SENATE

Tuesday, March 11, 1997

The Senate met at 1.31 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence has been granted to the Minister of National Security, Sen. Brig. The Hon. Joseph Theodore from today's sitting.

Leave of absence has also been granted to Sen. Vernon Gilbert for a further period of two months.

SENATOR'S APPOINTMENT

Mr. President: I have received communication from His Excellency the President of the Republic of Trinidad and Tobago which reads as follows:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency

NOOR MOHAMED HASSANALI

President and Commander-in-Chief of the Republic of Trinidad and Tobago

/s/ N. M. Hassanali

President.

TO: MR. VINCENT CABRERA

WHEREAS Senator Joseph Theodore is incapable of performing his functions as a Senator by reason of his absence from Trinidad Tobago:

NOW, THEREFORE, I, NOOR MOHAMED HASSANALI, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VINCENT CABRERA, to be temporarily a member of the Senate, with effect from

March 11, 1997 and continuing during the absence from Trinidad and Tobago of the said Senator Brig. Joseph Theodore.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St Ann's this 10th day of March, 1997."

MICHAEL MANLEY (MR.)
CONDOLENCES

Mr. President: I wish to advise hon. Senators of the sad passing, on March 6, 1997, of yet another stalwart of Caribbean politics, The Rt. Hon. Michael Manley, former Prime Minister of Jamaica.

Members who wish to pay tribute may now do so.

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, on behalf of the Government and people of the Republic of Trinidad and Tobago, I wish to express sincerest condolences on the passing of the Rt. Hon. Mr. Michael Norman Manley, former Prime Minister of Jamaica.

Mr. Manley was a committed regionalist and a renowned international statesman. He was born on December 10, 1924, and was the son of Norman Washington Manley, one of Jamaica's national heroes and the architect of its political independence; and Edna Manley, an internationally famous sculptress, patron of young artists and one of the leaders of the nationalist movement.

He was also a cousin of Sir Alexander Bustamante, one of the founders of the trade union movement, and Norman Manley's key political rival, as well as to Sir Donald Sangster, a former Prime Minister, and Hugh Shearer, another former Prime Minister and Bustamante's successor.

Mr. Manley has left an indelible mark on Jamaica's politics having served as Leader of the Opposition (People's National Party) in the House of Representatives from 1969 to 1972 and 1980 to 1989.

Mr. Manley was a leading figure in Socialist International and was elected as Vice-President in 1979. He was also an influential figure in the Non-Aligned Movement.

During his first term in office, Manley pursued a wide range of social programmes, asserted his democratic socialist ideals and was also a champion of the poor. During the period 1989 to 1992, Manley became pragmatic and abandoned most of his socialist positions, but still advocated increased social relief measures for the disadvantaged members of society.

The former Jamaican Prime Minister was a champion of the regional integration movement. He was one of the signers, the others being Errol M. Barrow, former Prime Minister of Barbados, the late L.F.S. Burnham of Guyana and Eric Williams of Trinidad and Tobago, who signed the Treaty of Chaguaramas that established the Caribbean Community on July 4, 1973. Mr. Manley was one of the few persons to be invested with the Order of the Caribbean Community, its highest honour, in 1995, in recognition of his sterling contribution to Caribbean integration.

Mr. President, the late Jamaican former Prime Minister played a prominent role in the establishment of the Association of Caribbean States. He was also a lover of cricket and was the author of *A History of West Indies Cricket.* Mr. Manley also authored several other books including:

- *The Politics of Change*
- *A Voice at the Work Place*
- *The Search for Solutions*
- *Jamaica Struggle in the Periphery*
- *Global Challenges From Crisis to Co-operation*
- *Breaking from the North/South Stalemate*
- *Up the Down Escalator*

Among the many awards conferred on Mr. Michael Manley were:

- Order of the Liberator (Venezuela)
- Order of the Mexican Eagle (Mexico)
- Order of Jose Marti (Cuba)
- United Nations Gold Medal for Work in Anti-Apartheid Struggle
- Juliet Curie Peace Prize

Mr. President, hon. Members of the Senate, it is with a deep sense of grief that we, too, mourn the loss of Mr. Michael Manley. The Government and people of Trinidad and Tobago share with Mr. Manley's family, and with the people of Jamaica, profound sadness on the passing of this great Caribbean patriot who, throughout his life, remained committed to the development of the Caribbean and the upliftment of its people. Indeed, his accomplishments will serve as an inspiration to those of us who are committed to the ideals of Caribbean integration.

May his soul rest in peace.

Sen. Nafeesa Mohammed: Mr. President, I wish, on behalf of the Opposition People's National Movement and, more particularly, the Opposition Senators, to offer our deepest condolences to the bereaved family of the former Prime Minister of Jamaica, the late Rt. Hon. Michael Manley.

Last week, the entire Caribbean region was plunged into mourning within the short space of 24 hours with the loss of two of its most outstanding and dedicated sons. Just hours after we paid tribute in this honourable Senate to the late Guyanese President, Dr. Cheddi Jagan, we received the news of the late Mr. Michael Manley who died last Thursday night.

1.40 p.m.

Mr. Manley's political history spans some 40 years. He belonged to a political dynasty in Jamaica. His father, Norman Manley, brought Jamaica to Independence in 1962 and Michael Manley was soon to follow in those footsteps with his election to the People's National Party in the party's executive in 1952.

The Rt. Hon. Michael Manley had many careers: as a journalist, a trade unionist, a politician, an international statesman, an author and a scholar. From 1952, Mr. Manley was a trade union negotiator, serving as President of the National Workers' Union of Jamaica, founder and first President of the Caribbean Mine Workers' Federation. He was elected as President of the People's National Party in 1969 and became Jamaica's fourth Prime Minister in 1972. He was re-elected in 1976 but was defeated in 1980. However, Mr. Manley held his ground in the Opposition and in 1989 he returned to power. Unfortunately, illness forced Mr. Manley from office in 1992 when he turned over the prime ministership of Jamaica to his long-time political deputy, Mr. P. J. Patterson.

Mr. Manley was a major architect and founding Member of Caricom. He became a major spokesman for the third-world movement and the new

international economic order. He was the author of several books including, one on the history of cricket. He was an international statesman, a great orator, and the ultimate charmer. The region mourns the loss of yet another of our few remaining charismatic leaders.

Once again, we extend our deepest condolences to the bereaved family and indeed, to the people of Jamaica. It is from God we came, and to God is our eventual return.

I thank you.

Sen. Prof. John Spence: Mr. President, on behalf of the Independent Senators, may I express our deepest sincere condolences to the family of the late Michael Manley. I would not repeat what my colleagues have just said because they have outlined his career effectively. One of the things that always struck me about Mr. Manley was that it must be very difficult to follow the footsteps of an illustrious father and also to make one's mark. Certainly, this was something that he was able to do magnificently. Also, we must remember that one of the things he was able to achieve was to keep the Caribbean close to Cuba. At a time when this was unpopular he was able to keep that integration to the wider Caribbean, including Cuba. He certainly was a great orator. I think in these days when many of our West Indian men particularly, are losing their heart, this is a striding example of one who was able to keep up.

Mr. President, with those few words, I express our sympathy again, to the family of the late Michael Manley.

Thank you, Sir.

Mr. President: I would like to associate myself with the sentiments expressed by the previous speakers. On behalf of all Members of the Senate, I extend to the bereaved family and the people of Jamaica, our sadness, on the passing of this great Jamaican statesman.

The Clerk of the Senate would be asked to send an appropriate letter to the bereaved family. May I ask everyone to stand for a minute's silence in tribute to the deceased.

The Senate stood.

OATH OF ALLEGIANCE

Senator Vincent Cabrera took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Report of the Auditor General on the accounts of Youth Training and Employment Partnership Programme Limited for the period November 01, 1990 to 31 December, 1991. *[The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung)]*

2. Report of the Auditor General on the accounts of Youth Training and Employment Partnership Programme Limited for the year ended December 31, 1992. *[Hon. B. Kuei Tung]*

3. Report of the Auditor General on the accounts of the Management Development Centre for the year ended December 31, 1994. *[Hon. B. Kuei Tung]*

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I seek leave of the Senate to deal with "Bills Second Reading", instead of "Motions", under "Government Business."

Agreed to.

1.50 p.m.

COMPANIES (AMDT.) BILL

Order for second reading read.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. President, I beg to move,

That a Bill to amend the Companies Act, 1995 be now read a second time.

The purpose of the Companies Act, 1995, and this amendment Bill, 1997 is to provide an up-to-date, comprehensive, and practical law to govern the activities of companies operating in Trinidad and Tobago. Mr. President, many have been asking when we will be proclaiming the 1995 Companies Act. We have had many enquiries about that. We have been deluged with persons pointing out the importance of the 1995 Act, and the importance of that, together with this Bill, cannot be overstated, because we can look at the Companies Act and the amending Bill as being akin to a constitution for companies. In the same way the Constitution forms the basic law of our society, we can look at the Companies Act, as amended, to provide a basic law for companies operating in this country.

Very often, we can lose sight of the fundamental importance of an act such as the Companies Act, by going into the various technical details and the provisions contained in it, but we need to remember always that the limited liability company is the principal form of association for carrying on economic activity and investment and, it is essential to the economic well-being of practically every country in the world. The limited liability company provides the mechanism through which investment is made, jobs are created, and revenues are generated for the betterment of the society. The importance of the Companies Act, 1995 which we are seeking to amend today, lies not only in its applicability to local entities—local associations—but also to the ability of this country to attract foreign investment.

Mr. President, it is part of the policy of this Government—and that has been very clear in the past few months—to attract direct foreign investment into this country, as well as local investment to assist in the general economic development of Trinidad and Tobago. We can only do that within a stable and fair legal framework and it is our respectful view that one of the pillars for such a legal framework is the companies' legislation and the Companies Act. Notwithstanding the natural resources of this country, or any comparative advantage which we may have, investors from whatever country would be loathe to invest in Trinidad and Tobago, if we do not have up-to-date companies' legislation which takes into account the realities of the present-day world, and with which such entities can be comfortable.

Whilst the present ordinance, as is well-known, which dates back to the 1929 United Kingdom legislation, has served us very well, it is very clear that we needed to update legislation concerning companies, so that we could increase the attractiveness of Trinidad and Tobago to foreign investment and to establish a firm legal foundation for our expanded economy. So, this Bill, Mr. President—the 1997 Companies (Amdt.) Bill—formidable as it is in length, in complexity, and in technicality, has become necessary to introduce a variety of technical and practical amendments which were required in the new Companies Act, 1995, being passed in October, 1995 but not yet proclaimed.

That 1995 Act adopted an entirely new system of company law to replace the Companies Ordinance, which I have said before, was based on the United Kingdom Act, 1929. The 1995 Act, I am advised, goes way back into 1987, when the then NAR Government began work on it. Thereafter, a draft bill was first submitted to that Government in 1991 on behalf of a committee of private professionals, and it was based on the Canadian Business Corporations Act.

Thereafter, in addition to looking at the Canadian Business Corporations Act, they also looked at the document known as the "Caricom Working Draft" and the new Barbados Companies Act. However, before that 1995 Companies Bill was passed into law and became an Act in 1995, regrettably, it did not appear to have received close analysis and review by professionals versed in the practice of company law in Trinidad and Tobago. Such review would have been essential, in our respectful view, for the successful introduction of new companies' legislation in this country.

Mr. President, you may recall, in the Senate of October, 1995—and Members of the Senate who were then sitting in that Senate: the Leader of Government Business, then the Leader of the Opposition Business; Sen. Prof. John Spence, Sen. Diana Mahabir-Wyatt, Sen. Rev. Daniel Teelucksingh and Sen. Martin Daly—when the Companies Bill, 1995 was passed, there had been a great outcry from the business community and from the Chamber of Commerce, with respect to certain provisions within it.

At that time, despite the fact that the Bill had a history dating back to 1987, earlier bills had been presented to Parliament in 1993 and 1994, and Joint Select Committees had been set up, it was only in 1995 that the committee proceeded to review the 1995 Bill, clause by clause. That committee completed its work on the Securities Industries Bill, but found itself obliged to report that it had not been able to complete work on the Companies Bill, 1995 to its satisfaction. In spite of that, the Bill was pushed through Parliament.

I am advised, however, when that happened in October 1995, the then Government gave an undertaking that prior to the 1995 Act being proclaimed, it would entertain amendments proposed on a review being undertaken by the private sector. To its credit, it did not proclaim it instantly. In fact, as events would have it, history would show, elections were called just immediately after and on the eve of elections, the 1995 Bill was passed in Parliament.

I am saying, to the credit of the then Government, it gave the undertaking that it would not be proclaimed, it would not become law, until substantial amendments had been made. Members of the Senate who were then in the Senate, would recall such an undertaking being given. When the new Government came into office in 1995, there was, again, uncertainty as to whether we would go with the 1995 legislation, or whether we would want to entertain amendments and, therefore, what kind of amendments would be entertained.

There were representations made as to whether we would need to completely repeal that Companies Act, 1995, and to draft entirely new legislation, based on the United Kingdom legislation or, whether we would amend the 1995 Act. This Government took some time to consider the various options and, finally, we decided that too much work had been put into the 1995 Act to just reject it completely and, we decided to go ahead with it but, we would hold consultations and have substantial amendments made to it.

We were concerned at that time as well. I remember calls were being made for us to proclaim the 1995 legislation, but we were concerned that the new Act should work properly, in every respect; that there should be no embarrassment, by reason of practical points that had been overlooked, and that the new legislation should gain the confidence of the business community. The concerns raised by that business community had been fully considered and dealt with. For this purpose, the Legislative Review Committee of Cabinet co-opted a sub-committee, which I had the pleasure to chair—because of the work we did thereafter—and we co-opted a selection of practising lawyers and accountants who had, by their comments, demonstrated an interest in these objectives.

2.00 p.m.

Let me indicate that we are truly grateful to those professionals who have given up a great deal of their time to work on this Bill, and if you will permit me to note, as with the Copyright Bill, what can be achieved by quiet dialogue and consultation between parties representing different interests in the national community in order to arrive at consensus in the interest of the society as a whole.

So that, if you will permit me, I would like to thank Mr. Gerald Furness-Smith who gave unstintingly of his time in helping us to draft the 1997 Companies (Amdt.) Bill; Mr. Philip Hamel-Smith; Mr. Timothy Hamel-Smith; Mrs. Stephanie Daly, representing the Law Association; Mrs. Judy Chang and Mrs. Ira Lakhan representing Price Waterhouse. Mrs. Chang had worked on the committees previously, so she was well versed in the legislation from its inception to the final product; Mr. Andrew Johnson representing the Chamber of Commerce; Miss Susan Harrysingh representing the Ministry of Planning and Development—the restructuring unit; Mr. Mark Ramkerrysingh representing the Chamber of Commerce; and David Collins, also a practitioner who assisted us with this Bill. I would especially like to thank Mr. Ian McIntyre who seems to be doing a lot of the drafting for us, from the Chief Parliamentary Counsel's Department; and our own Mr. Francis Sandy, Registrar of Companies. All these persons together with

myself, in times of my absence, continued to sit—I think it was almost every Wednesday and sometimes all day on a Friday—to look at the Bill. And their work, as I say, is the Bill that is before this honourable Senate today.

Mr. President, now if we look at the Bill we would see that it covers a wide range of amendments, mostly of a very technical nature. Obviously, time will not permit us to go into a full explanation of each of the amendments, but the explanatory note does set out some of them. What I would do is to spend a little time attempting to explain the principles which governed our work in preparing the Bill, and to give some illustrations of some of the amendments that I think are more important, and to look at the practical effect of those amendments. Certainly, if hon. Members wish to question any particular amendment, I would—now or at the committee stage—be very happy to explain that particular amendment in greater detail, but you would well appreciate that time would not permit us to do each amendment on its own.

One of the major objections to the 1995 Act as it stood was the ambiguity with respect to its application to all existing companies. These are referred to in the 1995 Act as former Act companies. The Act appeared to require these companies to comply with the provisions of the Act immediately, and to be subject to its provisions although they did not have to be continued under the Act for a period of two years. So they had two years within which to comply, yet at the same time the Act appeared to require the companies to comply immediately. So obviously that ambiguity needed to be dealt with. So, on consideration it would seem better to permit such former Act companies to continue, subject to the former Act, until such time that they are continued under the new legislation, subject only to a very small number of new provisions which would apply to them at once. These are noted in paragraph 2 of the explanatory note, and clause 185 of the Bill amends accordingly.

This ambiguity for existing companies is further illustrated when we look at the position in relation to companies limited by guarantee formed under our Companies Ordinance. In the Act there was no provision for such a company, and it would not have been able to be continued under the new legislation since it provides that, if not having a share capital—which is the position in most cases—such a company would have to be continued as a non-profit company for which status, in most cases, it would be quite unable to qualify. Our amendments now permit such companies to be continued, and for such companies to be formed under the new Act as required, that is companies limited by guarantee.

Mr. President, it seemed unfortunate that we should abolish this mechanism, that is, companies limited by guarantee which the 1995 Act abolished completely. Such a mechanism for a company functioning had been found very useful in practice and it was our respectful view that there would be no harm in permitting continued flexibility in this respect. So in this and other respects, our guiding principle in dealing and drafting the Bill has been one of common sense, and bearing in mind what provision will cause the least disruption in business life and in company law practice. So we looked at it from a common sense approach.

Secondly, looking to see which provisions would cause the least disruption in business life and in company law practices as we know it in this country. To illustrate, I want to look at the doctrine of constructive notice. The amendment in clause 14 of this Bill states that the abolition of the doctrine of constructive or presumed notice will not apply to charges registered under Part XI. This is a good illustration of the dangers in this 1995 Act which we hope that we have avoided.

Section 24 of the 1995 Act had abolished this doctrine of presumed or constructive notice under which persons dealing with a company were presumed to have notice of any corporate documents filed with the Companies' Registry. This caused injustice because persons dealing with the company would be presumed to have fully read and considered the small print in the memorandum and articles of association. But whilst this amendment—that is the abolishing of the doctrine of presumed or constructive notice—is a major feature of Canadian law, that law, no disrespect, does not appear to have our system of registration of charges which is an important mechanism to enable companies to get credit and to give their creditors some assurance that when they have filed the notice of their security they have full priority in respect of it.

So, the effect of such a provision depends to a considerable extent on the doctrine of presumed notice of the register of charges which the 1995 Act abolished. The result would have been extraordinary confusion with respect to companies' charges, and great difficulties for companies securing credit or the continuance of their credit arrangements. There seemed little point in our law requiring such a register which no one would have been obliged to check. So accordingly, we made amendments, as in clause 14 of the Bill.

Mr. President, another illustration is found in the definition of "debenture" in the 1995 Act. Now, this is important because there were new and elaborate provisions made in the 1995 Act requiring deeds of trust and other formalities in respect of debentures that were so wide that it would include not only the kinds of

security instrument for the protection of long-term lenders to a company, but also routine instruments such as cheques, promissory notes, bills of exchange, and letters of credit. We have amended that definition in clause 3(i) of the Bill.

The definition of "special resolution" has also been amended in clause 3(s) of the Bill. The definition was changed by the 1995 Act, to exclude the resolution signed by all the shareholders without the necessity of a meeting. It was our respectful view that there was no need to change the existing practice and, therefore, we restored the existing practice as now appears in clause 3(s) of the Bill which is before us.

The 1995 Act also considered that only individuals could be directors of a company, therefore, companies could not be directors of a company. Perhaps this might have been out of concern to enforce higher standards required of directors as set out in the 1995 Act. We were advised by practising attorneys in company law, that if we did so this would cause considerable inconvenience in practice, and it seemed that there were sufficient provisions in the law to pursue any liabilities of directors against a limited liability company.

2.10 p.m.

It is noted that such advice, Mr. President, is confirmed by the position in Barbados, where the Barbadians amended their law in 1991, to allow companies to be directors of companies. Clause 32 of our amending Bill, accordingly amends section 64(2) of the 1995 Act, by inserting the words "a body corporate", thereby allowing a company to be a director of a company.

With respect to share transfers, Mr. President, there were far-reaching changes that were made, from which it appeared the doubt would be cast on existing rights of shareholders in private companies, to restrict such transfers, and this has been corrected, in our respectful view, by suitable amendments in clause 47, amending section 107 of the 1995 Act.

The 1995 Act also insisted on a trustee for any issue of debentures, including a single debenture, such as to secure a routine bank overdraft. This was an oversight which has been corrected by amending section 282, in clause 102 of the Bill, accordingly.

In addition to those kinds of difficulties with the 1995 legislation, we also found that the 1995 Act, whilst imposing up-to-date provisions, sometimes applied these elaborate provisions to all companies indiscriminately. For example, section 125 of the Companies Act 1995, imposed the requirement of a shareholders' list being prepared before every annual general meeting. This would hold for large public companies as well as for small non-public companies. It seemed to us that

this would place a burden on the small company, while at the same time, provide no additional protection for such small non-public companies. Accordingly, clause 55(a) and (b) proposes that this practice be restricted to public companies and companies with 25 or more shareholders. The very small company would not have this additional burden placed on it.

We also propose amending the provision of section 143, to limit the complicated new proxy requirements to the same companies; so that clause 59 of the Bill amends section 143 accordingly.

As regards provisions relating to external companies, Mr. President, Part V, Division 2, dealing with the registration of foreign companies carrying on business in Trinidad and Tobago, we were advised that they might be misunderstood, as appearing to discriminate against certain companies and to impose considerable extra burdens. The provisions of those sections have therefore been radically redrafted. Penalties associated with external companies have now been equated to those of local companies. Nevertheless, at present, the law relating to such companies is not precisely the same as for local companies, and provision is made for the public's protection, which has not been interfered with.

Mr. President, the time in which such a company may be continuing under the new Bill, has been extended from one year to 18 months, that is to say, external companies.

Further, we have not hesitated to borrow provisions from the company laws of other jurisdictions where good precedents could have been found. For instance, in section 38, provision is made that no shares may be issued unless first offered to shareholders of the company, unless the articles of the company otherwise provide. As it stood under the 1995 Act, this provision could have proved a considerable embarrassment to the development of Trinidad and Tobago as an international financial centre, because it made no provision as to how such offer could be made; and the laws for some other countries, for example, the United States, imposed penalties on offering shares through the post, which do not comply with their security laws. Therefore, in our respectful view, it seemed sensible to adopt the up-to-date provisions out of the United Kingdom Companies Acts, to address this problem, requiring that such offers be made only to an address in Trinidad and Tobago.

Mr. President, it would also be noticed that the Act provides, in various respects, for firms to be auditors or secretaries of a company. A firm, of course, is

not in itself, a legal entity, or a person known to law and, therefore, it appeared necessary for proper provision to be made for a firm to be subject to criminal penalties in the same way as if any individual auditor or secretary offended against the Act. Thus, clause 184 introducing section 517(A), has been adopted from the United Kingdom legislation.

We have also made changes in the assimilations to the Canadian Business Corporations Act. It will be noticed in paragraph 5 of the explanatory note, that in many cases we have assimilated language to that of the Canadian Act. Although the Act generally is clearly modelled under the Canadian provisions, we found that in every section where these provisions were adopted, the language had been altered merely for the sake of establishing a difference from such foreign law and sometimes, without fully understanding the purpose of the Canadian section being copied. This, in our respectful view, seemed to be misconceived, and unless we found good grounds, due to local conditions, not to adopt the Canadian language, we have reverted to the precise wording used in the Canadian Business Corporations Act.

It is our respectful view that this would allow legal practitioners and others who would be using and interpreting this companies' legislation, to have access to Canadian authorities, whether they be precedents, textbooks or other commentaries, to provide them with some kind of guidance to deal with the multitude of questions which would undoubtedly arise.

Mr. President, you may recall when the legislation was brought in 1995, this was one of the concerns, that we were using a Canadian model rather than a United Kingdom model for the law. And then the criticism was, that we were purported to be using the Canadian model but in fact what we had done was mishmash of Canadian, Barbadian, United Kingdom and other undetermined legislation.

We are hoping that by reverting to the Canadian wording, where we thought that such would suit our local conditions for those provisions set out in the explanatory note, where we are saying we are assimilating back into the Canadian legislation, that we would have the benefit of the jurisprudence that would be available under the Canadian legislation. But it should be noted that while the Act adopts, generally, the new Canadian provision, including a position of considerably stricter liabilities on directors, section 104 did not adopt the slightly, more generous Canadian provisions for indemnity by a company of its directors. This, in the circumstances, seemed to be a mistake, and we propose that it be corrected. We have done so by making amendments in clause 45 of the amending Bill.

In addition to those kinds of changes, we have also attempted to retain existing law; that is to say, provisions out of our Companies Ordinance, where we felt such to be useful and beneficial. With respect to our existing companies' law, the Companies Ordinance, Chap. 31:1, this was repealed by the Act and is to continue in force only in respect of former Act companies, for limited periods, that is, until they comply and they are continued under this legislation.

The framers of the 1995 Act proposed that we should adopt the modern and up-to-date provisions of the Canadian Act and the Caricom working draft. But the explanatory note to the Bill for the 1995 Act stated that in respect of winding-up provisions, because they worked well, they would be retained. This Bill therefore, re-establishes the existing law and practice, in those respects, in regard to winding-up provisions. It was also found that changes were made in the existing law in respect to registration of charges, although those provisions were generally continued.

2.20 p.m.

In the absence of a clear explanation why an existing law or practice is undesirable, we saw no reason for it being changed and, therefore, in all these cases we have reverted to the existing, well-established language of our Companies Ordinance. Those are some of the changes that we have made. As I have said before, time will not permit me to go into all the amendments and I would be very happy to deal with any specific amendment that is raised during the course of this debate.

I would like to point out that this new Companies Act, in our respectful view, is a very important component to the strategy to improve and enhance the investor-friendly climate of Trinidad and Tobago, to make our nation a financial centre. We would like to give credit—I have always said that we give credit where it is due—to the former administration for continuing the work began during the NAR administration. Work began on the companies legislation in 1987, and it has taken three Governments. This piece of legislation has passed through the NAR administration from 1987, the PNM administration from 1991, and now this Government. Perhaps having passed through three Governments, we would have got most of it right. I look forward to the support and the views of the hon. Senators as we go through this debate. It is not an “open and shut” situation. Suggestions and views would be welcomed but I trust that we would be able to finally have the amendments passed and have the new Companies Act proclaimed.

In this respect, I would like to point out that regulations have already been drafted. The subcommittee has gone through the regulations and I would hope to have those ready for Members, not today, but during the course of the debate. They have to go back to the Law Review Committee and to Cabinet before we can bring them to Parliament, but they have been completed.

I would also like to point out that the Chamber of Commerce, the Institute of Certified Accountants of Trinidad and Tobago, AMCHAM, and the Ministry of Legal Affairs, have been holding discussions with a view to the hosting of a seminar on the new companies' legislation as soon as the legislation has been passed in both Houses of Parliament. Once the legislation has gone through this process in both Houses, we will want to host that seminar and we hope to bring experts in the field of company law—both locally and from abroad—to assist in some kind of public education awareness with regard to the new companies' legislation.

Mr. President, we know that the new legislation, clearly, will run into some difficulties because it is such a radical change, but we know that legislation is not cast in stone. Therefore, as the legislation goes into practice and as we use it, if it should come up against serious difficulties, I give this undertaking that as a prudent Government, we would come back to the Parliament to have amendments made. So that it is not cast in stone, but we believe that from 1987 to 1997—over a period of 10 years—it is more than time that we have new companies' legislation in place in Trinidad and Tobago.

Mr. President, I thank you and I beg to move.

Question proposed.

Sen. Nafeesa Mohammed: Mr. President, I would like to say at the outset, how very happy I am to be participating in this very important debate. As the hon. Minister has just pointed out, it is some 10 years now since we have been speaking about introducing new companies' legislation in Trinidad and Tobago. But I remember even before that, as a student of company law in Cavehill, Barbados, the discussions that were taking place in the mid-1980s pertaining to the harmonization of our company laws in the Caribbean. Like the hon. Minister, I too would like to commend all those persons—professionals and practitioners—who have been involved over these years in the actual drafting of the legislation that we have, not just before us today in terms of the amendment, but certainly, in terms of the 1995 Companies Act. The hon. Minister made mention of several distinguished

personalities whose presence we are fortunate to have in the Chamber today, and we on this side would certainly like to commend them for their hard work.

In the hon. Minister's opening remarks, she made mention of the haste with which the 1995 Act was passed through the Parliament. I recall just last week or the week before, when we actually received the present amendments to the 1995 Companies Act. I distinctly remember asking the hon. Minister about the possibility of referring these amendments to a parliamentary committee and she was indeed very apprehensive and negative about that suggestion. I can well understand her position in this regard because it highlights a fundamental flaw in our system, that is, with regard to the operation of our parliamentary committees, and we certainly look forward in anticipation because the present Government has campaigned on the basis of parliamentary reform and having more efficient parliamentary committees operating.

I raise this as a concern, Mr. President, because we heard the hon. Minister mention that prior to the 1995 Act being passed in Parliament there was, in fact, a Joint Select Committee of the Parliament that dealt with the 1995 Act. I know there are several Senators who are present in the Chamber now, who were actively involved in that particular committee—Sen. Martin Daly is here and, indeed, Sen. Wade Mark. In fact, I came across a document in terms of the attendance in that particular Joint Select Committee, and it was rather revealing to see that with all the Members who participated in that particular committee—I think there were eight sittings of that committee—and out of the eight sittings the hon. Leader of Government Business in the Senate—the hon. Minister of "Misinformation and Propaganda", the hon. Minister Wade Mark, attended only three out of those eight committee meetings.

I point that out, Mr. President, because time and time again, I have been hearing this comment, that in 1995, the Companies Act was being pushed through Parliament as though there was some linking of that fact with the events that took place in the latter part of 1995. At that time there was a certain type of politics being practised by the Opposition, but notwithstanding that, the fact is that after very many years of deliberations, and as the hon. Minister has pointed out—she said 1987, but I believe it is really in 1989—the then NAR Government, had appointed a working committee to review our companies' legislation. In fact, I believe that the actual terms of reference for that committee were linked to the report that emanated from the working party on company law harmonization in the Caribbean.

2.30 p.m.

I have a copy of the report, Mr. President, and this particular report sets out the history of the harmonization process in the Caribbean. I believe it was in the days when CARIFTA was in existence that the Secretary General then had actually appointed a working party that comprised the Governments of Trinidad and Tobago, Barbados, Jamaica, St Lucia, St. Vincent, I think the Caribbean Development Bank was involved, the University of the West Indies and, indeed, the Caribbean Association of Industry and Commerce.

When CARIFTA appointed that particular working party, Caricom came into being and Caricom also pursued the work of this working party. I think it was under Article 42 of the Treaty of Chaguaramas that provisions were made for the work of this particular committee, and emanating from this report, was a model piece of companies' legislation for our Caribbean jurisdictions. I think that model was prepared by Mr. W. J. Menarie, a company law draftsman and in 1989 when the then government appointed its working committee, its mandate was to look at that particular model and to look at the report of the harmonization of our companies law to come up with a draft bill for Trinidad and Tobago.

The working committee, in 1989, represented a very broad cross-section of persons involved in the field as follows: the Institute of Chartered Accountants; the Institute of Secretaries; the Chamber of Commerce; representatives from the Hugh Wooding Law School, the Labour Congress, Employers' Consultative Association, the Stock Exchange, the Ministry of Finance, the Ministry of Legal Affairs and, indeed, from the Law Commission.

Mr. President, when the working committee reported, it submitted a draft bill in 1991 and I believe that draft bill was drafted by the former Chief Justice of Barbados, Dennis Williams. Then in 1991 there was a change of government in Trinidad and Tobago and the former PNM government appointed another committee to review the 1991 Bill and, indeed to prepare a new bill for Parliament.

This committee eventually submitted a draft bill in 1993 and it was at that stage that draft bill in 1993 was referred to a Joint Select Committee and after the deliberations in 1995 we had the actual 1995 bill being introduced in Parliament which was in fact passed.

Mr. President, I went through the history of this piece of legislation because it shows that this process has been ongoing, and it shows that a tremendous amount of work has gone into the actual legislation that we have before us now. Indeed,

after all these years we now have a Companies Act with all these amendments and we are indeed very pleased to see that the present administration has seen it fit to continue with the process. I believe in 1995 when the Act was being passed, the hon. Minister mentioned that an undertaking had been given that the Act would not be proclaimed until further amendments had been considered. That kind of undertaking would have emanated because of the fact that the then government recognized that as time goes by amendments will be needed. The year 1995 represented a culmination where we had a substantially improved piece of legislation for our country and the Minister herself just pointed out, as time goes by, if her Government sees the need to amend further it will certainly come to this Parliament with amendments.

I want to compliment the Government for continuing with the process, and indeed, we heard the hon. Minister actually declaring that at least they have a policy in terms of trade liberalization and attracting foreign investors. That, too, had been our policy which is being continued and we must commend them.

One comment I would like to make in this regard, Mr. President, is that having spent the last few months formulating these amendments—it is indeed a very thick document, and the actual amendment bill really is a very technical piece of legislation; it goes to the specific provision in the 1995 Act—a thorough analysis of those amendments would really be required by those persons who are more versed, who are the practitioners and the professionals and who have to deal with that kind of legislation.

The comment I have to make is the fact that when these amendments are actually formulated, and prior to their introduction in Parliament, it is a bit unfortunate that they were not, in fact, put out for comment, because we would have had other persons who may not have been actively involved in the committee who would have liked the opportunity to see the amendments being proposed. Notwithstanding that, we recognize the tremendous input of those professionals and practitioners in terms of coming up with these amendments. We want to congratulate them for the very hard work.

Mr. President, we heard that in the process of drafting companies' legislation in Trinidad and Tobago there has been an ongoing debate as to whether we should retain the UK companies' legislation or whether we should adopt an entirely different system. From my perusal of the 1995 Act and, indeed, the amendments being dealt with here today, I am of the view that we have, in fact, a hybrid piece

of legislation. It really retains parts of the English system—the hon. Minister made mention of the use of precedents and so forth, and I can only assume, as an attorney, that we would be able to use the English precedents in addition to the Canadian precedents because we have heard that the 1995 Act was based on the Canadian companies' legislation to a very large extent, and these amendments are making further modifications.

There is one other observation I have about this Bill. Because of its background and the fact that it has this Canadian input, I believe the Barbados Companies Act is very similar to the Canadian piece of legislation. In fact, our 1995 Act is very similar to the Barbadian Act in terms of actual implementation of the provisions of our new companies' legislation, and I think we can learn a lot from the Barbadian experience. In this regard, I commend to the Members of the Senate the contribution made by the former Prime Minister of Barbados, way back in 1993, when he was in Trinidad and Tobago, and he participated in a symposium on the Trinidad and Tobago Companies Bill which was organized by the Institute of Chartered Accountants of Trinidad and Tobago and the Law Association.

Mr. President, in terms of the Barbadian experience, I think it is on page 93 of this particular document, Mr. St. John dealt with the need to ensure that certain administrative arrangements were made in order to have the companies' legislation implemented. This brings me to an issue which I have been raising in this Chamber time and time again, especially when we dealt with the whole package of intellectual property legislation. I myself have been to the Companies Registry on several occasions and, as a practitioner, I know there have been considerable improvements in terms of physical infrastructure to that particular registry . At one time the Companies Registry was housed in a building at upper Frederick Street. I believe it was between Duke and Park Streets but I cannot remember the exact number on Frederick Street. But in more recent times, the Companies Registry is housed just opposite Woodford Square at the Singer building. Whenever I go into that registry I am always impressed by the level of enthusiasm and the hard work put out by those members of staff at the registry. As a practitioner, I have had some very tedious experiences because, assuming one is about to register a company—

2.40 p.m.

Hon. Persad-Bissessar: That would be under the PNM regime.

Sen. N. Mohammed: I am talking about the practical day-to-day experiences. This has nothing to do with PNM, NAR or UNC. This has to do with improving our

system and, indeed, our legislation. But as a practitioner, sometimes you go to file a document and it is such a great inconvenience. You may not have the required number of stamps. I am sure the clerks would be very familiar with the actual quantum that is required. But the fact of the matter is that there are times when you may need to get some stamps; you may need to get some document sworn hurriedly by a Commissioner of Affidavits, or you may need to photocopy a document. At the registry you are often advised to go and get your stamps. I think the nearest places are at the Salvatori Building or Phillips Pharmacy opposite the Hall of Justice on Abercromby Street.

There is a constant up and down. This is not laying blame on anyone; it is just a humble suggestion, because we are talking here about economic reform, developing our infrastructure and making Trinidad and Tobago the financial capital of the region. If we are improving our society and our systems, let us try to improve our infrastructure to make things very attractive, convenient and practical.

I am suggesting that in terms of the physical infrastructure that is required for the Companies Registry, that certainly there is need for improvement and enhancement. Perhaps in the future, who knows, there might be a new building to be acquired for the actual Companies Registry. We heard the hon. Minister of Legal Affairs mention some time ago that plans were afoot to set up a proper intellectual property office. So with a more enhanced facility—and if you have all these registries in one building—all I am suggesting is that you try to have these facilities housed near to the registry. It would certainly make life easier for those persons, not just clerks and lawyers and accountants who may have to go; very often businessmen will have to go. If you are dealing with foreign investors and people who have to come from abroad, make the environment attractive so that people would know where they can get the different facilities. Have them available in one place.

Another concern that I have is in terms of the fundamental changes being made with respect to this Companies Act of 1995 and, indeed, with the amendments. The transition from the old regime where our companies law was based on the English system to the present one, is an area of concern to me, because I wonder, in terms of the staff at the Companies Registry, any person wanting to have anything done with respect to a company, what kind of assistance he or she would be able to get from the staff at the registry.

In other words, I believe with the changes that are being made now, it is imperative that we look at, I would say, a general public education programme. I

commend the hon. Minister for mentioning in her contribution that plans were afoot; that after these amendments pass through both Houses, a seminar would be organized. It is a step in the right direction in terms of educating the public and those persons who would have to use the companies' legislation. I commend the Minister for that move. We, certainly, would like to be involved in whatever activities would be taking place in that regard. My concerns really are in terms of the practicalities of the legislation and the implementation of the provisions of the legislation.

In conclusion, I would just like to indicate that we, on this side, support the amendments. We know the intense amount of work that went into formulating these amendments and we have every confidence in terms of those persons who were involved in this process. In fact, mention was made that Ms. Judy Chang who served in terms of the drafting of the 1995 Act, has also been involved in the process since the PNM demitted office. So I am sure there would be some kind of continuity and link in what has been taking place.

I just want to re-emphasize the need to embark on that awareness programme and to just urge the Government to see what can be done to improve the infrastructure that would be directly linked. Indeed, I compliment all those persons who work at the Companies Registry. In my view, the Companies Registry is perhaps one of the most efficiently run registries in the legal department in the country. It really is developing rapidly.

Mr. President, I thank you for this opportunity to participate in this debate.

Mr. President: Before I call on Sen. Mahabir-Wyatt, I just want to remind Senators that in referring to another Member in the House, it would be appropriate to refer to the Member by the Member's proper title.

Sen. Diana Mahabir-Wyatt: Mr. President, the Minister of Legal Affairs has made life extremely difficult for this Senate. For any Senator who wishes to exercise senatorial oration skills, I would imagine that the Minister of Legal Affairs has made things not only difficult, but vexatious, because she is so reasonable and she consults so widely; she is so diplomatic; she is such a good "Chair". She consulted with people within the Senate, people outside the Senate—and some are here today—including Judy Chang, and Stephanie Daly from Pollonais & Blanc which firm produced the Consolidated Companies Act. A copy of this Act is in the Parliament library and it was very useful to all of us. Our very greatly respected former Independent Senator colleague, Gerald Furness-Smith, also assisted in

producing this equally very impressive document. So there is really nothing left for anybody to say, except maybe to quarrel about the state of the registry and various other peripheral things and, of course, once again, to commend the Minister on her efficiency, effectiveness and skills, to the point where she is going to get bored. The media really do not have anything new to report.

At the risk of appearing to be nitpicking, I would just like to return to a couple of very small points in the Companies Bill which deal with non-profit companies which is in Part V, simply because Gerald Furness-Smith's excellent document which, I do not dare question, has completely left out any reference to that particular section. It was discussed when we did the 1995 Act, and most of the points which I had raised then have been taken into consideration, so I really do not have much to argue about. But, again, there are a couple of points on which I would like to get some guidance and I was wondering if the hon. Minister could help.

First of all, I would like to comment on section 307(3) just to say that I think this is an eminently sensible provision because it does say that the following provisions of the Act apply to non-profit organizations "with such modifications as the circumstances of a non-profit company require". That would make a big difference in the flexibility which NGOs need to operate their business.

2.50 p.m.

In section 313(1) there is a reference to class of members of a non-profit company. It says:

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

Since a non-profit company has no share capital, I was wondering if the hon. Minister could explain why the term "class" was used here. I thought at first it referred to section 315(2) which refers in subsection (a) and some of the other sections there to groups—division of its members into groups—in non-profit companies, but "groups" is different to "classes". "Classes", I thought referred to different classes of people who have share capital. Since that does not apply to companies without share capital or non-profit non-governmental organizations, can the Minister very kindly explain what this means in the context of section 313(1)?

The other query I have—and again it is a query which I raised before, for which I am sure there is a logical explanation and I have no doubt the Minister of

Legal Affairs will give—has to do with section 63(2) where reference is made to the secretary of a public company. In that section there are five subsections and it would appear, since there is not the word "and" after subsections (a), (b) and (c), that these are disjunctive rather than conjunctive. It appears to me that it would be extremely difficult to find a secretary for a public company who has the qualifications listed in (a) as well as (b), (c) and (d). That would mean that one would have to be an attorney-at-law as well as having held the office of secretary for three of the five years immediately preceding and so forth. I am wondering if the hon. Minister could straighten out that point for me as well.

Apart from these very minor issues, I must commend the Minister, again, for the work which has been done on this Companies (Amdt.) Bill. I do not think we are going to have a very long debate because, as I said, there is not going to be very much to debate. It has already been debated, agreed and decided on. So, I thank her for an early day today, hopefully, and look forward to receiving the regulations.

Thank you, Mr. President.

Sen. Philip Hamel-Smith: Mr. President, it is indeed a pleasure to stand and make a contribution to this debate on a Bill which would signal the long overdue start of a new era in company law in Trinidad and Tobago.

As you are aware, Mr. President, we have laboured over the past under a company legislation which had its roots earlier, back in 1929. There were false starts in 1991, 1993, 1994 and again in 1995, and in 1995 we had a new Act which to date remains unimplemented, the amendments of which form the subject of this Bill before us today.

Mr. President, I think it is unfortunate that hon. Sen. Nafeesa Mohammed attempted to fault the hon. Minister of Legal Affairs in the procedure which she adopted in bringing this Bill before the Parliament today. The hon. Minister of Legal Affairs was exhaustive in her consultation on this list of amendments.

Sen. Nafeesa Mohammed stood.

Mr. President: Would the hon. Senator give way?

Sen. P. Hamel-Smith: No, Mr. President.

Having, myself, sat through a number of consultations on this piece of legislation, I have no hesitation in putting on record that not a single comment

received by the draftsmen, nor the Minister herself, went unheard or unattended. Therefore, so far as the consultative process leading up to this amendment is concerned, I think she is fault free. *[Desk thumping]*.

Mr. President, the amendment before us encompasses 188 clauses.

Sen. Mohammed: Mr. President, on a point of order. I refer to Standing Order 34. The hon. Senator made a statement a while ago that I was critical of the hon. Minister in terms of the process. Certainly, I view this as a misrepresentation of what I said as I did not criticize the process. I complimented the process in terms of the extent of the deliberations that took place with respect to these amendments.

Sen. P. Hamel-Smith: Mr. President, as I was about to say, the amendment before us encompasses 188 clauses, all of which have been subject—

Mr. President: I think the matter was made under a "point of order", and I am of the opinion that the point was well made. Perhaps, the Senator might wish, not necessarily to withdraw, but to lessen the statement. It is not a grave misrepresentation, but maybe the Senator could lessen what he said to a certain extent.

Sen. P. Hamel-Smith: Mr. President, my interpretation of what was being advanced by the hon. Senator was that she found it unfortunate, to say the least, that the hon. Minister of Legal Affairs did not see it fit and then she went on to explain a procedure which she would have preferred to see rather than that adopted by the hon. Minister of Legal Affairs.

Be that as it may, the amendments before us have all been subject to long hours of discussion, and I am of the view that this final product is glowing testimony of the commitment of the hon. Minister of Legal Affairs to provide Trinidad and Tobago with companies' legislation that is not only workable and acceptable to all sectors of our community, but is capable of standing the test of time.

3.00 p.m.

The amendments before us have all been carefully thought out, and have not been slavishly copied out of any other statute books. Adaptations and modifications have been made to properly and practically reflect the corporate environment to be governed by this important piece of legislation, and the experience of a significant cross-section of our legal fraternity, as the hon. Minister mentioned, has been brought to bear on the Bill that is before the Parliament today.

It is indeed interesting to note that the efforts expended in refining these amendments have produced, as was said before, a hybrid product that is being carefully crafted to suit our local needs. It is not a carbon copy of anything although it is reflective of a number of other products. Whereas, it is true that the model followed is, in fact, the Canadian Business Corporations Act, wherever it was found necessary or even desirable, the draftsmen have deviated from this model to satisfy the needs of our local business environment. For instance, the amendment to section 38 of the Act dealing with pre-emptive rights deviates from the Canadian law and sensibly adopts the up-to-date provisions of the current UK Companies Act. Again, in clause 184 there is an amendment which adds a new section 517(A) to the Act. This deals with criminal proceedings against firms. Here, again, the provisions of the UK law have been followed.

Significantly, the body of the new Act and the amendments do, in fact, reflect the language and the provision from the Company Act of Canada. In fact, great care, as our Minister indicated, was taken and quite a few of the amendments before us, where appropriate, address the use and the issue of sticking close to the Canadian language. Hereafter, we can enjoy as far as possible the Canadian Authorities and Company law which was a concern expressed by a number of practitioners along with all the related precedents, textbooks, commentaries and the like, that emanate out of Canada.

It may be worthy to mention that the new Act, in fact, retains in some instances, some provisions of the Act to which we now refer as our old Companies Ordinance. For example, in particular, the provisions dealing with winding up that now exist in the Companies Act of 1995, were found to have worked very well for us here in Trinidad and Tobago. There was no good reason to discard these provisions. The draftsmen have even got more exotic, and in some instances—and will I give an example: section 24(2) of the Act which really provides a combination of the Canadian language which previously appeared in the old Companies Ordinance. The combination of the two has come about because the Canadian Acts have no provisions comparable with our Part IV of the Act, dealing with registration of charges and protection of creditors.

In Canada, and for that matter in the United States jurisdictions, these questions are dealt with under separate legislation and, consequently, the Canadian equivalent to section 24 would not be applicable to us. Accordingly, while embracing the principles of the Canadian Act, we have retained the requirements in respect of registration of charges in much the same way as in the existing

Companies Ordinance, Chap. 31:01. So, here is an example of a combination of the Canadian model being used in conjunction with the provisions of our old Companies Ordinance.

Mr. President, too much gratitude could not be expressed to our hon. Minister of Legal Affairs for her effort in bringing this Bill in its present form. I am of the view that it will be too painstaking a task to attempt to go into great detail of the many varied and technical aspects of this Bill. I think that the time of the honourable Senate would be better spent in committee examining the detailed contents of this piece of important legislation, clause by clause.

However, it may serve some useful purpose and possibly set the tone for such technical discussion, if I can deal with a few of the critical aspects of this Bill which demonstrate how radical some of the changes are in our effort to establish a new corporate mechanism for doing business. Consistent with the commendation of the Minister of Legal Affairs, the first amendment worthy of note is the amendment to be found in clause 3(k), that is, definition of "Minister." In the 1995 Act "Minister" is taken to be "the Minister to whom responsibility of finance is assigned." Before us now, is an amendment whereby the definition of "Minister" in our Act, will now be taken to mean "the Minister responsible for the Registrar General's Department" who, for the time being, is none other than the Minister of Legal Affairs.

Even something as basic as the definition of a company, has been changed by this new Bill to the effect that it not only relates to bodies corporate that have been either incorporated under the new Act or continued under its provisions. Formerly, the Act related—and to use the expression—"to any body corporate that was not discontinued." Those were the words used in the former Act which meant that the default position, so to speak, would be that all incorporated bodies on record would remain governed by the Act. It hinted that a non-discontinuance would cause the company to stay in existence and on record.

As someone familiar with the large volume of companies on record in the Registrar General's Department, I see it as a simple and very expedient but far-reaching step to use this opportunity to prune out of existence the thousands of dormant companies that remain asleep on the shelves of the Registrar General's Department. The effect of this amendment produces a result at the end of two years; the Registrar General's Department would only have on its records bodies corporate that have, in fact, taken positive steps to be continued. One can imagine

how beneficial such a simple amendment could be. We will end up with a severely pruned-down list of registered bodies corporate.

Another amendment worth mentioning relates to external companies; an area that has been commented on quite extensively in the past. This area is covered in clauses 107—123 of the Bill which have brought the treatment of these companies more in line with the treatment of local companies. Previously, an external company was required to register within a 12-month period, as mentioned by the hon. Minister. The amendment to section 319(1) enlarges this time to 18 months. This is a matter of interest. The comparison is that in the local company situation, public companies are required to be registered within 12 months and all other companies within a 24-month period. We have now moved the external company treatment from a 12-month time-frame to an 18-month time-frame. Further, as it relates to external companies, section 331 is proposed to be amended retroactively to validate all acts of external companies done prior to registration as opposed to merely authorizing the company to so do as previously drafted, trying to temper the treatment meted out to the external companies.

Further, under section 332(3), non-registration of a change causes the registration of an external company to cease automatically. This was an area which was of grave concern to all those who were dealing with external companies. The registration was automatically ceased if something as trivial as a change had not been registered. The new amendment to section 333(3) has been removed. Similarly, under section 333(3) there was another punitive measure causing an external company to be actually struck off the register for non-compliance. This is now proposed to be deleted also; again, treating the external companies with much more caution and care.

The incapacity of an external company under section 334 of the Act to maintain an action in court is proposed to be relieved by now providing for same to be available with the leave of the court. Mr. President, previously, this part of the 1995 Act provided that for an external company to maintain an action, it was required to be on record here. Now it has been tempered by providing the words “with leave of the court”, under the new amendment to section 334.

3.10 p.m.

There are other similar provisions which have brought the Companies (Amdt.) Bill to be less discriminatory of external companies and more in keeping with all

the business treatment of foreign investors that this Government has promoted from time to time.

Another area which may be useful to mention is the issue of registration of charges which is dealt with in Part IV section 251 and following. Amendments were needed in this area. Whereas previously section 251(3) applied to all charges with just two exceptions, the new subsection (3) sets out clearly a full menu of charges which are registrable, thereby leaving no room for question as to which charges would be required to be registered with the Registrar General, to afford protection to the creditors. In subsection (3) there is a full list of all the charges which are registrable and leave no room for ambiguity as would have obtained previously.

Another practical amendment is being suggested to section 494 of the Act. Previously, very wide powers were vested in the Registrar as regards rejecting names which applied for registration as companies. Justifiably, this could anticipate creating delays and problems with the establishment of companies. The proposed amendment to this section involves its repeal, so that the proposed names of companies would be merely subject to the terms of section 493. In very clear terms, this establishes what reasons can be assigned for non-acceptance of names. This is a practical change which would create a lot of ease for those involved in repetitive formation of companies.

These and many other amendments are designed to address certain difficult, but important issues, which apparently were overlooked previously by the draftsman of the Companies Bill, 1995. By and large, the proposed amendments now before us, facilitate substantially the conduct of business in the country and the work of the Registrar General's Department. Hopefully, this would redound to the benefit of the business community at large. I think it would go a long way in assisting the country to fulfil its aspiration of being the financial centre of the Caribbean.

With these few words, I look forward to participating fully in the detailed examination of this Companies (Amdt.) Bill in the committee stage. I commend the Bill in its present form to this honourable Senate.

Thank you.

Sen. Philip Marshall: Mr. President, maybe because of my close proximity to the learned Senator here, I would start with a quote which I hope is correct. I think it was Victor Hugo who said, "There is nothing more powerful than an idea whose time has come." In 1968, the Mexico Olympics was held in a rarefied atmosphere.

It enabled Bob Deman to break the world's long jump record. I think we are also making a leap here. A period of 68 years takes us from the Companies Ordinance, 1929, to the Companies (Amdt.) Bill, 1997.

I congratulate the Minister and the team that I know was led by the past hon. Sen. Gerald Furness-Smith, who must be classified as one of the amendment champions of Trinidad and Tobago and, certainly, a man who has demonstrated great detail and charisma to see us through this effort. The hon. Minister mentioned other persons whose names I cannot repeat, but I have noted, and they should be congratulated.

In a Bill which is complex it is difficult to address it from the perspective of a point by point blow. My intention is to deal with some broad issues of why a Bill like this is needed; why it represents a key aspect of the economic framework and underpinning of our business community; and why we must view it as a key to the development of our economic community.

In the market in Trinidad and Tobago mention was made of about 40,000 companies. This Bill seeks to deal with both public and non-public companies. In this country there are about 26 listed companies on the stock exchange. If my information is correct, the market capitalization of those companies, meaning, the market value of the total share capital of those companies which has been issued, and trade on the stock exchange is in the vicinity of $10.274 million. We are dealing with a capital market which has asset value that represents property almost equivalent to the annual revenue of the Government of Trinidad and Tobago.

We should not look at this Bill only in the context of privately-owned companies. This Bill talks at length about the duties and responsibilities of directors; the whole issue of code of ethics; issues dealing with audit committees, corporate governance and the protection of shareholders and creditors. We must bear in mind that in addition to those entities quoted on the stock exchange, there are many state-owned entities where the only shareholder is the Corporation Sole. We must not forget that although these companies may not have to file or publish their accounts annually on the basis of a stock exchange, and may be done by the Auditor General, people who are appointed as directors and members of boards of state-owned organizations, owe that same level of duty, care and diligence in managing the strategic direction, and the profitable use of assets of those companies. Although they may not be reporting to shareholders registered on a list of shareholders, they are reporting to the major shareholder, the taxpayers and people of Trinidad and Tobago. I hope that the context in which this Companies

(Amdt.) Bill is being proposed is one of transparency, accountability and, most importantly, a context with the mechanisms for follow-up and implementation.

3.20 p.m.

This Bill has a great list of fines and penalties for non-conformance. As you know, Mr. President, what gets measured, gets done and what gets fined, gets followed. If we do not fine people, if we do not enforce the provisions that have been stipulated, absolutely nothing will change.

Mr. President, this Bill is a substantial piece of work. The whole issue of corporate governance is increasingly under the microscope both in metropolitan and developing countries, as environments with cross-border trading, currency liberalization, litigious environments are developing and where creditors, shareholders or institutional investors may feel aggrieved when the savings of people are put into mutual funds and those funds invested in the equity market. One must readily understand that without the framework of a substantial piece of legislation like this, the anticipated returns by institutional investors, who may be promising their shareholders or mutual fund holders certain returns on the investment, would be lost if the directors and managers of corporations do not adhere to the duty of care, diligence, independence and disclosure of conflict of interest that has been laid down in this very well-thought-out and maintained Bill. I use the word "maintained" because it has been in a gestation period for 20 years. There have been many changes and significant work has been done to tie up the loose ends and the cross-references and to make this Bill an implementable mechanism that supports our economic framework.

Although bills, legislative frameworks and the threat of liabilities if directors do not perform are important, those in themselves will not mean that the objectives of the Bill in terms of well-established principles of corporate governance will necessarily be achieved. This applies to both the private and public sectors. There is nothing more important, there is no asset more often unrecognized than the individuals who are appointed to serve on the boards of directors. These individuals may be from within the company or they may be independent. A key aspect of this framework, although it may not be embodied in legislation—and I would certainly like somehow to see it embodied in principle support—is that the people who are nominated to serve on boards, who will ultimately represent the shareholders, the employees, creditors and other key stakeholders, are people who have the respective competence, skills, capabilities and decision-making ability so as to position the company, whether it is a state-owned corporation or a private

sector company, to engage on a path of action which will not lead to wastage of those companies' assets.

This very Senate talked about certain state-owned companies in the South that made certain decisions where the assets of the taxpayers were wasted. I am not a geologist so I shall go no further.

One of the key aspects of this Bill, Mr. President, is the whole question of the independence of auditors, as is now obtained in the Companies Ordinance, but more importantly, the establishment of audit committees. Section 157(1) and (3) of the Act deals with the appointment of audit committees and basically says that a public company whose shares are traded on the Stock Exchange, one of the 26 companies with the $10.2 billion market share value, shall have an audit committee of not less than three directors of the company, the majority of whom are not officers or employees of the company or any of its affiliates.

This means that any public company must have two independent directors, two of whom do not fulfil any position within the company as members of that audit committee and the audit committee shall review the financial statements of the company before such statements are approved and reported to the board.

I want to point out that underlying the role of the audit committee would be that audit committees generally should be informed about the operations of the company. They should be vigilant and effective overseers of the whole financial reporting process. They should have adequate resources and authority to discharge their responsibilities and should ensure, basically, that the whole integrity of the reporting with which external auditors have to deal—and thereby, eventually, the shareholders—is maintained so that accountability can be maintained whether it be a state-owned corporation or a private sector company.

In that context, I take a little issue with section 159 that now authorizes the Minister, after consultation with the Institute of Chartered Accountants, to authorize any person, in writing, to be appointed auditor of a company. With the ever-growing complexity of businesses today, I think that when exceptions to the rule are introduced into situations like this, the person who is appointed may find himself in the invidious position of not having the support of, maybe, a global type organization. If he, for example, is very fine, with the value of assets that may be quoted in commodity or other asset markets abroad, he may not have the wherewithal to conduct, adequately, the audit of a major corporation, not because of his intrinsic lack of ability, but because, if he is a sole practitioner or a smaller

type firm, he just may not have that support. It does leave me a bit concerned. I understand the reason in certain cases—non-profit organizations, smaller-type companies—but I ask the Minister, maybe in committee stage, to discuss some of these issues.

3.30 p.m.

Quite clearly this Bill, under section 161—and this is very important—talks to the independence of an auditor; that no one can be appointed an auditor of a company if he is not independent of the directors or officers of that company or, in any way shares any partnership or business affiliation with the directors of the company.

The way the Bill addresses the need for an audit committee, deals with the independence of auditors—by the way, I fully realize that I may be talking about issues both in the 1995 Act and 1997 Bill but it is really difficult to debate just the amendments. Seeing that the 1995 Act was never brought into law, I am looking at the 68-year time-frame, the combined leap.

Mr. President, I end on the matters relating to auditors. The audit committee has a very important role and I urge members of the Government that in major institutions in which the state has sole ownership—such as Corporation Sole—that they should establish an audit committee; that they should attempt to put into practice the guidelines and some of the concepts that I have broadly reviewed for transparency, accountability and for the benefit of all concerned.

I now refer to the issue of the duty of directors and the ever-increasing—some may call it—onerous position that may now be placed on directors. I believe we must have a new vision about directors, especially independent directors of public companies, in that they have a very important role to play in terms of the business knowledge they could bring to that organization if the required time is invested as it ought to be. In today's fast pace, international cross-border business environment no one should attempt to serve as a director of a company, if he is not prepared to learn the industry, if he is not prepared to understand the critical success factors in that industry and what makes a firm that operates in that industry successful or not. If an outside director is not prepared to undertake that learning there is absolutely no way he could bring the independence to bear on the strategy that may be formulated by the chief executive officer, and provide an independent process that can validate or provide quality assurance as to how that investment should be made.

Mr. President, you will understand that is very important because there could be very many cases—I am sure there have been—where taxpayers' and shareholders' moneys have been lost because of the lack of independence and gumption to really turn and steer the ship in a slightly different direction. Therefore, if one is not equipped with that knowledge and skill one cannot play a role that is beneficial to the company as a whole. Without that, Mr. President, this legislation will not serve to protect the interests of shareholders, employees or creditors. It is no point a company going under because innocent mistakes were made. It is just as damaging losing one's money innocently or fraudulently.

I would go through, briefly, the tenor of the legislation. This legislation attempts to assure that directors, in exercising their powers and performing their duties, act honestly, in good faith and in the best interest of the company and that they exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable situations.

I have a question with section 99(2) if I take that in terms of a standard of care and responsibility. I will read from the new Act section 99(2):

> "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."

Obviously, Mr. President, a company is its people and there has to be good business management. If directors follow the rules, ethics and learning, if the end objective that is followed is one of business success, then the employees should be looked after.

How does one decide in a situation where, however well-planned and well-researched a business strategy was the company finds itself in a situation where it may have to down-size, right-size, out-source, up-size—I do not know—where, unfortunately, employees may for the time being have to be temporarily laid off? This section may open a director's integrity and guidance to question. The point I am trying to make is, if the director follows the planning, diligence—I am talking mainly about public companies, maybe less so, private companies where there are no borrowings or creditors, where we certainly would not want a situation where an owner/manager who owes the bank and creditors nothing, simply takes advantage of his employees. I hope that the context within which that would be dealt would be one in which the minimum wage legislation or other proposed legislation that is before Parliament deals with the duty to employees in a company. I think we may be slightly in cross-purposes in this situation.

The Act goes on to basically translate and it attempts to communicate the following: that directors shall perform and appear to perform their official duties such that there is public confidence and trust in the integrity, objectivity and impartiality of the company's decisions so as to prevent any conflict of interests from arising. Directors have an obligation of public companies to act in a manner which would bear the closest public scrutiny, and not simply discharge their obligations in a mechanistic fashion by apparently acting within the law.

It would also be important that directors shall not have undisclosed interests which would be affected, significantly, by the company taking decisions along a certain line. What is important here is not that directors do not have private interests, but if they have those interests, they should be disclosed. There should be a proper process that they exonerate themselves from any decision-making in that direction. In fact, I think that most boards today, do have in their code of conduct and ethics, that where such a situation arises this disclosure provision would, in fact, be exercised. Basically, one cannot legislate for a person's behaviour and the onus for preventing real foreseeable potential or apparent conflicts of interest would really rest with each director.

One of the new aspects of the law—I think it is section 100—is certainly going to make certain people a little wary of the new onus responsibilities of taking on the role of directorships, especially if, as I am suggesting, they are from the outside. Know your business, know your company, know your strategy, is in the whole issue of agreement with resolutions.

3.40 p.m.

I certainly support the inclusion of section 100(1) which states:

"A director who is present at a meeting of the Directors or of a committee of directors is deemed to have consented to any resolution passed or action taken at that meeting, unless—

(a) he requests that his dissent be or his dissent is entered in the minutes of the meeting;

(b) he sends his written dissent to the secretary of the meeting before the meeting is adjourned; or

(c) he sends his dissent by registered post or delivers it to the registered office of the company immediately after the meeting is adjourned."

He sends the notification of his opposition to that decision.

It enables a director who may not be present at the meeting to, within 21 days, notify the company's secretary to place on record the fact that had he been there he would have dissented against the resolution that has been taken. This is important, because, as I said, the whole underlying aspect of good corporate governance is not legislation, it is equality of the decision-making in the board room. If those resolutions lead to decisions that are fraught with spending taxpayers' or shareholders' money on the basis of uninformed research, no legislation can protect us. Therefore, the significance of this section, the placing on record of dissent, will therefore, eliminate that director from the penalties of lack of due care and diligence.

I end with just a little clarification on some of the issues of a unanimous shareholder agreement. I suppose this may relate more to companies where the Corporation Sole or the Government is the single shareholder. This is the whole issue of a unanimous shareholder agreement, which, I believe was in the 1995 Act but not in the existing 1929 Companies Ordinance.

Section 137 says:

> "An otherwise lawful written agreement among all the shareholders of a company, or among all the shareholders and a person who is not a shareholder, that restricts, in whole or in part, the powers of the directors of the company to manage the business and affairs of the company is valid."

To that extent, the directors are relieved of their duties and liabilities. This could be along the lines of a managed corporation, where a shareholder—such as the Government of Trinidad and Tobago—is the only shareholder in a major public sector or energy company and it, basically, wants the directors to manage the company. But because the directors may not be empowered by the Government to fully take all the strategic decisions that are required because of the other ramifications—social or economic—what could possibly happen is that the directors could be given certain terms of reference and broad parameters within which they must work. Thereby, that limitation may cause them not to be able to make certain decisions which, otherwise, they may have made in the economic interest of the company.

Where such a situation exists, maybe this should be known and communicated on a broader basis so that any party that could possibly be affected, may be aware of this situation. If it is government-owned, naturally, one would not think that in

any way, even if the company did not succeed, the debts and liabilities would not be paid, but for cash-flow purposes they may not be immediately paid and this could have an effect on a small private sector company that is a service provider. It could have a major effect on that company being able to continue in business because of its lack of working capital.

Where such situations are mandated by shareholders; where there is a shareholder's agreement; where the directors, as shown on the correspondence or on the letters of the company or contracts, may not be able to make decisions that benefit the economic development or survival of the company, one should possibly be aware of that.

The Act, in sections 303 and 306, has also introduced specific legislation regarding insider-trading. This, naturally, in a small community like ours, is key. I believe many of the issues here would really be dealt with under the Securities Industry Act. So this Companies Act does not really stand by itself as the only document that will represent the new legislative framework for Trinidad and Tobago in the future.

It would be important that we demonstrate in the same way as we pass legislation as the Copyright Act, and so forth, as Trinidad and Tobago increases and raises its bar in the complexity of its legislation, that we thereby provide the economic framework and environment that would pursuade people to invest in smaller companies that may grow to be companies eventually listed on the stock exchange and, thereby, the capital market would provide the environment, where, if people felt that there is transparency; that there is accountability, they would be happy investing their money in real assets that employ real people instead of putting it in as part of that $600 million foreign investment deposits that we have in the banking system today that do not provide us with real growth, tangible real output and employment.

Thank you, Mr. President.

Sen. Danny Montano: Mr. President, it is a pleasure to rise in general support of this Bill this afternoon. It has been a long time in getting here. When I came back in 1976, there was an orginal draft by Mr. Dick Hobday and I do not think that ever saw the light of day and now in 1997 it looks like the end of the tunnel is in sight. I certainly would like to express my thanks and appreciation to the Members of the committee who worked on this final amendment and, particularly, to Mrs. Chang and Mrs. Lakhan who attended my office yesterday to assist me and

a representative of Sen. Marshall, in understanding and interpreting the myriad of adjustments in this piece of legislation. My comments are very few and relate specifically to only three areas of this Bill. On behalf of my professional colleagues, there is some disappointment that the Bill was not circulated more widely before being brought here. I certainly hope that I do justice to their ideas as well.

Section 152 in the 1995 Act permits a company to apply to the Registrar of Companies—and the amendment extends that to the Securities Commission—to omit certain items from their financial statements. Now, the amendment makes a certain amount of sense in that, as it stands now, it is felt that public companies ought, in fact, to appeal to an organization that would have a better understanding of the reporting requirements of companies. However, I have a difficulty with the entire section, Sir. The position that you face is, if a company, whether it is public or private, has a disagreement with the auditors, for the time being this clause—in terms of what ought to be disclosed on the face of the financial statements—gives the company a way around the reporting requirements.

3.50 p.m.

The Institute of Chartered Accountants is the primary body that governs the activities of practising auditors in the country. That organization had a long and painful genesis. It is now becoming stronger and stricter and, the definition of what fairly presents a set of financial statements is now fairly well-defined by the Institute of Chartered Accountants. From the moment that you take away the authority of the Institute of Chartered Accountants and put it in the hands of somebody else—you have two other bodies in this case: one being the Registrar, who would not necessarily be a chartered accountant, and the Securities Commission, again, not necessarily having any members on its board having any expertise as to what fairly presents a set of financial statements.

Auditors are required to go through a particular process in the audit of accounts; and the regulations, in terms of what is required to be reported, are the subject of a great deal of study and litigation. It is, therefore, very important that you leave the authority of what is required on a set of financial statements to the Institute of Chartered Accountants, as opposed to the Registrar and Securities Commission.

The Minister, in her contribution, indicated very clearly, that she was quite willing to entertain suggestions and recommendations. I hope that this is one she

would entertain. This, after all, is a piece of legislation that is totally non-partisan. We all have an interest here and, for this purpose we are all on the same side. I would, therefore, ask the Minister to listen to my comments and to recognize that I think it is important that the governance of what should be on financial statements be left to the Institute of Chartered Accountants. That body regulates the chartered accountants and, thereby, the auditors and, therefore, as soon as you make the appeal to some other body, you have somebody else now judging and governing matters for which the Institute of Chartered Accountants has a primary responsibility.

It is my submission, Sir, that the entire section should not be there at all. It ought to be removed. I do not think there is any need for it or, instead of referring it through the Registrar, or the Securities Commission, in fact, it should be referred to the Institute of Chartered Accountants.

My second comment relates to clause 65, section 159 of the Act, which was amended. Section 159 could be referred to, generally, as the grandfather clause. Basically, this clause allows someone who is not a member of the Institute of Chartered Accountants to apply to the Minister for a licence to practise as a chartered accountant. That is, in effect, what this clause is doing but, the amendment of clause 65, effectively removes the word "and" in subparagraph (a), and sets up an entirely different subsection (2).

Now subsection (1), as it now reads, allows someone who is suitably qualified to apply to the Minister for a licence. Subsection (2), as it would now read under the amendment, permits a person who was in practice at the commencement of the Act to apply within 12 months to get a licence to be an auditor of a company. The difficulty that I have with this, Sir, is—and again, it comes back to what the Institute of Chartered Accountants does—the Institute is the body that regulates chartered accountants, in the same way as the Law Society regulates lawyers, and the Medical Society regulates doctors. The Institute of Chartered Accountants regulates what accountants do, and how they practise.

The current state of affairs is that a practising accountant is granted a licence to practise on an annual basis. At the beginning of every year, he submits a renewal application to the institute and he renews his licence to practise. As of 1997, there are certain pre-qualifying requirements for that annual renewal and, that is, that he must have a certain amount of continuing professional education—I believe it amounts to 40 hours in every calendar year—in order to maintain his licence. This means that practising accountants are very carefully governed by the Institute of Chartered Accountants. This clause will, effectively, bypass all of that and grant a

licence to an auditor, someone who is falling completely outside the regulations of the Institute of Chartered Accountants.

I have no difficulty with the clause but, the fact is, once the individual has that licence he falls outside of the Institute of Chartered Accountants. The paragraph reads:

> "The Minister may, after consultation with the Institute of Chartered Accountants of Trinidad and Tobago, authorize, by instrument in writing, any person to be appointed as an auditor of companies, if that person is—"

One would assume if he has done that once, it is good forever and the licence is valid indefinitely. Now, it seems to me, that does not quite seem to make sense, in terms of what the professional accountants are required to do. I would not know how to draft an amendment to fix it but, certainly, I would ask the Minister to address the issue.

My third comment relates to section 337 of the Act, clause 123 of the Bill. Clause 123 removes the requirements of sections 151 to 174, insofar as they apply to external companies. The effect of that is, external companies are thereby not required to have an audit done locally and, they are not required to file their financial statements with the Registrar. I have no difficulty with the concept of what you are trying to achieve here but, my opinion is: it is a fact that many of the external companies, insofar as they operate here as branches, were formed as separate companies in a state such as Delaware, and the only assets of that company are in Trinidad and Tobago.

4.00 p.m.

The company itself is usually a subsidiary of a much larger organization and, therefore, what they do is form a subsidiary registered somewhere outside, and the entire operation, all the assets, are in Trinidad and Tobago. The result is, by removing the requirement for audit and for filing with the Registrar, many of these companies which have a major impact upon our economy and handle a major part of the resources of the nation, are really operating completely outside our framework.

Now I have no difficulty in trying to facilitate foreigners as they come here. We can roll over, but we do not have to play dead. The fact of the matter is, when they come here we have no mechanism by which we can measure the integrity of their actions; none at all! The only persons who would have a view of their

financial statements would be the Board of Inland Revenue and the VAT office. Nobody else would ever have a look-see at what these people are really doing. There would be no way for anybody to measure, in real terms—in dollars and cents—the real contribution that these foreigners are making to the national economy as they exploit our resources. We can measure it in dollars and cents, but as a percentage of their revenues of the real operations, we are not seeing anything at all.

Therefore, I think it is eminently desirable that these companies should at least file their financial statements with the Registrar. It follows from that, if they are going to file their accounts with the Registrar then they should be audited. The reason for that is that a local auditor would ensure that those accounts are at least prepared on the same basis as other accounts in the society are prepared and, therefore, as you read them, they should make some sense to the reader. Without the audit certificate saying that they are prepared in accordance with Trinidad and Tobago accounting standards, without that knowledge you really do not know how they are made up. Therefore, it would seem to make sense that if the accounts are going to be filed locally, then they should also be audited locally.

So with those few comments I will close, and again take my hat off to the members of the committee.

Thank you very much.

Sen. Martin Daly: Mr. President, I do not want to detain Members any longer than is absolutely necessary. But I rise to make a short contribution to say what a pleasure it is to have a Bill before us which is so technically sound. However, Mr. President, its technical soundness, I am afraid, has caused me to lament somewhat on one of my favourite subjects, which is the political process.

We have had a lot of difficulty in this Parliament, Mr. President, with detailed, voluminous, and complicated legislation being brought to us at very short notice with very little room for comment on the grounds that some loan has to be accessed and, therefore, neither parliamentarians nor the public are allowed sufficient time to scrutinize it. On one memorable occasion we were threatened in committee that sanctions would be visited on us by the international community if we did not pass the Bill, notwithstanding the fact that we did not like some of its contents.

Now what has happened here is that you have had a unique synergy between the political process which we undertake in this Parliament, and the political

process that goes on outside. I think it is important that someone places on the record, that while successive governments have sought to facilitate modern company law legislation, the fact is that this Bill is nearly wholly, exclusively, a product of the Trinidad and Tobago Chamber of Commerce and the lawyers whom it sought to have draft these clause-by-clause amendments. I think that is important to put on the record, because when we do have that kind of synergy, then we get good results.

It is absolutely remarkable that in a Bill, even an amendment Bill of this size, that no one has found it necessary—apart from the one or two general points that have been raised—to complain either about the technical soundness of the Bill or find it necessary to have to bring forward amendments. And so, its very technical soundness shows up the difficulties that we have in this Parliament when we try to take shortcuts. Without being churlish I want to reflect on that a little longer, because of the numerous occasions on which we have had legislation passed without this kind of synergy taking place. Now we have for all to see on the positive side, I and others have complained and we have been negative about the lack of the synergy which I have described.

I rise not only to support this Bill and to compliment the Minister of Legal Affairs for facilitating the passage of these amendments, but to underline what she has said. Not only has it taken 68 years for us to get this amendment, but it has taken the work of three governments in order for us to get a company law which apparently is now acceptable to everyone. And that is something we must reflect upon because it occurs so rarely in our parliamentary process, and it is therefore a single event that we are able to come to this situation today where we can now have a Companies (Amdt.) Bill on which everyone who has to use it and be guided by it, is in broad agreement.

I am rising, Mr. President, in order to point out that these things do not happen by accident. Not only has it taken three governments for us to get a company law with which everyone could agree, but on each occasion the Bill has been largely the work of private sector people, who have largely done it—not in all cases—on a voluntary basis. My complaint has always been that if we attempt to pass legislation without this synergy taking place and without contact with the persons outside, we will get bad legislation. Therefore, on a positive note today, Mr. President, I am still flogging my hobby-horse about the way in which the political process works.

It is not only this Minister who has been facilitative, the Minister of Finance of the last Government very clearly brought things to a standstill in order to receive

amendments. When politicians behave like that and reach out to the public we get good results, and that is the real lesson to be learned from this process which has taken place here.

On a lighter note, Mr. President, I recommend that this is how we conduct our business. It may take a little longer, but so far no one has visited us with any sanctions for taking a little longer over this, and so far as I know we have not lost the loan to which this is related. So that I am bound also to place on the record the fact that either formally or informally, the persons who have helped with this legislation did not think it fit to be as ungracious as those involved in intellectual property, to threaten us with sanctions when we protested about some of the contents which we did not like. So this has not only been a balanced exercise, but it has been a lot more gracious.

Now, Mr. President, I rise and give my unreserved support to these amendments. If I can close on a lighter note, many persons, I included, have in the course of this flurry of legislation which the Minister of Legal Affairs has presented, spent some time commenting on her efficiency, charm, flexibility, ability, and various other things, to the point where it may even become politically dangerous for her.

4.10 p.m.

Mr. President, in closing, there is something that has been missed in all of these compliments that have been paid to the Minister of Legal Affairs, and that is her sense of political timing. What I mean is, in the three very distinct stages of this Bill, there is something which ought to be observed, which is a tribute to the sense of political timing of the Minister of Legal Affairs.

When—if I may loosely call it—the Chang committee presented the first draft of the 1991 Companies Bill to the then government in November of 1991, they lost the elections. When, in a very hurried fashion in the last quarter of 1995, Minister Mottley passed this Bill with the undertaking that we would be given an opportunity to put forward amendments, his government lost the elections. I think it is very wise of the Minister of Legal Affairs, having regard to this "political fatality" that accompanies the Companies Bill, to bring it so early in the life of this administration, so that we would get a good company law that would not be accompanied by any "political fatality."

Mr. President, I did intend to stop there, but there are some persons who seem to want to get involved in the discussion of "political fatality," and, perhaps, their

sense of political timing is not as acute as that of the Minister of Legal Affairs. Perhaps they should leave this comment about "political fatality" to those who are recognized by the Constitution as independent, and do not become so by any other means.

Thank you very much.

Mr. President: Any other contribution?

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. President, I must say I am very gratified and grateful. I thank the hon. Senators on both sides of the House and the Independent Bench for their comments.

Once again I would like to pay tribute to the members of the committee; in particular, Mr. Gerald Furness-Smith, Mr. Philip Hamel-Smith, Mr. Timothy Hamel-Smith, Mrs. Stephanie Daly. And we need to thank Mrs. Stephanie Daly even further for this compilation which we made available in the library. We thank her for the time, effort and energy, because this was quite painstaking work. We also thank Miss Meera Lakhan, Mrs. Judy Chang, Mr. Andrew Johnson, Miss Susan Harrisingh, Mr. Francis Sandy, Mr. Ian McIntyre, Mr. David Collins, Mark Ramkerrysingh, and Mr. Robert Chee You.

As I said last week when we dealt with plant varieties, the work of the Ministry of Legal Affairs and the Minister of Legal Affairs, was only made possible because of the assistance of the committee, and I want to thank them very much.

Just a very few comments, Mr. President, because it seems as though the Bill is technically sound and the political timing has been perfect, in the words of the hon. Senator. I can assure him that, if elections were called, I am sure those on this side of the House are certain that we would win. *[Desk thumping]*. But boasting is not enough, so I would deal with law, with which I am more familiar.

Sen. Diana Mahabir-Wyatt asked, why does section 313(2) refer to classes of members. I am advised that this section—and this is part of the existing Act, it was not part of the amendment, just for the record. Section 311 subsection (2) provides that:

> "The articles or by-laws of a non-profit company may provide for more than one class of membership;"

Thus section 313(2) refers to each class of members. For example, ordinary members, associate members, life members, *etcetera*. Therefore, the company limited by shares, has more than one class. The Act allows for different classes of membership. I trust that answers the question.

The other query was about section 63(2) of the Parent Act. The question was whether it was drafted disjunctive or conjunctive. I am advised that the intention is that this subsection should be disjunctive, and as drafted, it is indeed disjunctive. The use of the word "and" would have made it conjunctive; but we have used the word "or" to make the requirements disjunctive.

On the question as to whether NGO's need qualified secretaries, they do not have to appoint qualified secretaries, as per 63(2), because 63(1) applies only to public companies.

Sen. Mahabir-Wyatt: Mr. President, can the hon. Minister assure me, because as I recall, when I read that section 63, the word "or" was not there, which was one of the things that worried me. There is an "or" at the end of "d", I think, but there is not an "or" at the end of (a), (b), and (c). Does the "or" at the end of "d" mean that it automatically implies an, "or" at the end of all the others, because it does not read that way.

Hon. K. Persad-Bissessar: I have been so advised—by the people who have drafted it; but perhaps we can deal with it at committee stage—that "or" qualifies all the others and therefore makes it disjunctive. The NGOs therefore, would not have to appoint a qualified secretary because section 63(1) applies only to public companies, unless an NGO becomes a public company, which is most unlikely, in my respectful view.

Mr. President, again, I want to thank all the Members of the Senate, Sen. Marshall for his kind words and his explanations, Sen. Philip Hamel-Smith on this side and all the Senators.

I have, in introducing this Bill, as I introduced the Copyright Bill, made it very clear that it was not just this government, but the previous governments had their inputs. I must take umbrage with the words of Sen. Nafeesa Mohammed, because far from attempting to score political points when I introduced it—I am always willing to give credit—but when political points are being scored, then we have to answer, when the attempt is being made to unfairly score political points.

Therefore, I would say to the hon. Senator, that if it is that she is saying there are difficulties with the Companies Registry, I want to make it very clear that these difficulties did not arise under the present Government, but they have been experienced over time. The commitment of this Government has been, and will continue to be, to modernize the structures and systems that are in place in this country. We have clearly shown that by coming to the Parliament with legislation

to update the intellectual property laws and to deal with the Intellectual Property Registry.

We now come with the Companies (Amdt.) Bill and that would mean, once it becomes law, we will have to, in effect, modernize the Companies Registry. The Ministry of Legal Affairs is clearly committed—I have said it before, and I repeat—to a modernization of all the registries in Trinidad and Tobago. Those include, the Companies Registry and the Lands Registry. I have talked about systems being 150 years outdated such as the systems of the Lands Registry, but it is very clear that this Government, despite its commitment and political will, cannot undo 30 years of mismanagement and continuing inefficiency. We would do it, but it would take us time, and I am very proud and happy to say that this Government has done, within one year, more than was done by the previous government in 30 years, if you want to deal with that Mr. President.

I want to say further, that once the legislation is put into place, we would take the necessary steps to modernize that registry. There are plans in place at the moment, to relocate the Companies Registry; we are working on that. I am being told across the floor—if they want to know, questions can be asked. So that we would put those systems in place.

Mr. President, we are very proud and happy to join, as the third government, to have dealt with company law and we are very proud that it is this Government that would, in effect, bring new company legislation, based on the history that has gone, to Trinidad and Tobago.

I beg to move, Mr. President.

Question put and agreed to.

Bill accordingly read a second time.

Mr. President: Before moving to committee stage, having regard to the time, we will break for tea. On resumption we will move into committee when the Minister makes the resolution. We shall now break and resume at 4.53 p.m.

4.22 p.m.: *Sitting suspended.*

4.55 p.m.: *Sitting resumed.*

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Hon. Members, we have this Bill here that contains 188 clauses. I do not think we will want to go through these 188 clauses, clause by clause. I want to suggest that we go through the Bill in tranches of 15 clauses *en bloc*. After I propose a question, Members wanting any points for clarification or elucidation will raise them and subject to no amendments being proposed, the question will be put for the 15 clauses *en bloc*. Is that agreeable? We have a proposal for an amendment to clause 8(1) so I am required to put clauses 1 to 7 first.

Clauses 1 to 7 ordered to stand part of the Bill.

Clause 8.

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

Mrs. Persad-Bissessar: Mr. Chairman, I now beg to move that clause 8 be amended as follows:

"8(1) A. Insert after paragraph (a), the following paragraph:

"(aa) by inserting after paragraph (b), the following paragraph:

"(ba) whether it is a public company;".

B. Delete paragraph (c) and substitute the following paragraph:

"(c) by deleting paragraph (d) and substituting the following paragraphs:

"(d) if the transfer or ownership of shares of the company is to be restricted, a statement to that effect and a statement as to the nature of such restrictions;

(da) whether the pre-emptive rights under section 38 with respect to the issue of shares are to be varied and, if so, a statement as to the nature of such variations;

(db) whether the power of the directors to make, amend or repeal the by-laws under section 66 is restricted and, if so, a statement as to the nature of such restrictions;".".

Mr. Chairman: Does everyone have a copy?

Mrs. Persad-Bissessar: Yes, they have been circulated.

Mr. Chairman: Are there any contributions?

Mrs. Persad-Bissessar: If I may point out for Members, these amendments are already incorporated in the consolidation in the volume that we made available in the library, so Members who beheld themselves of this consolidated copy of the statutes would have had the benefit of seeing these amendments. They are not totally new, Mr. President.

Question put and agreed to.

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

Clauses 9 to 60 ordered to stand part of the Bill.

5.05 p.m.

Clause 61.

Question proposed, That clause 61 stand part of the Bill.

Sen. Montano: Clause 61, section 151(3) refers to: "comparable financial statements." In the accounting profession we do not really use that word, we use the word “comparative”, and it is used in other sections of the Act. I am proposing that that word be changed to “comparative”.

Mr. Chairman: Which one?

Sen. Montano: Clause 61 amends section 151. Section 151(3) says:

"The Registrar may in any particular case suggest the period relating to which comparable financial statements..."

It should be “comparative financial statements.” The rest of the section refers to “comparative.”

Mrs. Persad-Bissessar: You are totally correct in what you are saying. Before we entertain the amendment, my technical legal staff advised me that we probably need to delete the word “comparable” completely because it would allow a company which has changed its year end to apply to the Registrar to have accounts for a 30-month period or some other period. So we would want to delete the word “comparable” and leave it as "to which financial statements..."

Sen. Montano: That is fine.

Mrs. Persad-Bissessar: Mr. Chairman, I beg to move that clause 61 of the Bill be amended by deleting the word "comparable".

Mr. Chairman: Clause 61 is amended as follows:

Renumber 61 as 61(1) and insert thereafter the following subsection (2). Section 151(3) of the Act is amended by deletion of the word "comparable."

Clause 61, as amended, ordered to stand part of the Bill.

Clause 62.

Question proposed, That clause 62 stand part of the Bill.

Mrs. Persad-Bissessar: Mr. Chairman, I need to move an amendment to clause 62, as circulated, by the insertion of a new clause 62A.

Sen. Montano: Mr. Chairman, before we get to clause 62A, in clause 62, dealing with section 152, I propose that we either delete section 152 altogether or that we change references of the "Registrar" and the "Commission" to read:

"The Institute of Chartered Accountants of Trinidad and Tobago..."

Mrs. Persad-Bissessar: Not at all. Perhaps you will want to give us some reason and some rationale for your suggestion.

Sen. Montano: In my contribution I thought I had done so. The whole point is that the Institute of Chartered Accountants is the body that really regulates by what rules financial statements should be prepared. If it is you want to, in effect, alter those rules by leaving something out, then, it is logical that it should be the organization to which an appeal should be made and not some other organization which may not necessarily have the same knowledge and experience.

Mrs. Persad-Bissessar: Basically, the Institute of Chartered Accounts of Trinidad and Tobago is not a statutory body and would be accountable to no one, really, in that sense. This is why we have the Registrar who will be accountable, and in the case of a public committee—the public commission under the NCC. So we cannot accede to your request.

Sen. Montano: Then I would suggest that you remove the entire thing. I think it is very important. What you are doing is, on the one hand, professional accountants are charged with the responsibility of making sure that financial statements are prepared in accordance with a certain set of rules, and the presumption is that they present failure only if those rules are not conformed with.

From the moment you set about to change any of those rules and requirements, then I do not see how they can properly express the opinion that the account still presents failure. So you are setting up a situation of real conflict here. You are also setting up a situation where, if a company disagrees with its auditor for whatever reason, then, perhaps, through connections or moral suasion of one sort or another, it can appeal to some organization to overrule the auditor.

The auditor has a very special function and we are either going to have to trust the Institute of Chartered Accountants and its members or do not bother, but it seems to me that allowing this is really a subversion of what auditors are attempting to do in the society.

5.15 p.m.

Sen. Marshall: Mr. Chairman, I would really like to support that point of view. The whole *raison d'être* of an auditor's responsibility is to comment upon whether the information that should be disclosed is properly disclosed according to international accounting standards. If that information is not disclosed, he is bound to qualify his report. Information in public financial statements do not need to have in it a level of detail that should provide competitive advantage to the reader of those statements, so they generally are presented as a fairly overview level. But that disclosure may be significant to the shareholders who receive those accounts. So I am supporting the entire deletion of that clause.

Sen. Kuei-Tung: Basically, I think we have no difficulty with what the Senator is saying. The difficulty we found ourselves in was really the question of whether the Institute of Chartered Accountants can be held as a regulatory body under law. But I think we have no difficulty in deleting the whole clause if it creates some doubt.

Mrs. Persad-Bissessar: Clause 62 would have to be amended by deleting everything contained in it and inserting instead, "Section 152 of the Act is repealed."

Mr. Chairman, just for clarification. There were two things we were doing with clause 62. It seems to me we have done one part of it.

Mr. Chairman: We are deleting clause 62 and repealing section 152 of the Act.

Mrs. Persad-Bissessar: We are deleting the wording of clause 62 and replacing it with the words, "Section 152 of the Act is repealed."

Question put and agreed to.

Clause 62, as amended, ordered to stand part of the Bill.

5.25 p.m.

Clauses 63 and 64 ordered to stand part of the Bill.

Clause 65.

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

Sen. Montano: Mr. Chairman, clause 65 amends section 159. That was the grandfather clause I referred to in my contribution. The original wording of section 159 actually seems to be superior to this one, in that it links all the matters in this section. The original section 159 states that if a person is suitably qualified "and" was in practice at the commencement of the Act then he could apply within 12 months. The amendment in clause 65 separates the two issues. So that a person who is suitably qualified "or" a person who was in practice at the commencement of the Act can both apply; they are not necessarily linked. The difficulty I have is that once the person is given this mandate, licence, or is authorized by the Minister, it appears to be a permanent arrangement; he never then has to reapply. He is licensed once and for all to practise accountancy and is not being brought into the regulatory framework of the Institute of Chartered Accountants of Trinidad and Tobago as the rest of us are. He seems to be operating under an entirely different set of rules.

Sen. Marshall: Mr. Chairman, I support that point.

Sen. Kuei Tung: Is the Senator still expecting the appointment to be—

Sen. Montano: No, it would seem that the person, once he is authorized, can be an auditor in perpetuity to any company. He has a licence to sign as an auditor, but is not subject to the regulations of the Institute of Chartered Accountants of Trinidad and Tobago as such.

Mrs. Persad-Bissessar: But, there is a consultation process with the Institute of Chartered Accountants of Trinidad and Tobago, so the Minister will not appoint without consulting with them firstly.

The second point the Senator made was that this would be open-ended; that is to say, once someone is appointed it is forever. Under the Interpretation Act the Minister is empowered to revoke so it will not be *carte blanche.* If the Institute of

Chartered Accountants comes forward and says, "You have appointed this person and he is no longer qualified," then the Minister can revoke. It will not be open-ended. The implied power to revoke is in there. I do not know if I understood the Senator's point.

Sen. Montano: That is my point. I hear what you are saying, but it would make me feel a lot more comfortable if this could at least be close-ended; at least that he could be appointed on an annual basis so that if the institute was not satisfied—because it would be difficult, I think, for the institute to keep monitoring all these people.

Sen. Kuei Tung: Is it on an annual basis for a specific company? Is this how you want—

Sen. Montano: No—

Sen. Kuei Tung: —because he has a licence to audit any company?

Mrs. Persad-Bissessar: Can I again say that the Minister will appoint after consultation with the Institute of Chartered Accountants and in that consultation, it can say this person should be appointed for one, two or three years. The Minister holds the discretion based on consultation with the Institute of Chartered Accountants as to whether it should be limited or to what period the limitation should be placed. In certain cases they may want it limited for one year and in others there may be a three-year limitation. I do not know.

Sen. Montano: Mr. Chairman, I do not think that the institute in any circumstance would agree to a two, three or four-year appointment because existing members are only licensed on an annual basis. It seems to me, if anything, that these individuals to whom this section applies should be required to renew their authority on an annual basis.

Mrs. Persad-Bissessar: We can end all of that. Would you like us to insert "on an annual basis" there?

Sen. Montano: On an annual basis, yes.

Mrs. Persad-Bissessar: Fine, let us do it.

Sen. Montano: Mr. Chairman, I think that the amendment as it is should be deleted and leave the original Act as it is, except that after the word "authorize"—

Mrs. Persad-Bissessar: "...provided that such an appointment shall not exceed one year." Will that suit you Senator?

Sen. Montano: Yes, that could do it.

Mrs. Persad-Bissessar: So, we would insert in clause 65(a), after the word "experience"—*[Interruption]* We would have to put it 159(1) and (2). After the word "experience" we are suggesting "provided that such appointment shall not be for a period exceeding one year."

5.35 p.m.

Sen. Dr. St. Cyr: Mr. Chairman, is it not better to put it positive?

Sen. Mahabir-Wyatt: Mr. Chairman, could I suggest we accept the principle and leave it up to the draftsmen?

Hon. Senator: No.

Sen. Dr. St. Cyr: Mr. Chairman, does that sound final or should we go on to say for one year at a time?

Mrs. Persad-Bissessar: We will look at it again.

Sen. Marshall: Provided that such an appointment is on an annual basis or reviewed. Is that possible?

Mrs. Persad-Bissessar: Mr. Chairman, can we defer clause 65? We will deal with it before the evening is through.

Clause 65 deferred.

Clauses 66 to 76 ordered to stand part of the Bill.

Clause 77.

Question proposed, That clause 77 stand part of the Bill.

Mrs. Persad-Bissessar: Mr. Chairman, I beg to move the amendment as circulated:

Delete the words "or incorporation" and substitute the words, "incorporation or amalgamation."

Question put and agreed to.

Clause 77, as amended, ordered to stand part of the Bill.

Clauses 78 to 119 ordered to stand part of the Bill.

Clause 120.

Question proposed, That clause 120 stand part of the Bill.

Mrs. Persad-Bissessar: Mr. Chairman, I beg to move the amendment as circulated:

Insert after subparagraph (i), the following subparagraph:

"(ia) by inserting after the word 'suit', the words ', counterclaim. "'

Sen. Prof. Spence: I think that is a typographical error. It says, "words". It is only one word.

Mrs. Persad-Bissessar: I am told that in drafting, punctuation marks are considered words so that "," is one word, and then "counterclaim" is another word. I am so advised.

Question put and agreed to.

Clause 120, as amended, ordered to stand part of the Bill.

Clauses 121 and 122 ordered to stand part of the Bill.

Clause 123.

Question proposed, That clause 123 stand part of the Bill.

Sen. Montano: Mr. Chairman, in clause 123, which deals with section 337 of the Act, are we deleting the references to paragraphs 151 to 174 of the Act? I would be inclined to delete that and simply include section 167 which deals with the audit committee.

I do not see why an external company should be completely exempted from any requirements. I am not sure how to deal with it but, my own thoughts are that the local branches of these external companies should be required to file their financial statements with the Registrar. I do not think that the groups' accounts are of any particular interest or value locally, but the branches' accounts, insofar as they pertain to local assets, are of value. I do not know how to get that in.

With regard to the burdensome clauses 151—174, if we take out clause 157, it should be all right.

5.45 p.m.

Mrs. Persad-Bissessar: I have been advised that under the law the local companies do not have to file financial statements. We require external companies

so to do. In essence, we would be discriminating against the external companies by putting a requirement which does not hold for the local companies.

Sen. Montano: That is my intention. These companies have access to and seem to control an inordinate extent of the natural resources of the country, and nobody has any idea of their real activities. I think it would be beneficial to the country as a whole if their accounts were available to the public, so that we could see exactly what is taking place. We have no knowledge of what is happening. I think it is very important.

One of the suggestions made during the tea-break was to put a cut-off point as was done in one of the original draftings of this legislation, so that companies below a certain level of activity would not be required to file with the Registrar. When dealing with external companies over a certain level, they should be required to file with the Registrar.

Mrs. Persad-Bissessar: Would they not have to file annually with the Inland Revenue Department just like the local companies?

Sen. Montano: That is not visible to the public. The revenue officers are sworn to secrecy.

Mrs. Persad-Bissessar: Why should the external companies have this burden and not the local companies?

Sen. Montano: Primarily because to a large extent they control the greatest resources of this country. We face a very unique situation.

Mrs. Persad-Bissessar: The Government would have access to information from Inland Revenue, but it would not be public information. If you are saying that it has a large amount of Government's assets, the Government has access through the Inland Revenue Department.

Sen. Montano: I do not think so.

Mrs. Persad-Bissessar: They are required to file with the Inland Revenue Department.

Sen. Montano: I know that, but I do not know that the Government *per se* can access the records from the Inland Revenue Department.

Sen. Kuei Tung: If your requirements would be greater for a foreign company because it is operating as a branch, than for the local company, I think that would be discriminatory and it is bad.

Sen. Montano: It is already so, but to a limited extent. Under the existing legislation foreign companies are required to file their balance sheets which were loosely used to mean financial statements. It is strictly interpreted as a balance sheet. The practice is that the foreign companies would file the balance sheet, excluding the income statement, with the Registrar. It is not all that foreign from what takes place now. The full set of accounts should be filed.

Mrs. Persad-Bissessar: With the greatest of respect, it is our view that we would not want to discriminate against foreign investment. I do not believe it is necessary to so discriminate against them. We would look at it again. I prefer not to make that decision on the spur of the moment in this manner. I would look at the bilateral agreements and discuss them with the committee. What you are asking us to do would change this radically.

Sen. Montano: I understand. If you give the undertaking that you would look at it, I will go with that.

Mrs. Persad-Bissessar: If we need to bring it back here, we would do so. If the committee is of the view that it is not necessary, it can be taken up downstairs.

Sen. Kuei Tung: Is your justification only because of the inordinate amount of assets which comes under their control?

Sen. Montano: That is correct.

Sen. Kuei Tung: Do you think that information should be made public?

Sen. Montano: Yes, I think so.

Sen. Kuei Tung: The transactions which they make with the Government would be subject to public scrutiny. I do not think that any private transaction they may have, should be made public.

Sen. Montano: I disagree entirely, Sir.

Sen. Kuei Tung: I am not saying that we would not look at it. I am trying to understand your argument so that when we look at it, I would know precisely.

Sen. Montano: It affects all the people and it is so significant to the country as a whole, that I think it is important. If this were North America and the men were on the periphery of the economy, I do not think I would make the same point. They are not on the edge of the economy; they are the mainstay of the economy.

Mrs. Persad-Bissessar: Hon. Senator, as I said we would look at it. It has to go to the other place and your representatives would be there. I will definitely look

at it and discuss it with the committee. It is not a decision I want to make in a few seconds.

Thank you.

Sen. Montano: Thank you, Madam.

Sen. Marshall: I was making the point that the problem is that many of these investments in the country represent the plant operations, and one does not get the whole picture. For them to disclose their accounts, they may disclose competitive information to another competitor based here. I think from that perspective, one may not want to insist.

Sen. Montano, I do support the general tenor of what you were saying. I would not insist on it. I could see a reason why one would not want to insist because we are still rationalizing gas prices and other things which may not be appropriate.

Clause 123 ordered to stand part of the Bill.

Clauses 124 to 184 ordered to stand part of the Bill.

Clause 185.

Question proposed, That clause 185 stand part of the Bill.

Mrs. Persad-Bissessar: Mr. Chairman, I propose that clause 185(3)(a) be amended by inserting "21" after the word "sections".

Question put and agreed to.

Clause 185, as amended, ordered to stand part of the Bill.

5.55 p.m.

Clauses 186 to 188 ordered to stand part of the Bill.

Clause 65 recommitted.

Mrs. Persad-Bissessar: Mr. Chairman, I beg to move that clause 65(a) be amended as follows:

Insert after the word "experience", the words "provided that such appointment shall not be for a period exceeding one year at a time."

If we have difficulty, we will look at it in greater detail and take it up again. For the time being, however, we will go with this amendment.

Question put and agreed to.

Clause 65, as amended, ordered to stand part of the Bill.

New Clause 62A.

Mrs. Persad-Bissessar: Mr. Chairman, I propose a new subclause 62A as follows:

Insert after clause 62, the following new clause:

"Section 156 amended

62A. Section 156(2) of the Act is repealed."

New clause 62A 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 62A added to the Bill.

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

Senate resumed.

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

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I beg to move that this Senate do now adjourn to Tuesday, March 18, 1997 at 1.30 p.m. At that time we will deal with the Community Service Orders Bill.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.03 p.m.