

(c) in the definition of "commencement date" substitute the words "is proclaimed under section 529" for "comes into operation".

Mr. Sobion: Yes, Mr. Chairman, that is acceptable.

Mr. Chairman: The entire amendment?

Mr. Sobion: No. We have accepted (a) which reads as follows:

"Replace the definition of "external company" by "External company means any incorporated body of persons that is formed under the laws of a country other than Trinidad and Tobago."

And (b), up to the word "profit" in line five. It reads as follows:

"(b) Add a definition of "Firm" as follows:

"Firm" means an unincorporated body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit."

And (c), section 529 should read section 2.

"in the definition of "commencement date" substitute the words "is proclaimed under section 2" for "comes into operation".

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

Clause 5 to 7 ordered to stand part of the Bill.

Clause 8.

Question proposed, That clause 8 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, there is a revised amendment by the Attorney General. It looks virtually the same to me: what the difference is I cannot make

out, maybe the Attorney General could help me, but I do not want to belabour the point.

Mr. Sobion: Mr. Chairman, I beg to move the following amendment:

8(3) Delete and substitute the following:-

"(3) If articles of incorporation submitted to the Registrar are accompanied by a statutory declaration by an attorney-at-law engaged in the formation of the company or by a person named in the articles in the documents accompanying the articles as a director or secretary of the company that to the best of his knowledge and belief no signatory to the articles is an individual described in subsection (2), the Registrar may accept such a declaration as sufficient evidence for the purposes of this Act, of the facts therein declared."

We have accepted, in principle, part of the amendment suggested by Sen. Mansoor. The statutory declaration that is going to be filed there can be filed either by an attorney-at-law or by a person named in the articles, but it is limited to the matters referred to in subclause (2), and does not extend to the latter part of Sen. Mansoor's amendment, that the articles comply with the provisions of the Act.

It is really a question for the Registrar to make a determination as to whether the articles comply with the Act and by having such a declaration made by a person, particularly if it is to be extended to a person who, other than an attorney at law, the Registrar in any event, would not be bound to accept that as conclusive of compliance.

6.10 p.m.

Sen. Mansoor: May I just ask: What is the fate of the amendment under clause 12? Are you leaving it as is?

Mr. Sobion: Clause 12 will remain in the Bill as it stands; in other words the amendment proposed by Sen. Mansoor is not accepted.

Sen. Mansoor: Okay. I looked at it again and there were some inconsistencies. In the earlier one it spoke about any officer that was left out in clause 12.

Mr. Chairman: The proposal is that clause 8(3) be amended as proposed by the Attorney General in place of the amendment proposed by Sen. Mansoor.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clauses 9 to 11 ordered to stand part of the Bill.

Mr. Chairman: The proposed amendment to clause 12 has been withdrawn.

Clauses 12 to 25 ordered to stand part of the Bill.

Clause 26.

Question proposed, That clause 26 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move the following amendment:

4. In clause 26:

(a) in subclause (1) delete the words "on behalf of a company" and in paragraph (a) substitute "all other parties" for the words "the other party".

(b) Delete subclauses (2), (3) and (4) and replace them by subclause (2) as follows:-

"(2) Contracts made on behalf of a company may be made as follows:-

(a) a contract which if made between private persons would be by law required to be in writing and if made according to the law of Trinidad and Tobago to be under seal may be made on behalf of the company in writing under the company's common seal;

(b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied.

(c) a contract which if made between private persons would be by law valid although made by parol only and not reduced into writing may be made by parol on behalf of the company by any person acting under its authority, express or implied."

The Minister indicated that this amendment has to do with contract and it was, in fact, accepted.

Mr. Sobion: Mr. Chairman, in clause 26 the acceptance conveyed by the Minister is slightly modified. In subclause (a) there is no need to substitute the

words "all other parties" because the Interpretation Act will deal with that. Subject to that, all of clause 26 is accepted.

Sen. Mansoor: It sounds all right to me.

Mr. Sobion: The suggestion that the words "all other parties" be substituted for the words "the other party": there is no need for that.

Mr. Chairman: There is no need for subclause (a).

Mr. Sobion: Yes. The first part of that subclause (a) is okay, delete the words "on behalf of a company"; it is the substitution part that is not necessary. In paragraph (a) substitute "all other parties" for the words "the other party". All of that can go.

Mr. Chairman: Let me get it straight. We are dealing with Sen. Mansoor's amendments on the top of page 2 in clause 26(a).

Mr. Sobion: It will now read: "in subclause (1) delete the words on behalf of a company"'. The rest goes, and everything else is accepted.

Mr. Chairman: Okay. Delete all the words in subclause (a) after "company" and then accept everything else.

Mr. Sobion: Yes.

Mr. Chairman: The proposed amendment to clause 26 by Sen. Mansoor has been circulated. Have you seen the corrections that were made.?

Sen. Capildeo: There is a deletion from "and" to the end; everything else remains (a) (b) and (c).

Question put and agreed to.

Clause 26, as amended, ordered to stand part of the Bill.

Clause 27.

Question proposed, That clause 27 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 27 be amended as follows:

"5. Substitute for clause 27 the following clause:

27. A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by a person acting under its authority."

Did the Minister indicate his acceptance?

Mr. Sobion: That is correct.

Question put and agreed to.

Substitute clause 27 ordered to stand part of the Bill.

Clause 28 to 53 ordered to stand part of the Bill.

Clause 54.

Mr. Chairman: Clause 54 was deleted by the House.

Sen. Mansoor: Mr. Chairman, just a note on that, for the persons who will be looking at that. There is a reference to clause 54 in clauses 86 and 90: it is something the persons who are cleaning up the Bill would want to look at. It needs to be deleted.

Mr. Chairman: The House deleted clause 54; there are some references in other clauses.

Sen. Mansoor: I have picked up clauses 86 (e), (f) and 90, there may be others.

Mr. Sobion: Mr. Chairman, we have recognized that, and there would be need to do consequential amendments in renumbering.

Clauses 55 and 56 ordered to stand part of the Bill.

Clause 57.

Question proposed, That clause 57 stand part of the Bill.

Sen. Mansoor: Mr. President, I beg to move that clause 57 be amended as follows:

"57. (1) A company or any company with which it is affiliated shall not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise—

(a) to a shareholder, director, officer or employee of such company or affiliated company, or to an associate of any such person for any purpose; or

(b) to any person for the purpose of, or in connection with, a purchase of a share issued or to be issued by the company or a company with which it is affiliated.

(2) Notwithstanding sub-section (1), a company may give financial assistance by means of a loan, guarantee or otherwise-

(a) in the ordinary course of business, if the lending of money is part of the ordinary business of the company;

(b) on account of expenditures incurred or to be incurred on behalf of the company;

(c) to a holding company if the company is a wholly-owned subsidiary of the holding company;

(d) to employees of the company or any of its affiliates-

(i) to enable or assist them to purchase or erect living accommodation for their own occupation;

(ii) in accordance with a plan for the purchase of shares of the company or any of its affiliates to be held by a trustee; or

(iii) to enable or assist them to improve their education or skills, or to meet reasonable medical expenses.

(e) in any other case unless there are reasonable grounds for believing that-

(a) the company is unable or would, after giving the financial assistance, be unable to pay its liabilities as they become due; or

(b) the realisable value of the company's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would, after giving the financial assistance, be less than the aggregrate of the company's liabilities and stated capital of all classes."

The question really arises because of the way clause 57(1) is worded. It says that: "When circumstances prejudicial to the company exist, the company or any company shall not." The feeling is that the way it has been drafted it has opened the flood gates to loans being made indiscriminately and if it were stated the other way, there would be greater control over directors making loans to themselves or, for all kinds of purposes.

I think the point is relevant because I do not believe there is any prohibition in many of the instances where, for example, directors are paying for shares. There is a statement in the Bill which says that if they do that and the company becomes bankrupt after that, they would be personally liable, or words to that effect. With respect to loans there is no caveat like that.

Mr. Sobion: Mr. Chairman, I looked at the proposed amendment and I am aware of the view that this matter can be solved otherwise, that is, by deleting clause 58", altogether, and consequentially deleting the words "except as permitted by section 58," in clause 57.

Sen. Mahabir-Wyatt: Mr. Chairman, while the Attorney General is looking at this, I wonder if he could just explain why it is the existing text only makes these prohibitions when circumstances prejudicial to the company exist. Obviously, if those circumstances do not exist then it is okay.

In the Bill, clause 57(1) says that when circumstances prejudicial to the company exist, the company, or any company, may not make these financial loans. It means that if there are no prejudicial circumstances the company can do so.

Mr. Sobion: That is exactly it. That is why I have suggested the deletion of clause 58 altogether. By clause 21, a company has the capacity and, subject to this Bill, rights—

Sen. Mansoor: The entire clause?

Mr. Sobion: Yes, the entire clause is to be deleted.

Sen. Mansoor: I got the impression that it was subclause (e). Having said that, that is fine. What about ESOPs?

Mr. Sobion: The company by reason of clause 21, if it is not prejudicial, it can.

Sen. Mansoor: If it is prejudicial then ESOPs will go by the wayside.

Mr. Sobion: That is right!

Sen. Mansoor: That sounds safe.

Mr. Sobion: So there will be two amendments

Sen. Mansoor: I am just asking the question from the legalese. If it is that there is an ESOP pursuant to some sort of contractual commitment in terms of practical day-to-day realities, will you be able to say that there are circumstances

prejudicial to the company and therefore our contractual arrangements with respect to making payments under an ESOP will go by the wayside? You see the difficulty?

6.20 p.m.

Mr. Sobion: Well, the provisions of clause 57 are geared to protect those with an interest in the company and prevent directors from acting where it is clearly prejudicial.

Sen. Mansoor: I am thinking from the vantage point of an employee. The director now tells me I am entitled to ESOP. For whatever reason, he says you cannot get these because circumstances prejudicial to the company's finances exist.

Mr. Sobion: No. Clause 58 provides for the making of loans for the purposes of ESOP. If the company is not in a healthy financial position—

Sen. Mansoor: Yes, I understand that, but does that liberate the company from contractual commitments? Does it? Is that the intention? If it is, the directors will be very happy. I do not know about the people who are at the other end of the stick.

Mr. Sobion: The ESOP shares may not be worth anything if the company goes bankrupt, in any event.

Sen. Mansoor: It may not, but not only that, the determination of when those circumstances exist is not an automatic business. Who is going to determine that?

Mr. Sobion: It would only arise because the sanction that is provided for later on is a sanction which brings in the directors as being liable for those loans.

Sen. Capildeo: If the employees find out later on that they acted in bad faith, then they move to suit.

Sen. Mansoor: That is the point I am raising.

Sen. Capildeo: There is no answer to your question.

Sen. Mansoor: I realize that.

Sen. Capildeo: "When circumstances are prejudicial", will depend on the board of directors, not on the employees. If the board makes a mistake, it will pay.

Sen. Mansoor: Would it be preferable in those set of circumstances in clause 57(1) to put it to the discretion of the board, so it makes it very clear you do not have the directors having this sword over their heads?

In subclause (2), should it be clearly stated that circumstances prejudicial to the company, that condition is totally to the discretion of the board? Is that necessary?

Mr. Sobion: There is no need to say it, because the board will be the one determining whether they can act in the circumstances that they are aware of. It is the power of the director to grant loans and so forth.

Sen. Mansoor: I am moving from that point. If you say that directors would take the brunt because circumstances were not prejudicial and therefore you did certain things, should you state very clearly that that is totally within the discretion of the board and cannot be questioned?

Mr. Sobion: You cannot say it.

Sen. Mansoor: I am just looking to make sure they cannot put directors in jail.

Sen. Mahabir-Wyatt: Mr. Chairman, I am still not satisfied on this. I know that Gerald Furness-Smith was very strong, and always has been, on the question of companies lending money to their directors, and in the draft that Sen. Mansoor brought to us it starts off:

> "The company or any company with which it is affiliated shall not,…directly or indirectly…"

In other words, under any circumstances. The wording we have now seems to me to allow companies to make loans to their own directors. There can be four directors in a company and we can say there are no circumstances prejudicial to the company, therefore, we are going to lend the company's money to ourselves. Is this the intention? Because that is what it is saying. It says:

> "57(1) When circumstances prejudicial to the company exist, the company…shall not,…give financial assistance to a…director…"

What you are saying therefore, is when those circumstances do not exist you are allowing the board of directors to make loans to directors.

I know this is something that Gerald Furness-Smith felt very strongly about. I think it is a matter of ethics because it has happened in a number of organizations, and what happened, that no prejudicial circumstances existed but the board of directors decides to give each other loans, and then prejudicial circumstances developed. We know of instances where financial institutions have gone out of business because of that. I think this is an extremely dangerous provision to put into an Act. We are encouraging corruption.

Sen. Capildeo: There is no way the company could lend, If one looks at Furness-Smith's amendment, which reads:

"A company, or any company with which if affiliates shall not directly, or indirectly give financial assistance…"

And then there is a whole set of restrictions.

Sen. Mahabir-Wyatt: That is Furness-Smith's wording, which I think is vastly preferable.

Sen. Capildeo: There has to be a policy decision by the state as to what you want. Sen. Mark, do you see how difficult it is to amend state legislation?

Mr. Mottley: That is how your paradox arose.

Sen. Capildeo: It is a policy decision. You cannot lend yourself. You leave that to the discretion of the company and, as Sen. Mansoor says, you do not put temptation in the way of the director. Again, that is a decision the Minister has to take. It is a policy decision. Do you trust directors enough to leave your law as it is, or are you saying, look, the experience in this country is that the directors will run away with the people's money?

Hon. Senator: That is the experience.

Sen. Capildeo: If you do that, you are going to have problems.

Sen. Mahabir-Wyatt: Mr. Chairman, you do not make legislation for people whom you trust, you make for people whom you do not trust.

Sen. Capildeo: Either you go with the Furness-Smith suggestion which is very tight or—

Mr. Sobion: I have had the opportunity to look at both the Furness-Smith draft and the Canadian Act. If one analyzes the Furness-Smith draft, one ends up with the same position as we are here with other restrictions not related to directors at all, because the Furness-Smith draft says that there is a prohibition on lending to shareholders, directors and so forth. The escape clause says notwithstanding that, you can lend in any other case which would take in directors, unless there are reasonable grounds for believing that the circumstances are as such. It remains the same.

Sen. Capildeo: Furness-Smith is very clear in his clause 57(1) as he has it there as opposed to the Government's amendment.

Sen. Mahabir-Wyatt: Mr. Chairman, in no instances in Furness-Smith's draft is there an allowance for directors to lend money to themselves. Even in subclause (2), it says that they can give financial assistance by means of a loan:

(a) in the ordinary course of business if lending money is part of their business on account of expenditures incurred or to be incurred on behalf of a company to a holding company…

But it does not put in directors giving loans to directors.

Mr. Sobion: If you look at

"(e) In any other case, unless…"

So that you can lend in any other case unless the same financial conditions exist as we have it here in our clause 57. The only way you cannot lend in both instances is if it is prejudicial.

Sen. Dr. St. Cyr: That is how we play cricket and do not get run out. We say no and the ball passes us.

Mr. Chairman: Sen. Mansoor, would you withdraw your clause 57 or would you like it to be put?

Sen. Mansoor: No. I would not want to do that, very reluctantly, because my experience tells me that loans to directors and employees cause much trouble and I am sure that Sen. Ainsley Mark would agree with me. If I had anything to do with it, I would say that companies should not make loans unless their business is banking. It is a nonsense that people abuse and in a way, it is good for companies not to be able to do it, and that is the end of the matter. You want to borrow money, go to a bank. That would be my first position.

Sen. Capildeo: Because we end up with the same thing.

6.30 p.m.

Sen. Rev. Teelucksingh: Mr. Chairman, I think we should close the door to temptation, and I know the assurance has been given that there will be amendments long after this. This Bill is going to be put on trial, as it were, and if there are difficulties we will come back and look at it again.

Sen. Barrack: They might not be here.

Sen. Dr. Saith: You mean you!

Sen. Rev. Teelucksingh: I would prefer Sen. Mansoor's approach to this clause.

Sen. Mansoor: Mr. Chairman, if I may, I think that the position I have taken is a draconian one; maybe in real life it is too draconian—I do not know. It is necessary at times.

Hon. Senator: There are exceptions.

Sen. Mansoor: And that is what I am worried about—the exceptions.

Mr. Sobion: Mr. Chairman, if one analyses Sen. Mansoor's proposed amendment, it would mean—I just want to bring one other thing to his attention—that notwithstanding subsection (1) the company can lend to the employee, if you take (d), even though conditions are prejudicial and the only limit on prejudicial financial conditions will be in cases other than those set out in (a) to (d) when the intent was to prevent directors from lending money at all where conditions were going to be prejudicial.

Sen. Mansoor: Mr. Chairman, (1), (2) and (3) could be pursuant to contractual arrangements with employees, because part of a man's package—you might be lending him money to build a house, or buy some shares. That is why the question of under what circumstances can directors say, "Well, you know the finances of the company are in jeopardy and therefore we are going to forget all these commitments."

Mr. Sobion: The way it is drafted as well, if you look at (b), you could be preferring creditors here, because it is not only expenditure incurred, but it could be expenditure to be incurred on behalf of the company.

So really, the intent of clause 57 was to put a check on directors lending money when financial conditions are prejudicial, but certainly it is a clause that one would need to look at further. I would therefore recommend that we accept clause 57 as it is and delete *[Interruption]* I am proposing that clause 57 be retained with the deletion of the words "except as permitted by 58" and delete clause 58.

Mr. Chairman: The amendment being proposed by the Attorney General is that clause 57(1) be amended by deleting the words "except as permitted by section 58" in lines 3 and 4 for the reason that section 58 is proposed to be deleted as well. So that 57 will stay.

Sen. Mansoor: Mr. Chairman, in the circumstances, reluctantly, I will withdraw the amendment as I have it. We all know there is a window of opportunity to look at it again, but it is really something that is dynamite; and I repeat, the original thing is that 57(1) is almost an invitation to lend.

Amendment [Sen. Mansoor] withdrawn.

Question put and agreed to.

Clause 57, as amended, ordered to stand part of the Bill.

Clause 58.

Question proposed, That clause 58 be deleted.

Question put and agreed to.

Mr. Chairman: The consequential amendments will be made to the numbering of the clauses following the deletion of all the clauses that are to be deleted.

Clause 59 ordered to stand part of the Bill.

Clause 60.

Question proposed, That clause 60 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 60 be amended as follows:

"By adding the words 'other than of an unlimited liability company' after the word 'company' in the first line."

That amendment has been accepted, Mr. Chairman.

Question put and agreed to.

Clause 60, as amended, ordered to stand part of the Bill.

Clauses 61 to 64 ordered to stand part of the Bill.

Clause 65.

Question proposed, That clause 65 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 65 be amended as follows:

"In clause 65 delete subclause (2) and also delete "(1)" at the commencement of the clause".

Sen. Mansoor: Mr. Chairman, this has to do with the qualifications of chartered secretaries and the feeling is that to limit it to people who have the qualifications in subclause (2) is somewhat onerous. It is a kind of amendment that, really, has been brought because of the fact that we do not have as many chartered secretaries as this Bill might require, and there are many persons with experience who can do the job. That is the point, really; it is not a make-or-break issue, though.

6.40 p.m.

Mr. Sobion: I certainly agree with Sen. Mansoor that there are a lot of people with experience who can do the job, but we must remember we are dealing with public companies and subclause (2)(e) talks about those persons with experience,

"who, by virtue of his holding or having held any other position or having been a member of any other body, appears to be capable of discharging the functions of a secretary of a public company." So that I do not feel that there is a difficulty with the clause as it now stands, because it caters for the qualified persons as well as those who have had experience.

Sen. Mansoor: Let us move on. I withdraw my amendment.

Amendment withdrawn.

Clause 65 ordered to stand part of the Bill.

Clauses 66 to 68 ordered to stand part of the Bill.

Clauses 89 to 94.

Question proposed, That clauses 89 to 94 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I wish to propose the following amendment:

"Delete clauses 89 to 94 inclusive."

This has not been accepted by the Minister and the Attorney General. The point is that these clauses introduce a new kind of liability for directors. Directors under the common law, I believe, are already responsible if they issue shares for stated values well in excess of what they receive. If they pay dividends when they should not be paying dividends, they are responsible, as normal prudent men in terms of the common law. These clauses 89 to 94, particularly clause 90, talk about the payment of dividend contrary to sections 55 or 56. You are really creating a new kind of crime, if you will, and I do not think it is really necessary. That is the point, really.

Mr. Sobion: Mr. Chairman, clauses 89 to 94 do not really add anything to the duty of a director to act reasonably. If one looks at the specific instance referred to, the question of a dividend in circumstances where the company may be unable to pay, the prohibition in clause 55 is that:

"A company shall not declare or pay a dividend if there are reasonable grounds for believing that—

(a) the company is unable…to pay…"

So that it is the same test of reasonableness—

Sen. Mansoor: Except that in clause 90, the directors are liable for the dividend paid out. So that as a director you can get a bill.

Mr. Sobion: That is the intent. I may also say that there is a defence liability in clauses 93 and 94. Clause 93 specifically deals with clause 33, and clause 94 deals with the others. So that in addition to not raising the standard, the only thing it does is to impose liability where it should have lain a long time ago.

Sen. Mansoor: Except that, let me say that what this introduces is what you have in the United States where directors are going to be that much more difficult to find; you are going to have directors wanting indemnity insurance. Really, think about it: a director gets a few dollars and he is going to be liable because some company paid a dividend of 10 cents on 80 million shares? I know that it is there, but if you read the language of clause 90:

> "are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company."

Which person in retirement is going to come and sit on your board? If there is the slightest doubt, directors run and leave the poor managing director to pick up the pieces, presumably.

Mr. Sobion: Once there is reasonable doubt, then he should not pay the dividend. The test of reasonableness remains. The common law test is reasonable, and here it is we are talking about paying dividends where you think it is reasonable to pay it. It is not a very strict liability.

Sen. Mansoor: Let me put it to you this way. If the liability already exists in clauses 55 and 56, why bring in this draconian language in respect of matters in the normal course of business? Because what is going to happen is if a company fails, everyone with hindsight—20-20 vision—would say, well, you know, you should have known. That is the difficulty.

Mr. Sobion: You would note, as I said, clause 94 provides that absolute defence once you cross two years. It assumes, even though the circumstances may show that the conditions were prejudicial, you still have an absolute defence after two years.

Sen. Mansoor: My view is that it is not necessary and I think it introduces a new kind of liability for directors of companies. I think there are remedies in the common law and you really do not have to have it there. You see, if you think back to what happened in the early 1980s when we had this spate of receiverships, and so on, in that set of circumstances, that is when these sections become alive and things are going to be tied up under clause 90. Directors are going to be in a lot of trouble.

Mr. Sobion: Mr. Chairman, we, on this side, think that having regard to the recent history as referred to by Sen. Mansoor, these provisions, clauses 90 to 94, are absolutely necessary. It will only cause directors to be, perhaps, a little more cautious. The duty is not different. It is a duty to act reasonably, and all it does is pinpoint certain specific areas within the legislation.

Mr. Mottley: Mr. Chairman, if I could add to that, you may have directors who knowingly pay the dividends to shore up stock value prices and things of this nature. So we are not going for the case where there is genuine error; we are going for those instances where, to serve their own interests, to mask conditions in the company, etc—

Sen. Mansoor: Mr. Chairman, would the Government consider clause 90(c) to leave that one out? Some of the items, okay, fine—redemption of shares, and so on—maybe, but payment of dividends is a matter in the normal course of business and I find it difficult to impose upon an individual director a joint and several liability for the payment of a dividend. That is a matter which shareholders approve.

6.50 p.m.

Mr. Sobion: Mr. Chairman, I have consulted on the suggestion. If one looks at what is a prohibited dividend, it would only catch a board of directors who recklessly pay out moneys as dividends—most times to themselves—when they know that the company would be unable to pay its liabilities as they become due.

It is really acts of recklessness, as Minister Mottley pointed out. It would be upon a deliberate declaration of dividends. Clause 55 states:

"A Company shall not declare or pay dividends if there are reasonable grounds for believing that—

(a) the company is unable, or would, after the payment, be unable, to pay its liabilities as they become due;"

It is an expected standard that a company ought not to pay dividends if it is unable to meet its liabilities after the dividends are paid.

I do not think that the fears expressed by Sen. Mansoor are really going to deal with the ordinary course of business. I think it is really directed to those who adopt a deliberate course of action.

Mr. Chairman, I would recommend that the committee accept the provisions as they now stand.

Sen. Mansoor: Mr. Chairman, I withdraw the amendment.

Amendment withdrawn.

Mr. Chairman: Before we deal with this, I think we only did clauses 66 to 68. We did not do clauses 69 to 88. Since Sen. Mansoor has withdrawn his amendment, we can go from clauses 69 to 100.

Clauses 69 to 100 ordered to stand part of the Bill.

Clause 101.

Question proposed That clause 101 stand part of the Bill.

Mr. Chairman: There is an amendment proposed by Sen. Mansoor to clause 101 as follows:

"(a) By deleting subclause (2) and renumbering subclauses (3) to (6) as subclauses (2) to (5) inclusive:

(b) In subclause (2) as renumbered in the first line change '(2)' to '(1)'

(c) By adding at the end of subclause (4) as renumbered '…and shall take particular care that the company complies with the provisions of sections 34, 43, 44, 45, 55, 56, and 57."

Sen. Mansoor: Mr. Chairman, I believe that the Government said it is not going to agree. I would go along with that and withdraw my amendment.

Amendment withdrawn.

Clause 101 ordered to stand part of the Bill.

Clauses 102 to 107 ordered to stand part of the Bill.

Clause 108.

Question proposed, That clause 108 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 108 be replaced by:

"Subject to its Articles or bye-laws or any Unanimous Shareholders' Agreement, the Directors of a company may fix the remuneration of the officers and employees of the Company and the shareholders in General Meeting may fix the fees payable to the Directors."

Mr. Sobion: That is agreed to, Mr. Chairman.

Question put agreed to.

Replacement clause 108, ordered to stand part of the Bill.

Sen. Ali: Mr. Chairman, what is the correct spelling? I notice the amendment says "bye-laws" and the original document has by-laws. Which is it?

Mr. Chairman: I know it used to be "bye-laws", but in many documents recently, I see "by-laws".

Mr. Sobion: It should be "bye-laws".

Mr. Chairman: The correct spelling is to take out the "e" in "bye-laws". Subject to that typographical change, we have already agreed that the clause stand part of the Bill.

Clauses 109 to 138 ordered to stand part of the Bill.

Sen. Mahabir-Wyatt: Mr. Chairman, in the list of amendments that came from the House of Representatives, proposed by the joint select committee, with respect to clause 121, is that already included?

Dr. Saith: Yes, it is.

Mr. Chairman: There was a list of amendments which were made in the House of Representatives and circulated, so those were already passed. Clause 121 was on that list of amendments.

Clause 139.

Question proposed, That clause 139 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 139 be amended as follows:

"Delete clause 139 and renumber the remaining clauses accordingly."

Mr. Chairman, I have never come across unanimous shareholders' agreements in real life, but, as I understand from the legislation, it is intended here that shareholders can basically agree on how a company operates and essentially, that agreement encroaches upon the powers of directors.

If there is a unanimous agreement, and there is a set of directors, the unanimous agreement, basically, limits what the directors can or cannot do.

What I am familiar with is that in circumstances where there is shareholders' agreement, it basically states they can do this or do that. It is really a modification of how directors could operate, but I have never seen a unanimous shareholders'

agreement in this jurisdiction. Who is going to be responsible when there is a unanimous agreement? The directors? Further, when those shares change hands, what is going to happen?

Mr. Sobion: Mr. Chairman, when I looked at the proposed amendment which seeks to delete all of clause 139, I was of the view that this clause would need revision rather than deletion. What the clause seeks to do is—where the shareholders get together and restrict the directors from acting—to provide that if there is a breach of any of the directors' obligations, the shareholders become liable because they have restricted the power of the directors to act.

I also am of the view that one should not only be, perhaps, considering unanimous shareholders' agreement, but probably have majority shareholders' agreement which have the same effect.

I think the concept is proper, but one may need to explore it further to, perhaps, deal with majority shareholders' agreement.

Having regard to that, what I was going to suggest is that we delete one matter in clause (2), which is not consistent with the original expression of subclause (1). Subclause (1) talks about the powers of the directors of the company to manage, being restricted in whole or in part, whereas subclause (2) restricts the discretion or powers. I think what is really intended, as set out in subclause (1), is a restriction on the powers rather than on the discretion.

If the discretion is restricted, I think the directors should still be liable because they have a statutory duty, as set out here, and they ought to consider that the restriction of the power of their discretion is not a legal restriction. Certainly, where their power is restricted, and they cannot act at all, in those circumstances the persons opposing the restrictions, and who have, therefore, virtually, assumed the responsibility for the action, should be made personally liable. This is the effect of clause 139.

As I said, in the course of the review, we would continue to give consideration to majority shareholders' agreement which also has that same effect.

Insofar as the transfer of shares is concerned, it is our view, in any event, that one takes the transfer of shares subject to the shareholders' agreement. We were, therefore, bound by the transfer.

7.00 p.m.

The question will arise as to whether you will be notified. We are proposing an amendment to clause 200 to make that the existence of a shareholders' agreement,

something that must be certified on the face of the share certificate. So one would have had actual notice of the shareholders' agreement and, therefore, would assume the responsibility on a transfer.

Sen. Mansoor: Mr. Chairman, may I just turn this on its head a bit. Is there really a commercial requirement for this? In what set of circumstances would shareholders wish to tie up the directors in this way? Is it going to be of any good purpose? I cannot visualize a business situation where commercial requirements would dictate that there should be an arrangement like this. I would not want to be a director in a company like this.

Mr. Sobion: Mr. Chairman, in this changing commercial environment, one has to anticipate at times, and quite clearly it is not that difficult to envision in a private company, with these new measures in, puppet directors being put in place who, themselves, would have no personal worth, and the shareholder who has set up this machinery goes free. It is really something that one has to consider as we go along—the changing commercial environment

Sen. Mansoor: Mr. Chairman, I would not want to put it to the vote. I think that people who have agreements like this—I have my doubts as to why this is commercially necessary.

Sen. Capildeo: When you look at clause 139 (3):

> "If a person who is the beneficial owner of all the issued shares of a company makes a written declaration…"

That declaration is a unanimous shareholder's declaration. What happens to the directors? They go through the window.

Mr. Sobion: Mr. Chairman, the shareholder who has set up the puppet directors, who are men of straw, and virtually controls their actions, when one proceeds against the directors of that company, the defence is it is the shareholder's agreement and they cannot go to the shareholder.

Sen. Mansoor: In that circumstance, do you think any shareholder is going to have a unanimous shareholders' agreement? No way!

Mr. Sobion: This is why we thought that in the further review to look at a majority shareholders' agreement as well, because one can put one per cent of the shareholding into the hands of someone who is not party to the shareholders' agreement and thereby escape the effect of clause 139. We are looking at that as well.

Sen. Mansoor: Mr. Chairman, in the interest of time, I withdraw under protest. I do not like agreements.

Amendment withdrawn.

Mr. Sobion: Mr. Chairman, I beg to move an amendment to clause 139 as follows:

In subclause (2), delete the words "discretion or."

Question put and agreed to.

Clause 139, as amended, ordered to stand part of the Bill.

Clauses 140 to 154 ordered to stand part of the Bill.

Clause 155.

Question proposed, That clause 155 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I sent in a written amendment to clause 155(2). I do not know where it has ended up.

I beg to move that clause 155(2) be amended as follows:

Delete from the word "shareholders" to the word "representatives" and substitute the following:

"A shareholder of a company who holds less than five per cent of the equity of the company, or his agent or legal representative."

Mr. Sobion: Mr. Chairman, the proposed amendment is a disputed amendment as well. It requests the deletion of subclause (2). We are of the view that where a company consolidates the financial statements of its subsidiaries, the shareholders of that company should have the right to examine the statements of the subsidiary companies whose accounts are incorporated in that company's accounts.

In our view, once you go that route of incorporating your subsidiaries—which may be private companies—the shareholders who have an interest in the principal company should have the right to examine the financial statements of those subsidiaries, and that is what clause 155(2) permits.

Sen. Mansoor: Mr. Chairman, that is an extremely onerous position and it is going to be very disruptive. What it really means is that anybody can just buy one share for $4 and basically come along to you and say "I am a shareholder, I have just bought a share for $4 and I want to see the accounts of any of your 40 or 50

subsidiaries." That is totally disruptive. Your competitors will do it. That is a requisition for mayhem in this town. If you had said to me a shareholder with more than 10 per cent, maybe, fine, but people are just going to buy and say they want to know what is happening in this private company and they are going to be able to make all sorts of demands and requests and they will do it for purposes of competition and market intelligence and so forth.

Mr. Mottley: Mr. Chairman, we believe that a shareholder, especially in public companies, should know what is at stake, the risk that he is shareholding, for the consolidation of the accounts can mask so much as to be in certain circumstances almost worthless. We feel that in the interest of protection of the shareholders we should make these available. We hear the practical concerns and if it is that we want to prevent pure nuisance value or pure competitive raiding, we might want to write in shareholders with over a certain percentage.

I strongly feel that we cannot allow companies to hide by just aggregating the accounts and presenting them, especially since there are many precedents for this abroad.

Sen. Mansoor: Mr. Chairman, 20 years ago people did not consolidate, and we were forced to consolidate. You really cannot hide anything in a consolidation. I cannot visualize a set of circumstances where a shareholder in a parent company could be disadvantaged because he does not know what is happening in a subsidiary. Consolidation pulls it all together. The rules of consolidation, in terms of consulting and so forth, are such that there is nothing to mask. The only thing that you can find out by looking at a subsidiary is market intelligence or commesse or confusion, to use the local parlance.

One can make the point that when you buy shares in a public company, that is precisely what you do. You buy shares in a public company; you do not have shares in the subsidiary, so it is really going to be disruptive.

7.10 p.m.

Mr. Sobion: Mr. Chairman, there is something as a safeguard which I think may be the concern of Sen. Mansoor. At subclause (3) a company can. I do appreciate that the provision may be a little cumbersome. Perhaps what may be needed is a streamlining of the company's right to object as contained in clause 155(4). Its states:

> "A company shall give the Registrar and the person asking to examine statements under subsection (2) notice of any application under subsection (3); and the Registrar and that person may appear and be heard…"

Subclause (3) provides that within 15 days of request you can seek relief from the courts saying this is a frivolous request. This is the man who has purchased one $4 share and now wants to examine all my books.

Sen. Mansoor: I really feel very strongly about this one because I see it as being disruptive. We can just follow the lead of the Minister of Finance where he said it is all right. Could we in the spirit of compromise, though against my better judgment, say in subclause (2) shareholders with more than 10 or 15 per cent of the equity?

Mr. Sobion: Would the hon. Senator accept 5 per cent?

Sen. Mansoor: That is too small.

Mr. Sobion: No one would go on to acquire in excess of 5 per cent in Republic Bank.

Sen. Mansoor: I would prefer 10 per cent.

Mr. Sobion: We would put it on the burner for review a while, but if you can accept 5 per cent for the time being.

Sen. Mansoor: Okay.

Mr. Sobion: In subclause (2), after the words "shareholders of a company" insert the words "who hold more than five per cent of the equity of the company".

Sen. Dr. St. Cyr: A shareholder.

Mr. Sobion: It really does not matter. Singular includes the plural and plural includes the singular. I take Sen. St. Cyr's point. It should in fact be "a shareholder" to prevent people from coming together.

Mr. Chairman: We will come back to clause 155 before we finish with this part.

Clause 155 deferred.

Clauses 156 and 157 ordered to stand part of the Bill.

Clause 158.

Question proposed, That clause158 stand part of the Bill.

Mr. Chairman: There is an amendment proposed by Sen. Mansoor to clause 158 as follows:

"Replace paragraph (b) in subclause (1) by the following:

(b) The gross revenue of which as shown in the most recent financial statements referred to in section 153 exceeds 10 million dollars."

Sen. Mansoor: Mr. Chairman, I withdraw my amendment to clause 158.

Amendment withdrawn.

Clause 158 ordered to stand part of the Bill.

Clause 159.

Question proposed, That clause 159 stand part of the Bill.

Mr. Chairman: There is an amendment proposed by Sen. Mansoor that clause 159 be deleted.

Question put and agreed to.

Clause 159 deleted.

7.20 p.m.

Clause 160.

Question proposed, That clause 160 stand part of the Bill.

Sen. Mahabir-Wyatt: Mr. Chairman, I beg to move that clause 160 be amended as follows:

After "section 156", in line 3, add the words "and report its findings to the whole Board of Directors"

I think the Minister has indicated that he has accepted this amendment so I propose it.

Mr. Sobion: It is partially accepted. The amendment as worded is acceptable except for the word "whole" appearing before "the Board of Directors"

Question put and agreed to.

Clause 160, as amended, ordered to stand part of the Bill.

Clauses 161 to 177.

Question proposed, That clauses 161 to 177 stand part of the Bill.

Sen. W. Mark: Mr. Chairman, I would just like some clarification. I am dealing with clause 164(3). I would like the hon. Minister of Finance to indicate how soon the accompanying regulations would be forthcoming, having regard to the fact that they are critical to the operational arrangements here.

Mr. Mottley: Most of them are ready. They will certainly be ready within one month.

Question put and agreed to.

Clauses 161 to 177 ordered to stand part of the Bill.

Mr. Chairman: Clause 178 was deleted by the House.

Clauses 179 to 198 ordered to stand part of the Bill.

Clause 199.

Question proposed, That clause 199 stand part of the Bill.

Sen. Mansoor: I beg to move that clause 199 be amended as follows:

(a) Delete subclause (4) and renumber;

(or alternatively, in the third line of subclause (4) insert the word "public" before "company"); and

(b) In subclause (7) in the third line of, substitute the word "and" for "are".

Mr. Sobion: The amendment to clause 199 came as an alternative. We either delete subclause (4) or alternatively in the third line of subclause (4), insert the word "public" before "company". The alternative is acceptable. The other amendment "and" for "are" is also acceptable.

Question put and agreed to.

Clause 199, as amended, ordered to stand part of the Bill.

Clause 200.

Question proposed, That clause 200 stand part of the Bill.

Mr. Sobion: I beg to move that clause 200 be amended as follows:

(a) In subclause (1), insert after the word "restricted" the words "or subject to a unanimous shareholder agreement".

(b) Insert after subclause (1), the following subclause:

"(1A) A transferee of shares subject to a unanimous shareholder agreement is deemed to be a party to the agreement."

Clause 200 (1) deals with the shareholder agreement, the clause that I had promised, and we are of the view that there is no need to add the words in Sen. Mansoor's amendment to subclause (3):

> "Subject to any rights of pre-emption or other restrictions on the transfer of shares set out in the Articles or noted on the Share Certificates."

Sen. Mansoor: You do not think it needs to be added? It is obvious that it would be subject to the rights of pre-emption.

Mr. Sobion: No. It is only as valid if he had been so registered at the time of execution of the instrument, so the restriction is there. There is no need to add those words upfront.

Sen. Mansoor: All right. I will withdraw my amendment**.**

Amendment withdrawn.

Mr. Sobion: Mr. Chairman, I beg to move the following amendment to clause 200:

(a) In subclause (1), insert after the word "restricted", the words "or subject to a unanimous shareholder agreement."

(b) Insert after subclause (1), the following subclause:

"(1A) A transferee of shares subject to a unanimous shareholder agreement is deemed to be a party to the agreement.".

Question put and agreed to.

Clause 200, as amended, ordered to stand part of the Bill

Clause 201.

Question proposed, That clause 201 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by Sen. Mansoor to clause 201 as follows:

In subclause (1) in the first line add the word "public" before the word "company"; and in subclause (1) in the last line add the word "certificate" after the words "the share".

Sen. Mansoor: I withdraw my amendment, Mr. Chairman.

*Amendment withdrawn***.**

Clause 201 ordered to stand part of the Bill.

Clause 202 ordered to stand part of the Bill.

7.30 p.m.

Clause 203.

Question proposed, That clause 203 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 203 be amended as follows:

(a) In subclause (1) the sixth line at the top of page 130 insert after the words 'signed by the transferor' the words 'accompanied by the relevant share certificates';and

(b) Add an additional sub-clause (4) reading:

(4) The duties of a company under this section are subject to any rights of pre-emption or other restrictions on transfer of shares contained in the Articles".

Mr. Chairman: Mr. Sobion, you said you had accepted those amendments.

Mr. Sobion: Mr. Chairman, my notes here tell me that (b) may not be necessary.

Sen. Mansoor: Mr. Chairman, what the amendment seeks to do is provide for a transfer form and you have to bring in the shares.

Mr. Sobion: Mr. Chairman, we will accept the amendments as proposed by Sen. Mansoor.

Sen. Mansoor: Mr. Chairman, we could probably look at it afterwards, but yesterday we were talking about record entries and these clearing agencies; I wonder whether there is an impact there.

Question put and agreed to.

Clause 203, as amended, ordered to stand part of the Bill.

Clause 204.

Question proposed, That clause 204 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move the following amendment to clause 204.

(a) In subclause (1) in the third line replace the words ‘held by’ with the words "registered in the name of"; and

(b) In subclause (2) three lines from the end replace the words ‘contract to acquire’ by the word ‘acquires’.

I think the Attorney General accepted that amendment.

Mr. Sobion: That amendment has now become contested. Mr. Chairman, we think that the words ‘held by’ should, in fact, remain.

All it seeks to do—the person may not, in fact, be registered but there may be circumstances whereby the company can certify that the shares are held by that person but not yet registered.

Sen. Mansoor: Mr. Chairman, I will go along with that, having regard to what we said yesterday.

Mr. Sobion: With respect to the proposed amendment at (b), I think what was sought there was to delete ‘contract to acquire’ and include the word ‘acquires’.

Sen. Mansoor: Mr. Chairman, I would drop that. Having regard to the Securities Industry Bill where we are now trying to remove ourselves from the necessity of passing certificates across the table. I think we had better leave it the way it is.

Mr. Sobion: Well, I was going to suggest an amendment; in fact, it is circulated:

“In subclause (2), insert before the word ‘contracts’, the words ‘acquires or’.

Amendment [Sen. Mansoor] withdrawn.

Question, on amendment [Mr. Sobion] put and agreed to.

Clause 204, as amended, ordered to stand part of the Bill.

Clauses 205 to 250 ordered to stand part of the Bill.

Clause 251.

Question proposed, That clause 251 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move an amendment to clause 251 and it reads as follows:

In clause 251 in subclause (1a) substitute ‘thirty’ for ‘sixty’.

Clause 251 is basically increasing the amount of time the Registrar has. I think that amendment has been accepted.

Question put and agreed to.

Clause 251, as amended, ordered to stand part of the Bill.

Clauses 252 to 254, ordered to stand part of the Bill.

Clause 155 revisited.

Mr. Chairman: The proposed amendment is that clause 155(2) be amended by deleting from the words 'shareholders' to the word 'representatives' and substitute the following:

A shareholder of a company who holds not less than five pre cent of the equity of the company, or his agent, or his legal representative.

Question put and agreed to.

Clause 155, as amended, ordered to stand part of the Bill.

Clauses 255 to 310, ordered to stand part of the Bill.

Clause 311.

Question proposed, That clause 311 stand part of the Bill.

Sen. Mahabir-Wyatt: Mr. Chairman, I beg to move the proposed amendment to clause 311(3). It reads as follows:

"In paragraph (a), delete the words "and sections 35,48,49,50 and 60 in that part".

Mr. Chairman, the Minister indicated that the proposed amendment to 311(3) was acceptable.

Mr. Sobion: Mr. Chairman, it remains acceptable.

Sen. Mahabir-Wyatt: Mr. Chairman, do I bring up at this point the new addition to clause 311(2) which is also on my list of proposed amendments?

Mr. Chairman: Yes, you may.

Sen. Mahabir-Wyatt: Mr. Chairman, the proposed amendment to clause 311(2) reads as follows:

"Where it is proved to the satisfaction of the President that an association about to be formed as a limited company is to be formed for promoting art, science, religion or charity or any other useful object and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any divided to its members, the President may, by licence, direct that the association may be registered as a company with limited liability, without the addition of the word 'Limited' to its name, and the association may be registered accordingly. Such a licence by the President may be granted on such conditions and subject to such regulations as the President thinks fit, and those conditions and regulations shall be binding on the association. Such a licence may, at anytime, and in his own discretion, be revoked by the President and upon such revocation the Registrar shall enter the word 'Limited' at the end of the name of the association, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that, before a licence is so revoked, the President shall give to the association notice in writing of his intention, and shall afford the association an opportunity of being heard in opposition to the revocation."

Mr. Chairman, the Minister indicated that he understood the purpose for this, but that there was no longer need for words in line 11, where it says:

"…without the addition of the word 'Limited' to its name…"

This is already taken care of in an earlier clause in the Bill. I was trying to include the concept of a President's licence, because clause 21(2) of the Bill limits a non-profit company from being able, without the licence of the President, to hold more than two acres of land. So we must have somewhere in this Bill how one gets a President's licence.

I accept that a President's licence no longer needs to remove the words 'Limited', but if we just take those words out "without the addition of the word 'Limited' to its name", and on the second page of my amendments "and in his own discretion, be revoked by the President," then remove the rest of the paragraph and just leave the proviso. It just means that there would be a provision to get a President's licence so that if one wants to have more than two acres of land one can do so. But you take out that business about the word 'Limited' which is already taken care of in the Bill.

7.40 p.m.

Mr. Sobion: Mr. Chairman, if I understand what is being advanced, I do not think that it is necessary to have clause 311(2) at all. Clause 14(2) clearly says

that subsection (1) does not apply to a non-profit company, so that a non-profit company is exempt from using the word "Limited".

Clause 21(2) says that the non-profit company, which is not required to use the word "Limited" may not, without the licence of the President, own more than two acres of land. The procedure for determining what constitutes a non-profit company or, the procedure for getting a licence to own more than two acres of land would form part of the regulations for the operations of the Bill. It will really be a procedural regulation to deal with those matters. That is, if I understand the submission correctly.

Sen. Mahabir-Wyatt: Are you saying that in future there will be no provision whereby, by the licence of the President, somebody can be registered? At the moment many non-profit companies are under a President's licence. That President's licence gives them certain freedoms to do certain things. Are you removing from law the ability of a non-profit company to apply for a President's licence?

Mr. Sobion: The procedure for determining what a non-profit company is, will have to be put in place. It may not be by President's licence; there may be no need for President's licence. One can perhaps set up a machinery within the Companies Registry itself. So that in the process of registration you would not have to apply for a President's licence necessarily in the way that the application is now made. But in getting the licence to hold lands in excess of two acres, you clearly would need a President's licence for that.

Sen. Mahabir-Wyatt: In which case there must be a provision for a President's licence in the Bill, otherwise you would have to amend clause 21(2) which says:

> "A non-profit company may not, without the licence of the President, hold more than two acres of land but the President may by licence empower any such company…"

This is in the future.

Mr. Sobion: That will be in the regulations; it will not be in the Bill itself—how one gets the President's licence.

Sen. Mahabir-Wyatt: How one gets it will be in the regulations, but the enabling provision to get a President's licence at the present time is in the existing Act under section 20. What I am asking is: Is it not necessary to have an enabling provision to allow somebody to get a President's licence? In the Act as it is at

present, if one is going to have—how one does it in the regulations, and also if one is going to have clause 21(2)?

Mr. Sobion: No, the provision to get registered under 20(2) of the existing Act deals with the use of the word "Limited". One has to get the President's licence in order to be allowed to—

Sen. Mahabir-Wyatt: Yes, but it also includes other things, that is not all a President's licence does, it gives you other advantages. If you look at the existing legislation, it says that such a licence by the President may be granted on such conditions and subject to such regulations as the President thinks fit, and so it can give you other things. What you are saying now is that this would no longer be possible.

Mr. Sobion: No, what I am saying is that there are two things here: There is the question of whether the use of the word "Limited"—

Sen. Mahabir-Wyatt: Okay, I will forget that; I understand it.

Mr. Sobion: It is at that stage the non-profit company does not use the word 'Limited". Whether there is a procedure established in the regulations or what procedure would be established in the regulations for determining a non-profit company, that will go in the regulations and not here.

With respect to a President's licence to hold in excess of two acres of land, it is in clause 21(2) which says that one can get such a licence. The procedure for applying for such a licence will be contained in the regulations as well. The enabling provision is here: "the President may, by licence, empower". That is the enabling provision and the regulations would say how that licence is to be granted.

Mr. Chairman: So the proposed clause 311(2) is withdrawn. The amendment is to clause 311(3).

Question put and agreed to.

Clause 311, as amended, ordered to stand part of the Bill.

Mr. Chairman: Clause 312 was removed to the definition section.

Clauses 313 to 319 ordered to stand part of the Bill.

Clause 320.

Question proposed, That clause 320 stand part of the Bill.

Sen. Mahabir-Wyatt: Mr. Chairman, I beg to move that clause 320 be amended as follows:

> "In line two, insert after the words 'by-laws', the words, 'not being contrary to this Act or to the articles of the company'."

Perhaps the Attorney General can guide me on this. It seems to me that the Minister did indicate that the amendment to clause 320(2) is okay, but he did not agree with the 320(1). My question here is that where you use the word "may" the directors of a non-profit company may make by-laws with respect to (a) to (j) by the normal rules of English grammar, is this restricting a non-profit company from making by-laws on anything else but (a) to (j)? If it is so, is it not contradicting subclause (2) of the same provision which goes on to enable one to make other by-laws respecting other things?

Mr. Sobion: You are restricted from (a) to (i) in subclause (1), but (j) is a general provision; (j) says, "the conduct in all other particulars of the affairs of the company." Paragraphs (a) to (i) are specific but (j) is the general sweep-up clause which permits you to make any other by-laws, so that is why the amendment to clause 320(1) is not necessary.

Sen. Mahabir-Wyatt: I accept. The amendment to clause 320(2), I think the Minister indicated that it was acceptable, adding the "not being contrary to this Act or to the articles of the company", which for some reason was left out; it was put into subclause (1) and was left out of subclause (2).

Mr. Sobion: With respect to the amendment to clause 320(2) this was agreed, except the words "among others" to be deleted from the proposed amendment.

Mr. Chairman: Clause 320(2) be amended as proposed by Sen. Mahabir-Wyatt contained in the list of amendments circulated by her, subject to the words "among others" being deleted in line two of the proposed amendments.

Question put and agreed to.

Clause 320, as amended, ordered to stand part of the Bill.

Clause 321 ordered to stand part of the Bill.

Mr. Chairman: It was indicated that most of the amendments to clauses 322 to 332 have been accepted.

Mr. Sobion: Yes.

Clause 322.

Question proposed, That clause 322 stand part of the Bill.

Sen. Mansoor*:* Mr. Chairman, I beg to move that clause 322 be deleted and the following substituted therefor.

"This division shall apply to all external companies which-

(a) establish a place of business within Trinidad and Tobago;

(b) before the commencement of this Act established a place of business within Trinidad and Tobago and continue to have an established place of business within Trinidad and Tobago at the commencement of this Act; or

(c) establish or use a share transfer or share registration office in Trinidad and Tobago.".

Question put and agreed to.

Substitute clause 322, as amended, ordered to stand part of the Bill.

7.50 p.m.

Clause 323.

Question proposed, That clause 323 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 323 be amended as follows:

"323(1) External companies which after the commencement of this Act establish a place of business within Trinidad and Tobago shall within fourteen days from the establishment of the place of business file with the Registrar a statement in the prescribed form setting out:

(a) the name of the company;

(b) the jurisdiction within which the company was incorporated;

(c) the date of its incorporation;

(d) the manner in which it was incorporated;

(e) the particulars of its corporate instruments;

(f) the period, if any, fixed by its corporate instruments for the duration of the company;

(g) the extent, if any, to which the liability of the shareholders or members of the company is limited;

(h) the business that the company will carry on in Trinidad and Tobago;

(i) the date on which the company commenced or intends to commence any of its business in Trinidad and Tobago;

(j) the authorised, subscribed and paid-up or stated capital of the company, and the shares that the company is authorised to issue and their nominal or par value, if any;

(k) the full addresses of the registered or head office of the company outside Trinidad and Tobago;

(l) the full addresses of the principal office of the company in Trinidad and Tobago; and

(m) the full names, addresses and occupations of the directors of the company.

(2) The statement under subsection (1) shall be accompanied by:

(a) an affidavit or solemn declaration sworn in accordance with the provisions of section 330 by two directors of the company that verifies on behalf of the company the particulars set out in the statement and in the case of an application for continuance under section 324 that verifies that the corporate instruments filed under the former Act together with any amendments thereto or variations thereof constitute the corporate instruments of the company at the date of the application;

(b) a copy of the corporate instruments of the company and in the case of an application under section 324 to the extent only that they have not been filed under the former Act;

(c) a statutory declaration by an attorney-at-law that this sub-section has been complied with; [or alternatively a statutory declaration by an attorney-at-law that after due enquiry and to the best of his knowledge and belief this section has been complied with;]

(d) The prescribed fees; and

(e) A power of attorney in accordance with section 329.

(3) The Registrar may accept the declaration referred to in subsection (2)(c) as sufficient evidence of compliance with the requirements of this section.

Question put and agreed to.

Clause 323, as amended, ordered to stand part of the Bill.

Clause 324.

Question proposed, That clause 324 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 324 be amended as follows:

"324(1) Every external company that was carrying on business in

Trinidad and Tobago immediately before the commencement date and was registered under the former Act, shall within twelve months after that date apply to the Registrar for a Certificate of Continuance under this Act:

(2) Upon receipt of an application in the prescribed form and on filing with the Registrar the documents required by section 323, the Registrar shall issue a Certificate of Continuance to the company in compliance with section 486;

(3) Until the expiration of twelve months from the commencement date the provisions of sections 343, 344, 348 and 349 will apply to an external company registered under the former Act in respect of its business in Trinidad and Tobago with any necessary modifications;

(4) An external company whose name appears on the Register maintained by the Registrar pursuant to section 477 is presumed to be registered under this Act; and an external company whose name does not appear on that Register is presumed not to be registered under this Act.

Question put and agreed to.

Clause 324, as amended, ordered to stand part of the Bill.

Clause 325.

Question proposed, That clause 325 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 325 be amended as follows:

In clause 325 in the third line add the words "or continued" after the word "registered".

Question put and agreed to.

Clause 325, as amended, ordered to stand part of the Bill.

Clause 326.

Question proposed, That clause 326 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 326 be amended as follows:

In the penultimate line substitute the word "at" for

"as".

Clause 327.

Question proposed, That clause 327 stand part of the Bill.

Mr. Chairman: There is a proposal with respect to clause 327 by Sen. Mansoor as follows:

Delete clause 327 and renumber the remaining clauses accordingly.

Question put and agreed to.

Clause 327 deleted.

Clause 328 renumbered 327.

Question proposed, That clause 328 renumbered 327 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 328 be amended as follows:

In clause 328 (now 327) replace the reference to section 326 by a reference to section 323.

Question put and agreed to.

Clause 328, renumbered 327, as amended, ordered to stand part of the Bill.

Mr. Chairman: We are now on page 8 of Sen. Mansoor's amendments.

Clause 329.

Question proposed, That clause 329 renumbered 328 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 329 be amended as follows:

In clause 329 renumbered clause 328:

(a) in subclause (1) in the third line after the words “prescribed form” add the words “in favour of a Trinidad and Tobago company or two or more persons resident in Trinidad and Tobago” and replace the words "some person named in the power and resident in Trinidad and Tobago" by the words “such persons jointly and severally;”

(b) add a further subclause (4) to read:-

“(4) A power of attorney filed or deposited under this section shall be valid although not registered under the Registration of Deeds Act, Chap. 19:06.”

Mr. Sobion: Mr. Chairman, in principle, we agreed to the amendment, but I would like to suggest some changes. I am dealing with the amendment on page 9, item 28.

To me, where the amendment suggests that we add the words: “in favour of a Trinidad and Tobago company or two or more persons resident in Trinidad and Tobago”; it would be more correct to say: “in favour of a company incorporated in Trinidad and Tobago or two or more persons resident in Trinidad and Tobago.”

Where the amendment proposes to replace the words: “some person named in the power and resident in Trinidad and Tobago;” by the words: “such persons jointly and severally,” it should be: “such company or persons severally.”

Otherwise it would mean serving both. If you name two persons as power of attorney, it would mean serving two persons.

Mr. Chairman: The amendment proposed by Sen. Mansoor—item 28 at the top of page 9—the Attorney General has proposed that it be amended slightly as follows:

Delete the words “a Trinidad and Tobago company,” and after “company” put in the words “incorporated in Trinidad and Tobago;” and in the last line delete the words: “jointly and severally” and add the words “such company or persons severally”.

(b) stays as it is.

Clause 329, renumbered clause 328, as amended, ordered to stand part of the Bill.

Clause 330 renumbered 329.

Question proposed, That clause 330 renumbered 329 stand part of the Bill.

Mr. Sobion: Mr. Chairman, the words "if the power of attorney in respect of any attorney named therein becomes invalid or ineffectual for any other reason, the company shall forthwith file another power of attorney pursuant to section 328" are already there because once a person dies, the power of attorney becomes effective.

Question put and agreed to.

Clause 330, renumbered clause 329, ordered to stand part of the Bill.

Clause 331 renumbered 330.

Question proposed, That clause 331 renumbered 330 be amended as follows:

Sen. Mansoor: Mr. Chairman, I beg to move that clause 331 be amended as follows:

In clause 331 (now 330):

(a) in subclause (1) refer to section 328 instead of 329 and add the following provisio:

Provided that:

(a) where any such company makes default in filing with the Registrar a power of attorney under sections 328; or

(b) if at any time all the persons named as attorneys under such power as attorney are dead, or have ceased to reside in Trinidad and Tobago, or cease to exist or refuse to accept service on behalf of the company or for any reason cannot be served;

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Trinidad and Tobago."

(b) Replace sub-clause (2) as follows:-

"(2) Any deed of any external company registered under this Division which may be executed out of Trinidad and Tobago may be registered in Trinidad and Tobago if executed under the common seal of such company in the presence of one witness at least; and the execution of such deed, and that the seal thereof thereto affixed is the common seal of the company, and that the same was affixed thereto by the authority of the Board of Directors or managers of such company and in conformity with the Articles of Association of such company,

and the signatures of the directors or managers to any such deed (where such signatures are required by the articles of Association of such company) and the signature to such deed of the Secretary or other officer by whom such seal may have been affixed, may be proved by the affidavit or solemn declaration of one of such witnesses or of the Secretary or other officer affixing such seal to be sworn or made before a Notary Public."

(c) Replace subclause (3) as follows:-

"(3) Every deed made in Trinidad and Tobago on behalf of any such company and executed under the hand of any person empowered by instrument in writing under the common seal of such company, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in Trinidad and Tobago, shall be binding on such company and have the same effect as if it were under the Common Seal of the Company."

Question put and agreed to.

Clause 331, renumbered clause 330, as amended, ordered to stand part of the Bill.

8.00 p.m.

Clause 332.

Question proposed, That clause 332 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 332 be amended as follows:

In clause 332:

(a) in subclause (1) add the words "or continued" after the word "registered" in the fifth line;

(b) in subclause (2) add the words "or continuance" after the word "registration" both in lines 1 and 3;

(c) in subclause (3) add the words "or continued" after the word "registered" in the third line and the words "or continuance" after the word "registration" in the fifth line.

Mr. Sobion: Mr. Chairman, again , there is no need to amend clause 332, which seeks to provide only a Certificate of Registration for external companies that are first registered. The provision for continuing companies will be in clause 345—

"Every former-Act company shall, within two years after the commencement date, apply for a certificate of continuance…"

So there is no need for a Certificate of Registration. Clause 332 deals with new external companies and continuing certificates will come in clause 345.

Sen. Mansoor: Okay.

Chiarman: Withdrawn?

Sen. Mansoor: Withdrawn, Sir.

Amendment withdrawn.

Clause 332, renumbered clause 331, ordered to stand part of the Bill.

Clause 333, renumbered clause 332, ordered to stand part of the Bill.

Clause 334.

Question proposed, That clause 334 stand part of the Bill.

Mr. Sobion: What about clause 331?

Chairman: I am going by the list of Sen. Mansoor's proposed amendments. We accepted that.

Mr. Sobion: There are a few minor changes. Sir, if you would permit me to go back, just to make it accurate.

Mr. Chairman: Yes.

Clause 331 recommitted.

Mr. Sobion: Line 5 of the amendment on page 10. In subclause (2) the word "common" appearing before "seal" should be deleted; and similarly, three lines down again, wherever it occurs; and four lines further down, it should be "with the Articles and Bye-laws". Articles of Association are now gone, so it should be "Articles and Bye-laws'. So "of Association" should be deleted.

Sen. Mansoor: "Articles and Bye-laws of such company"?

Mr. Sobion: Yes. It appears again, three lines down—Articles and Bye-laws of such company";

And in (c) of subclause (3) the word "common" appears in line four and in the last line. It should be deleted in those two places.

Mr.Chairman: We are just going back to Item 30, clause 331 in the amendments proposed by Sen. Mansoor. There have been certain corrections suggested at the top of page 10—subclause (2). We are deleting the word "common" wherever it appears before the word "seal" and where you had

"Articles of Association" should be "Articles and Bye-laws". Substitute "and Bye-laws" for "of Association";

And in subclause (3) the word "common" before "seal" in the final line, and in line 4 as well.

I think we have already accepted the amendment to 331 generally, so I will not go over that again, but I just want to make sure you have the correction. Page 10, clause (2): Delete the word "common" before "seal" wherever it appears in (2) and (3); and substitute "and Bye-laws" for "of Association". It appears twice in subclause (2).

Clause 331, renumbered clause 330, as further amended, again ordered to stand part of the Bill.

Clause 334.

Question proposed, That clause 334 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 334 be amended as follows:

Clause 334 (now 333) in subclause (1): replace the words "subject to such regulations as the Minister may make in that behalf" by the words "subject to regulations made under section 511.

Question put and agreed to.

Clause 334, renumbered clause 333, as amended, ordered to stand part of the Bill.

Clause 335.

Question proposed, That clause 335 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 335 be amended as follows:

In clause 335 (now 334) in subclause (2) add the words "or ceases to carry on business in Trinidad and Tobago" after the words "ceases to exist".

Mr. Sobion: I think, Mr. Chairman, if there was an indication of agreement on this one, that has suffered by the passage of time. There is some merit in the amendment proposed, but I think it would be a little difficult to agree to it at this stage, Mr. Chairman, because it seeks to give the Registrar power to strike out an external company if that company ceases to carry on business in Trinidad and

Tobago. I am not so certain, from an administrative point of view, how that power is to be exercised by the Registrar. I would hate to find that the Registrar is striking out external companies because he feels that the companies ceased to operate. So whilst there may be a need to establish a mechanism, until a proper review is done on this, Mr. Chairman, I would request Sen. Mansoor to consider withdrawing this amendment at this time.

Sen. Mansoor: It does not seem to be a material matter, at least, that I can envisage, so if you think that it should be withdrawn at this stage, yes.

8.10 p.m.

Mr. Sobion: The first subclause says that when a company ceases to operate it should inform the Registrar.

Sen. Mansoor: Yes.

Mr. Sobion: I would think that some mechanism will have to be established. So one would want to consult with the Companies Registry on this.

Mr. Chairman: Are you withdrawing your amendment to clause 335, item 33?

Sen. Mansoor: Yes.

Amendment withdrawn.

Question put and agreed to.

Clause 335, renumbered clause 334, ordered to stand part of the Bill.

Clause 336 and 337, renumbered clauses 335 and 336 respectively, ordered to stand part of the Bill.

Clause 338.

Question proposed, That clause 338 stand part of the Bill.

Sen. Mansoor: Mr. Chairman I wish to propose an amendment which reads as follows:

"In clause 338 (now 337):

(a) in subclause (1)(b) delete the words 'to reflect a fundamental change within the meaning of Division 2 or Part III';

(b) in subclause (2) delete the words 'and with the approval of the Minister enter a record of such other changes in the Register as he considers to be in the public interest';

(b) delete subclause (3) and renumber (4) and (5) as (3) and (4) respectively."

Mr. Sobion: Again, Mr. Chairman, the proposed amendment is worthy of consideration, but I would want, again, to suggest that, perhaps, some further work is needed on this. For example, the proposed amendment at (a) in the deletion of the words, "to reflect a fundamental change," It seems to me would lead to a situation where every minor change would have to be reported to the Registrar, and the consequential amendment in clause 340 which hinges on this amendment as well, proposes a machinery different from that which we have proposed. We have proposed a situation where the company shall be struck out if there is a material change, and I think Sen. Mansoor is suggesting that the company shall be debarred from instituting legal proceedings. The difficulty with that proposal is, of course, a defendant may never know that a person is so debarred and may proceed to have a judgment obtained against him. So it may not prove an effective sanction for failure to file.

Sen. Mansoor: What is contemplated is the external company as the plaintiff, and we are saying that if you do not do all these things you cannot be a plaintiff.

Mr. Sobion: That is right. But what happens if you are a defendant?

Sen. Mansoor: If you are a defendant, you are in double-jeopardy; you are stuck.

Mr. Sobion: You would then raise it and say, well—

Sen. Mansoor: Not at all. It is only if you are a plaintiff.

Mr. Sobion: Yes, but if you are a plaintiff, the defendant need not know, unless he searches the Companies Registry—

Sen Mansoor: Which I am sure he will.

Mr. Sobion: Which is what we are trying to avoid by some of the procedures here.

Sen. Mansoor: I think what it is really, is a mechanism. It was, rather than stop from doing business—

Mr. Sobion: We forced them into filing. But it is a situation where I think there should be some further consultation with the Companies Registry to see how their systems are set up and how best we can achieve—

Sen. Mansoor: Would you want it withdrawn and then we can look at it again?

Mr. Sobion: Yes. Mr. Chairman, just one minute please.

Sen. Mansoor: Mr. Chairman, I do not know if the Attorney General would—the penalty in clause 338(3) where your registration is jeopardized, is that not somewhat onerous?

Mr. Sobion: Is it the time or the fact of being struck off the register?

Mr. Mansoor: Being struck off the register I mean, you may want to be.

Mr. Sobion: Well I think this is one of the situations we are hoping to look at before the Bill is proclaimed, looking at your proposed amendment which was withdrawn.

Sen. Mansoor: You see what happens when you cease to be registered? Are you still a person?

Mr. Sobion: You are not.

Sen. Mansoor: By not doing these things I can cease to be a person, therefore—

Mr. Sobion: Some external companies avoid liability by ceasing to be a person, choose its name and not file it.

Sen. Mansoor: So I think that (3), rather than being a penalty is probably an opportunity, if you turn it around.

Mr. Sobion: I want to partially accept one of the other amendments of Sen. Mansoor, and that is:

"Delete the words in subclause 2—"with the approval of the Minister."

So it will now read:

> "…the Registrar shall enter the change of name in the register, and enter a record of such other changes in the register as he considers to be in the public interest."

So, "with the approval of the Minister" has been struck off.

Sen. Mansoor: That is right. That is not necessary.

Mr. Sobion: We are going to clause 338(3) now. If I may just get the suggestion again.

Sen. Mansoor: Well, when I first looked at it, it appeared to me that it was a very onerous type of consequence for not filing one of these changes. But as I look again, in addition to that, I wonder what the consequences of not being

registered are. Can you do a disappearing flit because you are not registered? So on both counts it seems necessary to take it out.

Mr. Sobion: Well, clause 340 will tell you the consequence of not being registered. "may not maintain any action, suit or other proceeding in any court in Trinidad and Tobago…"

Sen. Mansoor: But then it raises the question of defendant or plaintiff again, because "may not maintain any action" may mean that you are not suable.

Mr. Sobion: But this is one which is earmarked for prior proclamation.

Sen. Mansoor: I am prepared to, sort of, recognize the complexity of it and walk away from it with the undertaking that it would be looked at by brighter people than myself.

Mr. Sobion: So the only amendment to clause 338 is to (2).

Amendment (Sen. Mansoor) withdrawn.

Mr. Chairman: The proposed amendment by the Attorney General is as follows:

"In subclause (2), delete the words 'with the approval of the Minister" in line four.

Question put and agreed to.

Clause 338, renumbered clause 337, as amended, ordered to stand part of the Bill.

Clause 339.

Question proposed, That clause 339 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I propose an amendment which reads as follows:

"In clause 339 (now 338) in subclause (1) after the word 'December' add the following words in brackets '(or in the case of financial statements, made up to the end of the financial year of such company last preceding such date)'

Question put and agreed to.

Clause 339, renumbered clause 338, as amended, ordered to stand part of the Bill.

8.20 p.m.

Clause 340.

Question proposed, That clause 340 stand part of the Bill.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 340 be amended as follows:

"In clause 340 (now 339) replace the words 'registered under this Act' by 'in compliance with this Act' and in the sixth line the words 'registered under' by the words 'in substantial compliance with'.

Mr. Sobion: Mr. Chairman, to some extent, this is consequential upon clause 338, so I think Sen. Mansoor would wish to withdraw.

Sen. Mansoor: Mr. Chairman, I withdraw the proposed amendment to clause 340.

Amendment withdrawn.

Clause 340, renumbered clause 339, ordered to stand part of the Bill.

Clause 341.

Question proposed, That clause 341 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by Sen. Mansoor to clause 341 as follows:

"Add a new clause 341 as follows:

341. Every company to which this Division applies shall:

(1) conspicuously exhibit on every place where it carries on business in Trinidad and Tobago the name of the company and the country in which the company is incorporated; and

(2) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all billheads and letter paper, and in all notices, advertisements, and other official publications of the company; and

(3) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in all billheads, letter paper, notice, advertisements and other official publications

of the company in Trinidad and Tobago and to be affixed on every place where it carries on its business;"

Mr. Sobion: Mr. Chairman, this proposed amendment is also consequential, so upon agreement with Sen. Mansoor, it should also be withdrawn.

Sen. Mansoor: Mr. Chairman, I withdraw the proposed amendment to clause 341.

Amendment withdrawn.

Clause 341, renumbered 340, ordered to stand part of the Bill.

Mr. Chairman: There is a proposal for a new clause, but we would have to do that at the end, after we have completed all the clauses. We would come back to that.

Clauses 342 to 350 renumbered 341 to 349, ordered to stand part of the Bill.

Clause 351.

Question proposed, That clause 351, renumbered as 350, stand part of the Bill.

Sen. Mahabir-Wyatt: Mr. Chairman, during the Minister's winding up he said that the Government would be willing to take a look at clause 351(c), removing the words "or manager" after "director", since many of the managers of any organization would not know, neither have the authority, nor be responsible for the applying to the Registrar for a certificate of continuance. It seems unnecessarily harsh to penalize managers, for example, a marketing manager who has had no authority or knowledge, nor ability to do this. "Directors" seem to be fair game.

Mr. Sobion: Mr. Chairman, would the deletion of the word "manager" and the substitution of the words "Chief Executive Officer" be all right?

Sen. Mahabir-Wyatt: That is fine with me.

Mr. Chairman: What is the amendment?

Mr. Sobion: Mr. Chairman, to delete the word "manager" in line one and substitute the words "Chief Executive Officer".

Question put and agreed to.

Clause 351, as amended, ordered to stand part of the Bill.

Clause 352 ordered to stand part of the Bill.

Clauses 353 to 439 ordered to stand part of the Bill.

Clause 440.

Question proposed, That clause 440 stand part of the Bill.

Sen. W. Mark: Mr. Chairman, I beg to move that clause 440 be amended as follows:

"Delete paragraph (c) and replace with the following:

(c) All severance benefits including terminal benefits referred to in section 18(6) of the Retrenchment and Severance Benefits Act, 1985, shall be due to an employee not being a director, whether retrenched by an employer, receiver, liquidator or some other person."

Mr. Chairman, the reason clause 441(c) is included in the manner it is, has to do with the lack of consultation and dialogue. In the existing Companies Act, severance entitlement amounts to $120 under the preferential payments parity. This Act, as one would recall, came into existence in 1929. We are now in 1995, heading towards the 21st century, and there is a proposal to virtually entrench an arrangement into law where if a company goes into receivership, or liquidation, in respect of parity payments, workers' entitlements would not go beyond the maximum of two months' basic wages and salaries.

We do not want to bankrupt a company, but if there were sufficient consultation, I am certain we could have done much better than what is being proposed here.

One is also aware that a number of companies have gone into receivership and have been liquidated, and as such workers end up receiving next to nothing, or sometimes, they receive absolutely nothing.

It is strange that all rates, charges and taxes—moneys owed to the state—must be paid in full, but when it comes to workers' wages, salaries and severance benefits, there is an effort being made to confine those benefits to a mere two months. This is unacceptable. I do not know if the hon. Minister of Finance and the Attorney General recognize that in an instance where a company goes into receivership, and the workers employed there have 30 to 40 years' service, this clause is attempting to limit these workers to a mere two months' salary. This is unacceptable.

Mr. Sobion: Mr. Chairman, there are two things that were incorrectly stated. Insofar as the parities are set out in paragraph (a), there is a restriction. It is not all the rates, charges and taxes owed to the Government; the state is limited to 12 months prior to the date. If a company is owing 10 years' rates, charges and taxes the state would get only 12 months prior to the date. And that is the existing provision.

8.30 p.m.

So that while there is no improvement on the recovery of moneys owed to the state, there has been an improvement insofar as employees are concerned as set out in paragraph (c). I may mention, as well, that this is a fairly contentious matter and has been contentious for some time. There is a review of the Retrenchment and Severance Benefits Act underway at the moment. There have been discussions with respect to establishing a severance fund. It is likely that the position will improve when amendments are made to the Retrenchment and Severance Benefits Act.

Mr. Chairman, having regard to the fact that there is an ongoing exercise with respect to how to solve this very difficult problem, I think that the provision, as it is set out here, which is an improvement from $120 should be retained for the time being.

Sen. W. Mark: Mr. Chairman, I want to add to what I have said. Under the Retrenchment and Severance Benefits Act, when a company goes into receivership or liquidation, the workers are entitled to 100 per cent severance benefits insofar as the floating assets of the company are concerned. Here is a statement coming out, almost torpedoing this arrangement where, for instance, the Government is seeking to confine severance payments to a mere two months whereas the Retrenchment and Severance Benefits Act on or before a receivership comes in, before the assets crystallize, there is a situation where there are fixed and floating assets and the workers are entitled to 100 per cent severance pay. What is being proposed here—and they are saying it is a compromise—is to give the workers $120 for all their years of service, once a company goes into liquidation. In this instance, they are saying they will now give two months' pay.

Sen. Mansoor: Whatever happens if you have $10 in the bank? You have to first pay that as severance with respect to (2). It is not a question that you are only entitled to two months. This is in priority to all other debts, so that effectively you are guaranteeing one-sixth of your annual payroll as basic salaries.

It is a massive improvement so much so that I believe we are going to have difficulty with banks in their security with this. This is a priority payment. The receiver or liquidator has no choice in the matter.

Sen. Mahabir-Wyatt: At the present time it has no priority. This is giving something, not taking something away.

Sen. W. Mark: Mr. Chairman, this is not a favour that is being granted to people. There is a situation where companies in this country are deliberately triggering a mechanism to go out of existence. We know of instances of that. I am not saying irresponsible companies, because of the very judgment that came out of the Privy Council recently, but there are companies that will deliberately trigger a mechanism to go into liquidation, conscious of the fact that those workers would not be entitled to any kind of payment. We are going to put on our statute books a law that would entitle workers, in the event of receivership or liquidation of a company in this country, to a mere two months' pay as a priority. We are talking about priority payment to other debts. This is absolutely unacceptable. For instance, if there were sufficient discussions and deliberations on this matter the Government would have, at least, come up with something much more tidy and much more favourable to employees.

Mr. Mottley: One can understand we were resisting this because of the problem of the bank that Sen. Mansoor pointed out. The workers want this. In the absence of this, they get nothing.

Sen. W. Mark: The National Trade Union Centre of Trinidad and Tobago was not consulted on this matter. When you say the workers want this, what do you mean?

Mr. Mottley: A trade union can demand anything and get nothing, except retrenchment, if that is what they force the banks in the situation to do. This is a compromise that gives them something where they had nothing before.

Mr. Sobion: Many arguments have been ventilated on this matter for many years. I pointed out to the goodly Senator that the matter is under review in another forum as well. There have been tripartite discussions with respect to the establishment of a severance fund. It is not that Government or any of the parties involved in this matter did not consider it important, but the fact is the arguments are well known and it is being addressed in another forum. This is an improvement on what exists and, therefore, there is very little that would be served by prolonging further debate on this matter.

Sen. W. Mark: Mr. Chairman, if you read this matter carefully, what compounds the madness is when we go to the amendments of the joint select

committee which is proposing under this same clause that subclause (1)(c) should come into effect on the expiration of two years after the commencement of this Act. In other words, they are saying if a company goes into receivership in 1998—the Minister of Finance said this afternoon that on April 1, or before, they would like to proclaim this Act. The joint select committee has agreed that this particular clause would only come into effect two years after the expiration. Between now and that period, the workers would still be entitled to $120. I cannot understand the rationale. That is a murderous proposal which is being suggested here, that you continue to pay workers $120 until April, 1998. Even the two months that is being proposed, it could be less but you cannot get more. Why is the Government proposing such a ridiculous amendment to clause 440?

Sen. Mansoor: Mr. Chairman, if I may. That amendment was put in because the feeling of the committee was that to bring this new priority of what effectively is one-sixth of your annual payroll, could upset the finances of many smaller companies. What would happen is that immediately banks would see there is this priority payment of so much money, they would immediately want to call their loans and do all sorts of things. We wanted to give a certain amount of time so that we can all get used to the idea and make other arrangements. I do not think it would be $120. I think there is a problem there because there is as vacuum. I did not think about that before but the notion of just making as a priority pay one-sixth of an annual payroll for most companies is really quite a dramatic step as a priority payment.

Sen. Barrack: Mr. Chairman, paragraph (c) is not clear because, obviously, it is saying…"not exceeding the equivalent of two months' basic wages or salary…" In other words, you can get less, but you cannot get more. If that is the case, $120 two years after this Act comes into effect will still be there or less. You can now get less. Therefore, there is no guarantee of one-sixth of your annual payment here. It is not exceeding. There is a ceiling on it. It is not that there is a basic area.

Sen. Mansoor: Sen. Barrack, it means if one is entitled to less than that. In other words, if you are entitled to more than two months' basic salary, because of your severance you cannot get less than two months, but if your are entitled to only one month, you cannot get two months.

Sen. Barrack: I am not seeing it here.

8.40 p.m.

Sen. W. Mark: We have a fundamental disagreement on this question and to clause 440. We have not reached that point as yet, but we will get to it. We do not support this.

I want to make one final point. I repeat, because the Attorney General seems not to understand what I am saying in the context of the existing Retrenchment and Severance Benefits Act. I made the point that under the existing Act, if a company goes into receivership the workers are entitled, as a matter of parity, to 100 per cent of their severance payments in respect of the floating assets of the company.

I am saying that what is proposed here is unacceptable and since the Government is not budging on this matter the workers will have to address this. We have to take this to the masses and indicate exactly what the position of the Government is on this matter. We know our position and this ought to be altered. If the Government does not alter it we want a division on it so the record would show clearly who supported it and who did not.

Sen. Capildeo: Mr. Chairman, I have just one question. How did they get to two months?

Mr. Chairman: The proposal by Sen. Wade Mark is that clause 440 be amended as contained in the amendment circulated.

Question on amendment put.

The Senate divided: Ayes 7 Noes 16

AYES

Mark, W.

Capildeo, S.

Barrack, J.

Gray-Burke, Rev. B.

Buckridan, Dr. R.

Dean, E.

St. Cyr. Dr. E.

NOES

Saith, Sen. Dr. The Hon. L.

Barnes, Hon. B.

Yuille-Williams, Mrs. J.

Draper, Hon. G.

Robison-Regis, Mrs. C.

Callender, S.

Mark, A.
Ojah-Maharaj, D.
Elder, Miss J.

Gosine, Pundit R.

Hassim, A.

Maloney, A.

Nanga, J.

Mahabirsingh, S.

Mansoor, M.

Mahabir-Wyatt, Mrs. D.

Senators H. Ali and D. Teelucksingh abstained.

Question, on amendment, put and negatived.

Clause 440 ordered to stand part of the Bill.

Clauses 441 to 474 ordered to stand part of the Bill.

Sen. W. Mark: These amendments are not relevant to our discussion.

Mr. Chairman: Those were passed in the House.

Sen. W. Mark: We have to come to these at the end of the session.

Mr. Chairman: Those amendments were made in the House of Representatives so they have come here as part of the debate.

Sen. W. Mark: We do not have the chance to deliberate on these amendments. I have strong objection to a particular clause here that was proposed in the other place.

Mr. Chairman: What clause is that?

Sen. W. Mark: That is clause 440.

Mr. Chairman: We just did clause 440.

Sen. W. Mark: Mr. Chairman, when I was going back to this you advised me that you were dealing specifically with my amendment, and that is why I stayed clear of this one.

Mr. Chairman: Yes, because we are dealing with amendments to the Bill. Did you propose an amendment to that?

Sen. W. Mark: No. The point I am making is that a short while ago I observed this amendment. This is why I raised it with you.

Mr. Chairman: It is an amendment, but it is part of the Bill before us now. Unless someone proposes an amendment to that you cannot deal with it.

Clauses 475 to 521 ordered to stand part of the Bill.

Clause 522.

Question proposed, That clause 522 stand part of the Bill.

Mr. Chairman: There is a proposed amendment to clause 522 by Sen. Mansoor.

Sen. Mansoor: Mr. Chairman, I beg to move that clause 522(2) be amended by replacing all after "necessary" in the third line by the following:

"for the purposes of section 352 or to enable a former-Act company or an external company registered under Part X of the former Act lawfully to function until it is continued under this Act or wound up, or struck off the Register as the case may be".

Question put and agreed to.

Clause 522, as amended, ordered to stand part of the Bill.

Clauses 523 to 528 ordered to stand part of the Bill.

New Clause 341.

Mr. Chairman: There are two new proposed clauses. One is by Sen. Mansoor.

Sen. Mansoor: Mr. Chairman, I propose a new clause 341 be added to the Bill as follows:

"Every company to which this Division applies shall:

(1) conspicuously exhibit on every place where it carries on business in Trinidad and Tobago the name of the company and the country in which the company is incorporated; and

(2) cause the name of the company and the country in which the company is incorporated to be stated in legible characters in all billheads and letter paper, and in all notices, advertisements, and other official publications of the company; and

(3) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in all billheads, letter paper, notices, advertisements and other official publications of the company in Trinidad and Tobago and to be affixed on every place where it carries on its business;"

New clause 341 read the first time.

Question proposed, That the new clause be read a second time.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and agreed to.

New clause 341 added to the Bill.

New clause 529.

Sen. Mansoor: Mr. Chairman, I propose that a new clause 529 be added to the Bill as follows:

"This Act will come into effect on proclamation and not earlier than the 30th day of June 1996."

New clause 529 read the first time.

Question proposed, That the new clause be read a second time.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and agreed to.

New clause 529 added to the Bill.

8.50 p.m.

Mr. Sobion: Mr. Chairman, before we take the vote on this, the Bill at clause 2 says that:

> "This Act shall come into operation on a date to be fixed by the President by Proclamation".

By adding a new clause 529 we are fettering the President in the exercise of his discretion, and I feel that this matter might simply be cured by an undertaking given by the Government with respect to the date March 30, 1996. I would hate to see a piece of legislation passed by this Parliament being proclaimed and we fetter the President's discretion in that way.

Sen. Mansoor: Mr. Chairman, I want to accept that undertaking. I cannot see any circumstance where I cannot accept that as an undertaking. I would like to point out that this is a very important aspect of the acceptance of this Bill. I am particularly concerned with the question of retroactivity. I think we should give the public, however defined, the opportunity to look at this Bill. If it will affect legal sensibilities, I am prepared to accept an undertaking. *[Interruption]* That is fine with me. I do not know how other people feel, but I would accept it as an undertaking.

I withdraw the new clause.

New clause withdrawn.

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

Senate resumed.

Bill reported with amendment.

Hon. W. Mottley: Mr. President, before the matter is finally decided, on behalf of the Government, I would like to put into the record of *Hansard* the undertaking discussed that the Government will not seek to have the Act implemented before March 30, 1996.

Bill read the third time and passed.

Motion made, That the Senate do now adjourn to Tuesday, October 10, 1995 at 1.30 p.m. *[Dr. The Hon. L. Saith]*

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.55 p.m.