SENATE

Tuesday, February 11, 2003

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT in *the Chair*]

SUMMARY COURTS (AMDT.) BILL

Bill to amend the Summary Courts Act, Chap. 4:20 [*The Attorney General*]; read the first time.

COMMISSIONS OF ENQUIRY (AMDT.) BILL

Bill to amend the Commissions of Enquiry Act, Chap. 19:01 [*The Attorney General*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate. [*Hon. Dr. L. Saith*]

Madam President: What is the wish of the Senate?

Sen. Mark: Madam President, under 48(1) of the Standing Orders, we need 15 clear days.

Madam President: So, Senators, since there is a dissenting voice we would have to go for the 15 days.

Motion negatived.

Sen. King: Madam President, could we please ask what was the comment and what was the response? We did not hear.

Madam President: I wonder why? The mikes were not on? All right. The Leader of Government Business asked that the Bill be taken at the next sitting of the Senate but the Leader of the Opposition objected saying that they needed 15 clear days and if there was one dissenting voice, then we would have to take it at 15 days.

Sen. King: Thank you.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial report of the Point Fortin Civic Centre for the year ended December 31, 1997. [*The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill)*]

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial report of the Point Fortin Civic Centre for the period January 01, 1998 to September 30, 1998. [*Sen. The Hon. C. Enill*]

3. The Law Reform Commission Report for the year 2000—2001. [*The Attorney General (Sen. The Hon. Glenda Morean)*]

ORAL ANSWERS TO QUESTIONS

National Trade Union Centre Representatives (Appointment of)

9. Sen. Wade Mark asked the hon. Minister of Labour and Small and Micro Enterprise Development:

Could the hon. Minister provide this Senate with the relevant facts concerning the non-appointment of National Trade Union Centre representatives to a number of state boards and other vital government committees including Green Fund Agency, the board of First Citizens Bank, the Water and Sewerage Authority and the Planning Committee on Government's Vision 2020?

The Minister of Labour and Small and Micro Enterprise Development (Hon. Lawrence Achong): [*Desk thumping*] The Government rigidly adheres to the appointment of NATUC members where there is a statutory requirement to do so. Where there is no such requirement, the Government reserves its right to appoint persons to boards who, in its opinion, would bring meaningful value to discussions and activities consistent with its policy directives.

Sen. Mark: Madam President, if I may, could the hon. Minister indicate what is the Government's policy? Does the Government have a policy as it relates to appointing worker representatives from the National Trade Union Centre to state boards?

Hon. L. Achong: Madam President, I think the answer covers that. Where there is a statutory requirement to appoint members of NATUC, the Government does that. Where there is no such requirement, we reserve the right to appoint persons to boards who, in our opinion, would bring meaningful value to discussions and activities consistent with our policies. In some cases, we have appointed union members, in other cases we have not.

Sen. Mark: Madam President, I have a couple of supplementals. Does the Government recognize the National Trade Union Centre as the majority union or organization representing workers in the Republic of Trinidad and Tobago? Does

your Government recognize the National Trade Union Centre in that context? [*Interruption*] That is not a new question. That is a supplemental question.

Hon. L. Achong: That is a new question, Madam President.

Madam President: You do not have the answer, Mr. Minister? All right. Well, Sen. Wade Mark, will you bring it as a new question so the Minister can bring the answer for you?

Sen. Mark: Yes. Ma'am, I have another supplemental.

Madam President: Go ahead.

Sen. Mark: Madam President, through you, I would ask, is the Minister of Labour and Small and Micro Enterprise Development aware that the International Labour Organization, in accordance with ILO Convention 44, recognizes the National Trade Union Centre as the majority representative union of workers in the Republic of Trinidad and Tobago?

Hon. L. Achong: Yes, the Government is aware of that.

Sen. Mark: If the Government is aware of that, why is the Government not appointing representatives of the National Trade Union Centre on government state boards and statutory authorities and public utilities?

Hon. L. Achong: Madam President, that question has been answered.

Madam President: I agree. Sen. Montano, did you want to ask a question?

Sen. R. Montano: Yes please, Madam President. Madam President, having regard to what has fallen from the Minister's lips about meaningful contribution, is it therefore the Government's view that no meaningful contribution can be had from NATUC on boards such as the board of First Citizens Bank, WASA and other boards to which a trade union representative has not been appointed?

Hon. L. Achong: Madam President, I do not know how the Senator could come to the conclusion that the Government is of the view that people from NATUC cannot make a meaningful contribution. That is something where we reserve the right to choose.

Sen. R. Montano: That is not the question. Answer my question.

Hon. L. Achong: That is the answer to the question.

Madam President: Sen. Wade Mark, would you move on to question No. 2, please?

Sen. R. Montano: I have one more supplemental, then. Having regard to the hon. Minister's last answer, would he please state what trade union representatives are on the First Citizens Bank board, the WASA board and the Green Fund Agency?

Madam President: Mr. Minister, are you going to answer that now?

Hon. L. Achong: Madam President, that is a new question. I would have to get the answers on that.

Sen. R. Montano: It is not a new question. It flows from your answers.

Sen. Mark: Madam President, could the hon. Minister of Labour, Small and Micro Enterprise Development—[*Interruption*] No, he has not answered your question.

Sen. R. Montano: Is there a union representative on FCB?

Hon. L. Achong: I do not know.

Sen. R. Montano: So you do not know if what you said is true or false?

Madam President: All right, ladies and gentlemen, Senators; remember, your supplemental questions must be relevant to the question that was asked and the answer given. To my perception, some of the information that you are asking for require further questions and therefore I think it would be to the benefit of everyone if you would bring those questions forward, okay?

Sen. Mark: Can I ask one final question? Madam President, could the hon. Minister of Labour and Small and Micro Enterprise Development indicate whether the Government is pursuing a policy of divide and rule in the trade union movement?

Hon. L. Achong: Madam President, that question does not deserve an answer.

Sen. Mark: You see the arrogance of this man; the arrogance of this Minister?

Government's Legislative Agenda

10. Sen. Wade Mark asked the Minister of Labour and Small and Micro Enterprise Development:

> Could the hon. Minister state when the Government intends to reintroduce and have passed into law the following crucial social protection legislation:—
>
> — Occupational Safety and Health

— Basic Conditions of Work, and

— Employment Injury and Disability?

The Minister of Labour and Small and Micro Enterprise Development (Hon. Lawrence Achong): Madam President, the Ministry of Labour and Small and Micro Enterprise Development, by letter dated November 15, 2002 to the Permanent Secretary in the Ministry of the Attorney General, has informed the Ministry of the legislative priorities of this ministry. Included in the priority listing are the three Bills referred to by Sen. Mark, namely: the Occupational Safety and Health Bill, the Basic Conditions of Work and Minimum Wages Bill and the Employment Injury and Disability Benefits Bill. Also included on the said list were preparation and submission of the Minimum Wages Order for an $8 minimum wage, which has since been implemented, a bill to govern retrenchment and severance pay, and an amendment to the Industrial Relations Act. The ministry is now awaiting guidance from the Attorney General with regard to the schedule for the tabling of these bills in Parliament.

Sen. Mark: Madam President, through you, could the hon. Minister indicate whether he is aware that scores of workers have either been maimed or injured on the job at industrial sites and, as such, there is an urgent need to have tabled in this Parliament and debated and translated into law the Occupational Safety and Health Act?

Hon. L. Achong: Madam President, if they had come to Parliament last year it would have been debated and passed. [*Desk thumping*] [*Interruption*]

Sen. Mark: Madam President, could the hon. Minister indicate to this honourable Senate when the Government, his Government, intends to bring to this Senate the Occupational Safety and Health Bill? Is there a time frame? Is it going to be two years from now, three years from now, five years from now? Could you give us a time frame?

Hon. L. Achong: Madam President, I just informed this Senate that the bill is now with the Attorney General and she sets the agenda.

Sen. Mark: Could I ask the Attorney General then? Seeing that she sets the agenda, could I ask the hon. Attorney General, Ma'am?

Madam President: Sen. Wade Mark, if you are going to ask the Attorney General you will have to put that as a question.

Sen. Mark: Yes, but could I get in one—

Madam President: You have another question to ask, a supplemental?

Sen. Mark: Yes.

Madam President: Go right ahead.

Sen. Mark: Madam President, could the hon. Minister of Labour and Small and Micro Enterprise Development tell us, the Basic Conditions of Work Bill, which is outstanding along with the Occupational Safety and Health Bill, against which the PNM voted in the other House, when he intends to bring that bill to this Parliament? When is that bill going to come here?

Hon. L. Achong: Madam President, that bill is also with the Attorney General. We are not going to allow you to dictate our agenda. [*Desk thumping*]

Sen. R. Montano: Madam President, would the hon. Minister, having regard to the answers that he has now given to this question, as a member of the Cabinet and, therefore, a member of the Executive, indicate to this Senate what priority these pieces of legislation have over other pieces of legislation and, therefore, assuming that he answers that it has great priority, is it reasonable to assume that these bills will be brought within the next six weeks?

Hon. L. Achong: Madam President, all the bills mentioned here, along with many other bills, enjoy the same priority. I cannot say that it will come next week or in two weeks' time. If the Opposition had done the rightful thing and spent the last year in Parliament, we would have been able to deal with a number of matters. [*Desk thumping*]

Industrial Relations Act
(Repeal and/or Amendment Timetable)

11. Sen. Wade Mark asked the hon. Minister of Labour and Small and Microenterprise Development:

> Could the hon. Minister provide this Senate with a detailed timetable for the repeal and/or amendment to the Industrial Relations Act?

The Minister of Labour and Small and Micro Enterprise Development (Hon. Lawrence Achong): Madam President, the amendment to the Industrial Relations Act is among those identified on the priority listing of the Ministry of Labour and Small and Micro Enterprise Development. The drafting instructions for the revision of this Act have already been prepared by the legal counsel of the ministry. As a result, the drafting of the bill to amend the Industrial Relations Act has commenced. It is expected to be completed by the end of this year.

The question from the hon. Senator spoke about the repeal and/or amendment of the IRA. The Government has no intention of repealing the IRA.

Sen. Mark: Madam President, could the hon. Minister of Labour and Small and Micro Enterprise Development indicate to this honourable Senate what aspects of the Industrial Relations Act would be amended?

Hon. L. Achong: Just one comes to mind readily and it is to deal with politicians who call for civil unrest. [*Laughter*] [*Desk thumping*]

Sen. Mark: Madam President, I think that is ludicrous, I must say, in response to Minister Achong, but I realize that he is a very jocular politician. We deal with serious business here.

Madam President: Do you have a supplemental, Senator?

Sen. Mark: Yes. Madam President, I just wanted to ask the hon. Minister, in light of the growing industrial relations unrest and crisis in Trinidad and Tobago, whether his Government really sees as a priority those amendments and if he can tell us whether within six weeks we can have those amendments here?

Hon. L Achong: Madam President, the goodly Senator did not hear just now. That bill would be ready by the end of this parliamentary year.

COMPANIES (FORMER-ACT COMPANIES) (VALIDATION) BILL

Order for second reading read.

The Attorney General (Sen. The Hon. Glenda Morean): Madam President, I beg to move,

> That a Bill to validate certain acts of former-Act companies be now read a second time.

Madam President, the Companies (Former-Act Companies) (Validation) Bill—we have 2002 on it but it should be 2003 because this was introduced some time ago—seeks to validate acts and omissions of certain companies which failed to apply for certificates of continuance under the 1995 Companies Act, that is, Act No. 35 of 1995, within the time limited for doing so. Senators will recall that the Companies Ordinance, Chap. 31:01 was repealed by this 1995 Act which now governs all companies incorporated in Trinidad and Tobago. As a result, in order for these companies to continue, there was a provision in the Act for applications to be made for the continuance of companies registered pre-1995.

This Bill that is before us today, was introduced in this honourable Senate by the former administration in June 2001 but, because of the fact that Parliament

was prematurely dissolved, for all those reasons into which I would not go now, the Bill lapsed. The Bill has been brought before this Senate again as it seeks to grant relief in a matter of general importance. Madam President, the Companies Act, 1995 came into force on April 15, 1997. The Act sought to revise and enhance the law relating to companies and to repeal the old Companies Ordinance, as I indicated earlier. At the same time, the Act made transitional provisions for the operation of companies referred to as former-Act companies.

To this end, section 518(1) of the Companies Act provides, among other things, for the operation of former-Act companies under the Ordinance until such time as certificates of continuance are issued to them under the Act. Under section 340(1) of this present Act, that is the 1995 Act, the former-Act companies, with the exception of public companies, were required to apply to the Registrar General or the Registrar of Companies for certificates of continuance by April 15, 1999. However, by March of 1999 it was found that the majority of the former-Act companies had not yet applied for certificates of continuance. Instead, the Registrar had been inundated with requests from various stakeholders, including the Law Association of Trinidad and Tobago, corporate attorneys and accountants, for an extension of the period for applying for certificates of continuance.

It was with a view to bringing some relief to these persons, and all the others who were caught by this provision, that the Companies (Amdt.) Act, 1999—that is No. 6 of 1999—was passed by this honourable Senate. This 1999 Act amended section 340 of the Companies Act to empower the Minister of Legal Affairs to extend, by Order, the deadline date for former-Act companies to apply for certificates of continuance. The then Attorney General and Minister of Legal Affairs subsequently made approximately 10 Orders extending the period for former-Act companies to apply for certificates of continuance. You see, there will be a break in the time if these Orders were not made before the expiration of the preceding Order.

Now, the last of these Orders extended the deadline to May 31, 2001, by which date it was determined that sufficient time had been allocated to former-Act companies desirous of continuing their business under the Companies Act to apply for certificates of continuance. Indeed, Madam President, the statistics suggest that the majority of former-Act companies, which have not yet applied for certificates of continuance, are inactive and probably have no intention to continue. It was reported in 1999 that there were approximately 27,000 companies incorporated under the old Companies Ordinance. By the end of January 2001,

only about 7,700 of these former-Act companies had been granted certificates of continuance. Additionally, in May 2001 there were no more than five applications for certificates of continuance. This apparent lack of interest in continuing on the part of former-Act companies seems to have prompted the then Attorney General and Minister of Legal Affairs to discontinue making those Orders.

So, Madam President, in accordance with section 12(1)(a) of the Statutes Act, Chap. 3 No. 2, all Orders made by the then Attorney General and Minister of Legal Affairs were published in the *Gazette* to give them legal effect and section 12(1)(a) of the Statutes Act states, among other things, that every statutory instrument shall be published in the *Gazette* and shall come into operation on the date of such publication. As a result of an administrative error, some of the Orders made were published late, that is, after the deadlines set by the previous Orders had already expired. Indeed, Madam President, the last Order that was published on time established August 14, 2000 as the deadline for applying for certificates of continuance. So that all Orders that were made subsequent to August 14, 2000 were ineffective to correct the mischief that had already been done because these Orders were all published late.

Madam President, this means that rather than a continuous grace period for the former-Act companies to apply for certificates of continuance under section 340 of the Companies Act, there were several interruptions in the grace period. It may even be argued that the time for application expired on August 14, 2000 just before the first break in the grace period occurred. So that by August 15, 2000 former-Act companies would have run out of time for making their applications for continuance. In any event, these breaks in the grace period would have exposed former-Act companies, which had not applied for certificates of continuance and continued their business or had applied for certificates of continuance after August 14, 2000, to the disabilities and sanctions under section 346 of the Act, that is, the penalties imposed for non-compliance.

If a former-Act company failed to apply for a certificate of continuance within the time limited for so doing under section 346, such former-Act company may not, without leave, sue or counterclaim in any court, although it may be made a defendant to a suit; no dividend may be paid to any shareholder of the former-Act company without leave of the court and every director of the former-Act company is liable to a penalty of $100 a day for each day during which the former-Act company carries on its business after the period for applying for a certificate of continuance has expired. Such exposure, Madam President, is inimical to the interests of the former-Act companies and their shareholders. The former-Act

companies, as well as their shareholders, would have been under the impression that they were protected by the Orders and could continue to operate lawfully which, in fact, was not the case and, through no fault of theirs, but simply by reason of administrative error.

The Companies (Former-Act Companies) (Validation) Bill, 2003 seeks to put the former-Act companies in the position they would have been had the Orders been published on time. To do this, it is necessary to validate the acts of former-Act companies which failed to apply for certificates of continuance before June 01, 2001. Clause 3 of the Bill seeks to achieve this objective.

Madam President, this honourable Senate would have noted that the Companies (Former-Act Companies) (Validation) Bill requires a special majority. This is desirable, out of an abundance of caution, to avoid future challenges, whether they be constitutional or otherwise, which may stem from isolated cases. Thus, for example, if a former-Act company had declared a dividend and could not, without leave of the court, distribute it to its shareholders, the shareholders may have been able to bring legal proceedings against the former-Act companies. Once this Bill is passed, the shareholders would lose that right. It is this possibility that rights may be affected that makes the Bill require a special majority. So, Madam President, amendments will be circulated in due course.

The objective, as I have indicated, is quite clear; to prevent the mischief occurring to former-Act companies, which, under the impression that they had been valid, continued in accordance with the provisions of the 1995 Act, when, in fact, they were not.

Madam President, I beg to move. [*Desk thumping*]

Question proposed.

Sen. Wade Mark: Madam President, before I speak—I reserve my right—I just wanted some clarification from you. Seeing that the amendments of which the Attorney General spoke have not been circulated, would we have a second bite in terms of the debate, because we do not have those amendments before us? So we could only concentrate on what is before us at this time.

Madam President: I am afraid, Sen. Mark, that normal procedure is that those amendments will come at committee stage in any case, so will you, if you—so are you—

Sen. Mark: I was misguided.

Madam President: Do you wish to speak now?

Sen. Mark: No Ma'am; I reserve my right.

Madam President: Okay.

Sen. Carolyn Seepersad-Bachan: Madam President, I seek some clarification on this Bill and let me first of all begin by saying that with all the filibustering, according to the Attorney General, and the arrogance that we have just seen from the Government side, it makes life very difficult on this side to make a meaningful contribution.

Madam President, we are talking about validating certain acts of companies under the Companies (Former-Act Companies) (Validation) Bill and the purpose of this Bill is to validate those acts of former-Act companies which failed to apply for a certificate of continuance within the time limited for doing so, and, in so doing, any act or thing done or omitted to be done by a former-Act company which failed to apply for a certificate of continuance before June 01—and this is important—2001 and which act or thing or omission would have been valid and lawful and which, but for the failure to apply for the certificate of continuance, is deemed to be valid and lawful.

In going through the Act, and according to the Attorney General, under section 346(1), when a former-Act company fails to apply to the Registrar for a certificate of continuance, the former-Act company may not, without leave, sue or counterclaim in any court, no dividend may be paid to any shareholder of the former-Act company without leave of the court and every director of the former-Act company is liable to a penalty of $100. However, Madam President, which is what I want to elaborate through my contribution, if you now look at subsection (2) of 346, it says:

> "Notwithstanding subsection (1), when a company described in that subsection…"

In that subsection (1):

> "is issued a certificate of continuance, the company may then, upon such terms as to costs as the Court may order, maintain an action, suit or other proceeding as though the company had never been disabled under this subsection."

This is why it is rather confusing, the need for this particular amendment to the Companies Act (Amdt.) Bill 1997. More so, Madam President, because we are talking about a three-fifths majority in this Senate arising out of the need for the inconsistency with sections 4 and 5 of the Constitution. To me, the Attorney

General has not really given cogent reasons why it must be inconsistent with sections 4 and 5 of the Constitution amendment, stating only that there is protection against the constitutional motion against a former-Act company. I do not know if that is adequate.

You see, Madam President, under section 518, in which case the former Act is repealed, it will be noted that:

> "Notwithstanding subsection (2) and the definition of 'company'"

What it is saying here is that the former-Act company continued to apply to a former-Act company until such time as a certificate of registration or continuance is issued to it; but it is also saying that:

> "…sections 21, 24, 300 and 435 shall apply to a former-Act company provided that a receiver or liquidator shall not be liable…"

When we go to sections 300 and 435 what they actually say is that employees are protected and creditors, in effect, are protected in the event that such protection would be required. So it is not to say that a former-Act company will not, in any way, say, "Okay, I am not paying my employees or workers compensation" because it is clearly outlined in those subsections.

Madam President, if we take a look at the historical development of the Companies (Amdt.) Act, 1997, we would recall that there was the Companies Act, 1995 which replaced the Companies Ordinance based on the United Kingdom Act of 1929. This whole process was started by the then NAR administration in 1987, the draft bill was submitted in 1991 and it was based on the Canadian Business Corporation Act, the Caricom Working Draft and the Barbados Corporation Act. Sometime in 1996 when the UNC government came into office, recognizing that the Companies Act, 1995 was formidable in length, complexity and technicality, it became necessary to introduce a variety of amendments, including those that were technical and practical, which required the new Companies Act, 1995 being passed. Up-to-date legislation concerning companies is paramount in increasing the attractiveness of Trinidad and Tobago to foreign direct investment and to establishing a firm legal foundation for an expanding economy.

Madam President, modern legislation, the Companies Act, is a significant component to the strategy to improve and enhance the investor-friendly climate of Trinidad and Tobago for any country. Make no mistake, it was part of the United National Congress government policy to attract foreign direct investment into this country as well as local investment to assist in the general economic development and to make our nation the leading financial sector, as we term it, the financial

hub of the region. It was identified as one of the key significant factors favourable for foreign investment but, Madam President, this can only be achieved within a stable and fair legal framework and a pillar for such legal framework is modern companies legislation.

As a result, the then government embarked on the modernization of laws and infrastructure with reference to those dealing with business activity as the Parliament witnessed in the passage of a series of laws relating, for example, to the field of intellectual property, et cetera, et cetera. I am sure, as we heard enunciated by this Government, it is Government's policy that, in order to expand and encourage any further economic activity in Trinidad and Tobago, there is no doubt that we must continue to modernize companies law which would treat with the emerging challenges of the contemporary business world and which will address the needs and concerns of the people of Trinidad and Tobago and domestic and foreign investors.

We must remember that the principal form of association for carrying on economic activity and investment essential to the economic well-being of practically every country is the limited liability company. The limited liability company provides the mechanism through which the investment is made, jobs are created and revenues are generated for the betterment of our society. This is why it brings me to ask an often asked question in this Senate, whether or not the Government is committed, Madam President, to this policy objective because, at the end of the day, their actions always seem to be at variance with their policy objectives.

We would recall that in 1995, as alluded to by the Attorney General, a major amendment to that 1995 Act was when former companies were required to comply immediately, although they were not required to be continued for a period of two years. The amendment in 1997 allowed them to be continued in compliance with the former Act until such time that they were continued under the new legislation, subject only to a very small number of new provisions which would be applied at once, as I just outlined.

As alluded to by the Attorney General, in 1999 it was recognized that not enough companies had applied for continuance and, in order to ensure that the Companies Registrar would be able to handle any influx or high intake of applications for continuance, they would extend the deadline. However it was decided, and as approved by the then Parliament, that the minister would be given the power to extend that deadline date by Order. Madam President, it was in the discretion of the then minister to determine the final deadline date and, as we have just heard, that final deadline date was May 31, 2001.

However, the time and effort in producing that final product was as a result of the commitment of the then UNC government to provide Trinidad and Tobago with companies legislation that was workable, acceptable to all in our community, capable of standing the test of time and adaptable to the changing environment through appropriate amendments. This is why, over the years, we have seen several amendments before this Senate with respect to the companies legislation.

I would go back just to the most recent one in 2001 which attempted to remove the ambiguity with respect to the meaning of the word "shareholder"—this was the Companies (Amdt.) Bill 2001—to establish beyond doubt that the shareholder is an owner of security for the purposes and, in addition, it would have repealed section 159 of the Companies Act to relieve persons who were in practice as auditors of companies on April 15, 1997—the date of commencement of the Companies Act—from having to apply to the minister to whom responsibility for the Registrar General's Department is assigned. These were the sorts of amendments that were coming before this Senate. However, it is not applicable and it is not appropriate that we could say, because this particular Bill came before the Parliament in 2001, it is relevant to today.

You see, Madam President, and I want to outline my argument along the lines of what has happened globally, validating former acts of companies falling under what we term former-Act companies, is almost as much as sending a signal that we are prepared to establish double standards. This is why I went back and dealt with the issues and the time and effort taken by the last administration in amending the Companies Act, 1995 to ensure that it was practical and workable and because, at the end of the day, we were part of seeing the importance of modern companies legislation, the importance of this legislation, ensuring that we would have provided a mechanism through which all companies could have been continued.

It is my understanding that almost 8,000 companies have applied for continuance and another 15,000 remain outstanding; but it is also my understanding that these very companies can still file for continuance. However, it does not, in any way, give the Registrar General or the Companies Registrar the authority or some mechanism through which he can investigate to determine if such former-Act companies continue in operation in violation of the Act and, as a result of that, when receiving an application for continuance today, he may very well not know if that said company continued to operate in violation of section 346(1). Given that, it is very important for us to understand that I am not sure if, at this point in time, in the year 2003, this amendment is relevant.

I say this because we have an administration that has sat here for the last year and has been working. We had an Attorney General and we had a Minister of Legal Affairs. Madam President, what has happened to the modernization of company law? Today if we look on globally, which I want to detail in this contribution, we will see some of the steps that have been taken to modernize companies legislation globally. So why have we not taken the same steps? Instead, all we see is a rehash of legislation that lapsed two or three years ago and here we are talking about something of substance coming before—we just heard about the legislative agenda. There is no legislative agenda before this Parliament when all we are doing is bringing back Acts to validate this and amend this and these were bills that lapsed two years ago. Are these bills and amendments still relevant to today? We must look at the times. Today we live in a very dynamic environment. We live in the global village and we must be able to respond in such a situation.

So Madam President, if we take a look at what has happened over the last couple of years; over the past decade the world witnessed a significant transformation in the role of the private sector in economic development and no doubt Trinidad and Tobago subscribed to that. More and more countries have developed market-based approaches to economic policy. Awareness of the importance of private corporations for the welfare of individuals has increased. These private sector corporations create all the jobs, generate taxes, produce a wide array of goods and services at reasonable prices, increasingly manage our savings and secure our retirement income. Amid growing reliance on the private sector is the issue of corporate governance and this is what globally has taken place over the last couple of years; the move towards including a number of corporate governance issues.

If we take a look at what has happened with the collapse of the emerging economies, for example the Asian crisis, a number of high-profile cases of governance failure and misconduct or of company decline are largely or at least partially attributed to governance problems. This is what inspired the Cadbury Report of 1992 and again this report was followed by numerous similar initiatives in Canada, Australia, the Netherlands and France and this financial turmoil in the emerging economies brought the issue to the front pages at the end of the 1990s and it revealed the bad consequences of "officity" and lack of accountability on the health of financial markets. Countries with the lowest corporate governance standards, especially in terms of minority shareholders' protection, experience the largest exchange rate depreciation and stock market decline. Corporate governance has become and is perceived as an issue of systemic financial stability.

If I go to the Organization for Economic Cooperation Development (OECD), corporate governance structure and deals are intimately linked to some of the most important contemporary developments in the global economy. That is because, again, of the growing importance of the private sector, the growing international interdependence and the changing competitive circumstances for investors and corporations. Might I add, Madam President, which is what we are seeing in this country, the large development of institutional investors. If you look at some of the contemporary developments in the global economy, good corporate governance is not only a safeguard against waste of corporate assets, it is also seen as a guarantee for financial transparency, corporate accountability and investor responsibility. Good corporate governance practices are necessary in order to preserve long-term public legitimacy of market institutions, including the business corporations.

Madam President, with respect to the international dependency, in their constant search for the most profitable opportunities, most investors can now diversify on a global scale. To reap the first benefits of these new opportunities, both investors and corporations need to better understand different business cultures and corporate governance arrangements. The ability to communicate and understand different corporate governance practices has, therefore, become an increasingly important factor for companies and countries that want to attract internationally mobile capital, be it domestic or foreign.

As a result, Trinidad and Tobago falls into that category because we continue to strive to become one of those countries to which we can attract mobile capital. The ability of these companies to put the right corporate governance arrangements in place, in many cases, is an important part of our competitive edge. How do we achieve that competitive edge? We achieve that through our legislation. We achieve that through the communication means, which is again through our companies legislation which adopts the corporate governance principles.

Madam President, I want to take a look at what has been driving company legislation reform and that has been development of the OECD corporate governance principles. We would recall that, as a result of these very scandals, the Asian crisis and the recognition of corporate governance as a means of recovering from that crisis, in 1998 ministers of member countries requested the OECD to develop a set of standards and guidelines for presentation in May 1999. The principles in response to that mandate were based on consultation with all OECD and non-OECD countries. They were submitted to broad public exposure, to public commentary on the successive draft, including the Internet, and adopted in May 1999.

What then has it served? It has served as a point of reference for legislative proposals. Corporate governance debate centres on the organizational structure of the corporation, duties and responsibilities of the shareholders' meeting, the board of directors, the management and the auditors, Madam President. We would remember, if I may—because I pulled these five principles off the OECD web site, and these five main areas dealt with the rights of the shareholders and by that we mean that corporate governance should protect the rights of shareholders.

The second principle deals with the equitable treatment of all shareholders and, that is, the corporate governance framework, which our companies legislation must adopt, should ensure equitable treatment of all shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. The role of stakeholders in corporate governance, the corporate governance framework, should recognize the rights of stakeholders as established by law and encourage active cooperation between corporations and stakeholders in creating wealth, jobs and sustainability of financially sound enterprises.

Madam President, what that is speaking to is exactly where this country has reached today. We have been talking about first-generation reform and that we are about to launch second-generation reform. Second-generation reform deals with the empowerment of all stakeholders and hence, when we talk about from the top level, last week we had an interesting debate on constitutional reform. This now, Madam President, is transcending to even the smallest business concern in that we are now asking for corporate governance principles which ensure that there is empowerment of all the stakeholders in the corporate well-being and it means whether they are suppliers, employees, friends, directors or members of management they are now involved and companies legislation is being expanded to empower these same stakeholders.

Of course, the fourth principle of the OECD is disclosure and transparency and we cannot speak about this enough. "The corporate governance framework", and I am quoting from the OECD web site, "should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company."

Principle number five: "The responsibilities of the board, states that the corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board and that the board is accountable to the company and shareholders."

Now, I know they may ask, why I am speaking about all these OECD principles. Madam President, as a Government that has been in office for more

than a year and looking at what has been happening globally and seeing where most of the OECD and non-OECD countries have started adopting some of these principles, I ask the current administration: What are your plans and why have you not brought legislation with this in mind? The OECD principles are generally global. They focus on economic growth. They represent what governments and markets around the world would agree constitute the necessary elements for building good corporate governance. Madam President, it has become a truly global standard and a de facto reference point.

2.30 p.m.

They are used widely in both the private and public sector, in the countries of the Organization for Economic Cooperation Development (OECD) and non-OECD countries. They are adopted by the financial stability forum as one of its 12 core international financial systems. Individual countries have developed corporate governance codes modelled on the principles complementing them in their ways. The private sector bodies model their corporate governance initiatives on the OECD principles.

By adopting these principles, many countries have seen a way of ensuring that their corporate sectors become marketable for the global investor. This is why we speak about that mobile capital. The OECD principles are becoming the process mode; a document; a tool for policy dialogue; institution building and the global common language. It is now the global co-operation between the OECD and the World Bank, including a global corporate governance and the regional round tables, which main objectives are to provide a platform for dialogue and formulate practical policy agenda. It is interesting to note that the World Bank has started—I took this off their web site—a process of assessment of a number of its members, on the basis of these principles within its overall exercise on a voluntary basis.

A country's institutional corporate governance framework can be described by the main elements of statutory law and regulations, one being the company law. It is not only restricted to companies law, but also the securities legislation, investment regulation and other complementary legislation. I wonder how this compares with a Bill that sits before us that is asking for the validation of all Acts of companies under the former Companies Act. Whereas we recognize that the principles are not binding and represent the first initiative by an intergovernmental organization to develop the core elements of good corporate governance regime, the principles can be used as a benchmark by governments, as they evaluate and improve their laws and regulations. The World Bank activities report on the observance of these standards and codes with the IMF. The country's

corporate governance assessment is based on a template for listed companies. The aim is to identify the strengths and weaknesses, the ultimate policy advice and assistance. It will act as a *de facto* rating agency on corporate governance using the principles as the benchmark.

Probably, the Minister in the Ministry of Finance, Sen. Enill, would agree with me that since we want to establish Trinidad and Tobago as the financial hub, one of the things that we should be seeing before this Parliament is such legislation, in order that we can be part of this *de facto* rating agency on corporate governance. Much debate has taken place on whether or not there is a need for a regional rating agency. What is at stake is the importance corporate governance arrangements would have on the economy's overall prospects to attract foreign investors and the economy's overall prospect to build a strong private sector.

In accordance with this Government's policy objectives as enunciated in the budget, it is their intention to ensure that we deepen and widen our private sector participation, in light of the imminent boom in the gas sector. When we talk about companies legislation reform, we must click to this issue as to whether or not the signal we are sending is moving us on and modernizing our companies legislation, or taking a backward step and validating Bills of the former Companies Act. The importance of good corporate governance goes beyond the interest of shareholders in an individual company. What is at stake is the basis for the framework for economic growth. This is why I say—and it confuses me as to why the Government announces one set of policy objectives. The Bill before us seems contrary to what they are trying to achieve in their policy objectives.

I will take one look at the US situation on company law reform. Several here may know about the Sabans Oxley Act of 2002. Over the last year, with this spate of corporate scandal, several countries that want to continue to maintain their competitive edge as a domicile for multinational companies and global investors have started company law reform. They have established a standing committee that would constantly review companies law and the appropriate actions required to modernize companies legislation. I think it is timely. We are talking about a retrograde step. If this particular amendment had formed part—out of an abundance of caution—of a reform Bill to modernize our companies legislation which should be done, I can understand. When we have before us, a Bill that is a single amendment to validate former-Acts under the companies ordinance, that is the problem I have. We keep talking about being part of the global race.

I started by talking about one of the several legal reforms in the OECD countries, the improvement in transparency and the protection of shareholders'

rights. I can go into all the various Acts that are available, but I know that the other side is not interested in these issues. I am not even sure if they are interested in company law reform. In this country, companies are using the services of auditors who are performing in-house internal auditing functions. We should see before this Senate, amendments to strengthen the independence of auditing firms and their acts in terms of external audit functions. Recently, several companies have adopted that to strengthen their accountability issues in terms of credibility of the financial statements issued by external auditors. One case is that of Enron with the strengthening of independence criteria for board members; the disclosure of executive remuneration and the call for the creation of several board committees.

Sen. Morean: Madam President, on a point of order. I wish to draw your attention to Standing Order 35(1) which says:

> "Subject to the provisions of these Standing Orders, debate upon any motion,… shall be relevant…"

What is before the Senate is a Bill to amend a provision of the Companies Act, 1995 because of an administrative error. It is not companies reform of any commercial enterprise. We are dealing with correcting an administrative error which occurred during the last administration; an error which they saw and determined needed to be corrected.

Madam President: I have been listening closely and trying to tie up what is being said. I will ask the Senator to come back to the substance of the Bill.

Sen. C. Seepersad-Bachan: Madam President, with your permission, can I explain the relevance of these issues? We cannot talk about companies legislation and their amendments. We are aware that we are available globally. Our information is available on the web site. Like every country that is looking on in terms of company law reform and the amendments being made, this one represents a retrograde step. When we are dealing with amendments, we must understand the impact on our commercial environment and the furtherance of our private sector. We must understand the importance and development of this same private sector in this country, that we want to make investor-friendly.

Madam President: Senator, I think you have explained your point, but as the point was made, it is not about company reform. If you can come back to what the Bill is saying, we will appreciate that.

Sen. C. Seepersad-Bachan: Madam President, if you look at what has happened globally, there is no indication—most countries have moved forward and not backward. The amendment in this Bill seems to do that. Because an

amendment came one year ago, it may have been relevant at that time, but is it relevant at this time? When I opened, I indicated why the same companies under this legislation were protected. I heard the Attorney General say that there were gaps in-between. If there were gaps between when the Order was issued and when it was gazetted, and they are afraid of the protection for those companies, the Act provides for that. Section 346(2) says that once you obtain your certificate of continuance, the company may upon such terms as to cost, order and maintain an action, as though the company had never been disabled. I look forward to their response on these issues. Section 518 actually protects some of these companies under the Companies Act.

I am not getting adequate reasons. I ask the current administration that instead of bringing an amendment like this, why was it not part of a total reform Bill? It would send the right signal to the international community. The global race is on and we want to be part of it. We have to understand what we are doing to maximize the potential of this country, in terms of maintaining and increasing our investor friendliness. I am deeply concerned that we do not miss that competitive edge. I see amendments such as this as a backward step. The Attorney General has not given cogent reasons and I suppose in her response she will.

She could have adopted a similar approach under the Sabans Oxley Act, 2000 which was recently passed by the Congress of the United States. That was prompted because of the recent spate of scandals and the need to strengthen corporate governance. It would have sent the right signal. This is important before us as a nation. We are talking about job creation and the protection of jobs. We cannot deal with bills in isolation without understanding the impact on the economy, the furtherance and progress of Trinidad and Tobago.

I suggest that the Government should have an independent committee or a joint select committee of Parliament—I know that they would not go for the joint select committee—that would review the Act to make suggestions for amendments, that could come before Parliament on a periodic basis. We cannot think in a vacuum and compartmentalize, because the race will start and we would be left behind. I see this as a step in the wrong direction. I am making the plea before this Senate, that we take the necessary steps and act in accordance with the interest and economic well-being of this country.

Unfortunately, I know that the other side, as usual, has no interest in the issues before us and taking this country forward. All they have an interest in is going after commissions of enquiry that say nothing, until the Law Association had to condemn it. This is not about scoring political points. [*Interruption*]

Madam President: Senators, can I have some order please.

Sen. C. Seepersad-Bachan: Madam President, about one week ago we talked about constitutional reform and the empowerment of our people. I appeal to the Attorney General and the Government, that at the end of the day, they have to be accountable to the people of this country. They must do the people's business. Let us work towards the interest of Trinidad and Tobago. When you start recognizing the loss of potential investors, have we modernized? No. We have passed this particular amendment which is a retrograde step. What would the IMF think about this country? How would the World Bank and OECD evaluate countries like ours? We are not following the OECD principles and there is no intention.

In my humble view, corporate reform has taken on new urgency globally. For us to be part of that global race, we must ensure that the modernization of our companies legislation take on the same level of urgency. Developing the modern company law for competitive economy, modern companies legislation and the strategic framework are some issues that we should look at. These issues are being dealt with in the United Kingdom and the United States. The *Mc Kenzie Report* speaks about where global investors would be moving in terms of company legislation reform.

Let me end with this quote from Arthur Levit, the former Chairman of the United States Securities Exchange Commission.

> "If investors are not confident with the level of disclosure, capital will flow elsewhere."

If this Government does not understand the need to get on with the people's work; recognize the need to modernize the companies legislation and respond to the dynamics of the environment but, instead, choose to bring back an amendment to a Bill that was probably relevant two years ago, the only thing that is constant in the 21st Century is change. We must respond to change.

Thank you.

Sen. Mary King: Madam President, as we heard from the Attorney General, the new Companies Act, No. 35 of 1995, was passed in the Senate on October 03, 1995. That was eight years ago. This Act is meant to govern the activities of companies that operate in Trinidad and Tobago. After this date, all new companies had to register under this new Act. The actual date of promulgation, I believe was 1997. Those companies already existing which we call the former-Act companies, within two years of the date of promulgation, were mandated to apply to the Registrar of Companies for a certificate of continuance.

The fee to do this was very low. It did not exceed $50. The Act of 1995 takes very seriously, the non-compliance of any former-Act company. Section 346 states very clearly:

> "When a former-Act company fails to apply to the Registrar for a certificate of continuance within the time limited therefor …
>
> (a) the former-Act company may not, without leave, sue in any court but may be made a defendant to a suit;
>
> (b) no dividend may be paid to any shareholder of the former-Act company; and
>
> (c) every director or chief executive officer of the former-Act company is liable to a penalty of one hundred dollars a day for each day during which the former-Act company carries on its undertaking thereafter."

Those are very serious penalties.

Clearly, the Parliament that laid these laws intended that these companies should also take them very seriously, since this is the context in which we wish business to be done in Trinidad and Tobago. Today, before us, we have an amendment to the Act which would allow defaulters to pay dividends to then shareholders. None of the penalties envisaged by the original framers of the law are to be applied to these non-compliant companies. This means that any former-Act company that continues not to obey the law of Trinidad and Tobago, and that is to be registered under the Companies Act, 1995, that is, they failed to apply for the certificate of continuance before June 01, 2001, they can actually continue to do business in Trinidad and Tobago, without fear of having these penalties imposed on them. What is even worse, is that they are still not registered under the new Act. It would appear that the terms and conditions of this Act do not apply to them. For example, the increased responsibilities of directors which are spelt out in the Act in sections 60—100 are very major parts of the Act. I am tempted to ask: Why do we not repeal, today, the Companies Act, 1995 and go to the old *status quo*?

The method of compliance is so simple and asked for virtually nothing, that it could only be because of negligence, that we still have defaulters today. I suggest an amendment that you add to clause 3 that clauses 3(1) and 3(2) do not apply after July 01, 2003. This amendment suggests extending the date for proper registration of the non-compliant former-Act companies to July 01, 2003. I know that the companies law is a matrix within which we regulate those who wish to invest in our country and in their future.

The Bill seeks to regularize the negligence of those who are not abiding with our current laws. I have not understood why this is so from what I have been told in the Preamble to the Bill. If one were to look at what laws we might bring, I would have preferred to see before us, some amendments to other Acts which could improve the investment climate in the country. The first that comes to mind is the Bankruptcy Act which should include a section probably in the mould of the United States Bankruptcy Act, Chap. 11, which allows companies that have stumbled into some financial difficulties, another chance to make good and continue to employ and provide services.

Another aspect of our business conditions in Trinidad and Tobago, is that a large amount of our savings is held in pension funds and insurance holdings. We desperately need to create new linkages and companies, particularly in the on-shore sector. The existing Insurance Act prohibits the investment of funds in these start-up innovative companies and those companies that have not made adequate profits over the past five consecutive years.

The Securities and Stock Market Act needs a fundamental overhaul, if we are to encourage these new companies to develop and get on to the stock market. I think these might be more constructive amendments and I expect them to come from this Government, as the one on the table, I feel, is not a constructive amendment. I would like to include my amendment when we get to the Committee Stage.

Thank you.

Sen. Dana Seetahal: Madam President, I join with and share the concerns of Sen. Mary King as to the intendment of the proposed Act and to what was originally intended by the Companies Act, 1995. It seems to me that if any government passes laws and continues to give delinquent offenders permission to break that law—they say this is the law, but we will extend the deadline. The past administration extended that deadline for quite a number of years, until June 2001, as the hon. Attorney General has said. That in itself, with respect, was negligence. Many of us, and even people who had charitable companies, forced ourselves to comply with the deadline and apply for articles of continuance, so that our companies would continue to exist and not incur the penalties in section 346 of the Companies Act, 1995. That certificate of continuance was necessary for us to continue in existence under the new Act. For many reasons a number of companies did not do so. They have been given favours. They have been rewarded for non-compliance with the law. You did not comply with the law, take an extension. No other person who is delinquent in this country, I am sure—I

should not say that I am sure—it seems that it is not right that people who constantly break the law should be rewarded for doing so. If Parliament consents to that, Parliament is just as guilty.

Based on what the Attorney General has said, it seems to me that this proposed amendment is meant to take care of those who were given a legitimate expectation that they would be asked to continue up to June, 2001. We let them break the law and then we say that we would not condone it, but excuse them up to June, 2001. Then, the Government failed to register the appropriate Order to allow this to happen, it is only reasonable—even though I think it is morally wrong—to bring the law into conformity to permit that. This proposed amendment does not do so. It seems to me that it goes further.

Sen. Morean: May I say that while I appreciate what is being said, the amendments to be circulated in committee stage take care of that. We go up to the date June, 2001. It is just to correct that window, not a total correction.

Sen. D. Seetahal: Thank you. I was told at the outset that we were dealing with the original law, when Sen. Mark had enquired. I have been supplied with the amendment and my reading of this amendment is not as the Attorney General has indicated. If one were to read the proposed amendment to the Bill that has been circulated, it says:

> "…any act or thing done or omitted to be done by a former-Act company which—
>
> (a) failed to apply for a certificate of continuance before the 1st day of June, 2001; or
>
> (b) applied for a certificate of continuance between the 14th day of August, 2000 and the 1st day of June, 2001, shall be valid and lawful to the extent that it would have been…"

I understand the Attorney General to be saying that is the situation in subclause (b) that should be taken care of. There are companies that were told that if they applied for their continuance up to June 01, 2001, they would be right and tight. This amendment should be, "Any Act done or omitted to be done by a former-Act company which applied for a certificate of continuance between the 14th day of August, 2000 and 1st day of June, 2001, shall be valid…" Once you did your application before and up to June 01, 2001, even though the Order was not registered, you would be protected, if we now pass this Bill. The hon. Attorney General said that for some reason, through some fluke, some of those

Orders were not registered in time, so that the people who applied only up to August 2000, were covered, although the stated intention of the Order was to go on until June 2001.

The alternative suggestion, as proposed by the Attorney General, would be in line with that. When you talk about a clause that says, "any act done or omitted to be done by a former-Act company which failed to apply for a certificate of continuance, before the 1st day of June, 2001", there is no limit. You are saying that all those companies which never applied for a certificate of continuance would be covered. This is the plain meaning of the law. It not only means those people who applied as at June 01, 2001. I am sure the drafters would tell me, they ought to know and if they do not know, it seems that if you did apply and if you did not apply. All those people could not care less—I would not use stronger language than that—about the law. They failed and neglected, but they now would be covered and patted on the hand, not slapped, for their delinquency. Make a mockery of the law, you would get another extension. There is no deadline, not even up to today.

I do not suggest that we say that this extension should go on to June, 2003. I say that it should go as the Attorney General proposed, that only those people who applied up to June 2001, should be covered. Clause (a) should be struck out. There is no place for us to continue to reward people who break the law. We are talking about crime, crime prevention, setting examples, new dispensation, vision 2020 and the like. I do not know if this was an omission on the part of the Government in laying this amendment to the original Act. If so, it is a crucial omission to fail to realize that, that subclause is allowing delinquency in perpetuity. That should not be tolerated. Is there any punishment? If you never apply for a certificate of continuance and break the law forever, you are never to be punished. I hope that this matter would be clarified even before we go into committee stage.

Thank you.

Sen. Wade Mark: Madam President, I would not be long on this matter. We on this side—having regard to the contribution made by Sen. Carolyn Seeperad-Bachan—have made it very clear that we would like to have some clarification on this Bill before us.

The purpose of the Bill is to validate certain acts of former-Act companies which failed to apply for a certificate of continuance within the time limited for doing so. Extensions were effected in an effort to facilitate that. When this Act

was introduced in 1997, we knew that it was a revolutionary kind of change that was taking place. The Companies Act, 1995 was passed in the House of Representatives on September 22, 1995, and in the Senate on October 03, 1995 and came into operation by proclamation on April 15, 1997, by Legal Notice No. 68 of 1997. We recognize this was a revolutionary piece of legislation. It was consistent with the globalization and liberalization processes that were taking place internationally. This was a long process. It started with the PNM and we effected it later on, in terms of making further changes and consultations. There was widespread participation by the various stakeholders and we had this final document in the form of the Companies Act, 1997.

Over the years, from 1997 to the present time, extensions were granted to companies. We recognized that because of the novelty of this piece of legislation, companies did require some time to put their house in order. Many companies operated under the old Act and the new companies that were being formed were coming under the new Act. Those companies that were operating under the old Act were told by the then government through various notices, this particular Act and other amendments to this Act, that they had certain deadlines. The first extension was some time in April 14, 1999, to maybe October 14, 1999. That was a six-month extension. The companies that failed to comply and apply for certificates of continuance were given an amnesty to apply and cover that period.

We were in the Parliament and we had to bring another extension. We had a second extension which was for the period October 2000 to June 2001. We tried to encourage those delinquent companies to get in line. There were consequences. As Sen. King said, the fees that they were called on to pay were not high. Even with the second extension, companies violated and ignored the further extension. There was a third extension and this time it was done on a month-to-month basis. The minister had the authority to extend this matter on a month-to-month basis. There were some cracks.

I do not know if the hon. Attorney General can tell us how many companies were involved. Was it 500? How many delinquent companies are there, that have violated the law and failed to apply for certificates of continuance? We do not have any idea. I do not think the Attorney General has provided this Senate with an appreciation of the number of companies that were delinquent in applying for these certificates of continuance. What is the cost to the taxpayers in this country? Even if it were $50, that is revenue foregone. It is revenue that we have lost. How can we be called upon in Parliament, to give cover to companies that have deliberately, willfully and consciously decided not to apply?

If you look at the amendment, clause 4 B says,

"…any act or thing done or omitted to be done by a former-Act company which—

(a) failed to apply for a certificate of continuance before the 1st day of June, 2001;"

They applied. It does not mean to say that if I were there at the time, that this is correct now. This is why Parliament is in existence, so we can dialogue and debate these matters. I could have done something that was wrong then, but they are now in government. Their responsibility is not to continue. This is wrong.

I have spoken to a number of top businessmen in this land and they feel strongly about this matter. There are businessmen in this country who are conforming to the law. They are adhering to the Companies Act and fulfilling their obligations to the country. There are many other companies that wilfully, deliberately and knowingly decide to flaunt the law. They are telling us we must support that. If they want us to support this, let us bring those people to a joint select committee of this Parliament and let them explain that kind of conduct. Let the committee report to this Parliament as to what kind of sanction or penalties, we would apply to those companies. Do not tell us that we must rubber-stamp and support this particular amendment.

Clause 4 B says:

"…any act or thing done or omitted to be done by a former-Act company which—

(a) failed to apply for a certificate of continuance before the 1st day of June, 2001; or

(b) applied for a certificate of continuance between the 14th day of August, 2000 and the 1st day of June, 2001,

shall not be called into question merely because the former-Act company failed to apply for the certificate of continuance before the 1st day of June, 2001 or applied for it between the 14th day of August, 2000 and the 1st day of June, 2001 and section 346 of the Act shall not be invoked against the former-Act company."

Sen. Morean: Madam President, I agree, when I look at subclause (a), it is bad. They are redrafting the amendment to take in the people they want to take in. We would do it in the committee stage.

Sen. W. Mark: We are debating something and I am on my legs and the Attorney General says that she is doing this. When would we get the chance to debate it? This is a democracy and even though the PNM would like to impose a dictatorship on this country and Parliament, we would not be part of it. If the Attorney General needs time, we can suspend this debate and go on to some other Bill, pending our being supplied with the relevant information, so that we can make an intelligent contribution.

I indicate to this Senate that we have grave reservations about this matter. I do not know if the Attorney General can tell us here and now, how many companies applied for certificates of continuance between the 14th of August, 2000 and 1st day of June, 2001. We do not know. We are debating a matter and we do not have the facts before us. Is it a fact that five companies failed to apply? I doubt that. I believe it is hundreds of companies. Five were granted, but how many applied? Who is responsible and accountable in this instance? We must have accountability.

Sen. Dr. Saith: Ramesh Maharaj.

Sen. W. Mark: If you say it is Ramesh Maharaj, I must let him know that Lenny Saith said that. I remember that both of you were in bed at one time.

We are concerned about what is taking place at the level of the Registrar General. We want to know why this matter reached that particular stage. Whose error was it? We know that this is a very serious matter. You are asking us to support a measure about which we do not have sufficient knowledge. We want to know how many companies applied. We know that five were granted. Why were they not granted just as the other five were granted? We believe that while this Bill is very important, we have to look very carefully at those amendments that are coming before us. We would not support this measure unless we are convinced and are provided with the relevant information. If it becomes necessary we would propose to the Attorney General to have this matter referred to a select committee of this Parliament, so that we can interrogate people.

This Parliament must not be used as a rubber stamp. We are not prepared to be used as any kind of whipping horse. We are here to do the people's business and we must do it properly and intelligently. We must have information for us to do our job properly. They cannot come in this Parliament and give poor, weak and slipshod information and expect this Opposition to give support to those measures. We serve notice as from today, that this Opposition would not give support to this Government because we have seen the arrogant, dictatorial and

disrespectful approach that they have developed. We would not allow the PNM to disrespect this Opposition. This Opposition demands respect. We would not support the amendment to this Bill. We would not support this Government on any measure until they decide to change their attitude and approach to the Opposition. We are not boys and girls. We are big people who represent people in this country, even though we are appointed. We are the alternative government to the PNM. Very shortly, we would test them on a battlefield, both at the local government elections and a general election which would come before five years. We serve notice that until we are able to get convincing and persuasive arguments in support of our views that we have expressed, the PNM should not expect any support from the Opposition on this matter.

Thank you.

The Minister of Science, Technology and Tertiary Education (Sen. The Hon. Danny Montano): Madam President, the first thing I would like to address is the comment that was made by Sen. Seepersad-Bachan when she began her contribution. She referred to the Attorney General as arrogant and filibustering. I know that the Senator is rather new to this Chamber. I had the unhappy circumstances to sit on that side of the Senate for a number of years, when I had to face a certain other Attorney General. By comparison, the Attorney General on this side, this afternoon, is the most gracious and genteel Attorney General that this country has seen for the past decade. I am very proud to have her on my side. It is a pleasure working and dealing with her.

Sen. Seepersad-Bachan: Madam President, filibustering is a word used by the Attorney General. I spoke about the arrogance of the administration.

Sen. The Hon. D. Montano: Madam President, she was very clear. She said the arrogance of the Attorney General.

Sen. Seepersad-Bachan gave us a history of company law in Trinidad and Tobago. I do not think anybody needed a lesson on the history of company law. We got one anyway. It was extraordinary how the web was weaved, ignoring the fact that the Companies Act, 1995, was legislation that was passed when this administration was last in power. To be fair, the genesis of the reform of the companies legislation started before I came back from school in 1976. I remember there was discussion even then and a draft document that was available. When this party lost government in 1986, the then administration took up the issue and began to talk about company law reform. That issue is a non-partisan issue. It affects the economy and businesses. It never was. It was not then and it is not now.

It is disturbing to hear Senators on the other side make this matter a partisan issue, when what we are talking about is companies that are doing business in the national economy. It is not right. You tend to look at this with a skewed view as if people are doing something wrong. The sight of how this piece of legislation got started is lost.

I would refer Senators to the debate of April 1999, when the first extension was granted to see when we were in Opposition, how we handled it then. We understood that it was not a partisan issue. There were real difficulties out there. The reality is, as you heard earlier this afternoon, there were 27,000 companies registered with the Companies Registrar. By April 1999, 4,000 had themselves re-continued under the new Act. What happened to the other 23,000? Where are they and who are they? Is it that the old legislation did not have the kind of teeth insofar as the Registrar was concerned? The Registrar did not then, and does not now, act as a policeman to make sure that you do certain things. If you did not file your annual returns, the best that the Registrar could do was to strike you off.

All of us in the private sector were trying very hard to update the companies' records. Many companies had not bothered to update their records for many years. Even though they wanted to continue under the new Act and needed to go back to their old records to see what happened with their shareholdings, many companies were family owned and the shares had been passed on from grandfather to son and grandson. The shareholding, in 1999, was quite different from what it may have been in the Registrar's records.

3.30 pm.

There was a tremendous amount of work that was necessary to try to get the information right. So it is not necessarily fair to say that many of the companies that were not able to meet the deadlines were wilfully doing so. That may very well be, but I do know, there were some companies that were struggling to try to update their records.

What had happened historically, filing documents with the Company Registrar was not like filing a tax return. There was no financial consequence if you did not do that and, therefore, the reality was that very few companies actually did it at all. It is only those few companies that actually had a professional firm of auditors or lawyers working for them that managed to get themselves registered. There were many others that did it on their own, yes, that is true, but by and large, the bulk of them depended on the professionals to advise them and to help them and many of them just fell in-between large cracks, as it were, and that was the reason for the necessity for the extension, as Sen. Mark explained.

The previous administration, understanding and working with the problem, understood what was the issue and said there was a need to have these extensions, and they were trying to close them off as quickly as they could. We, in the Opposition, understood the practical difficulty—it was not a political issue; it was a practical issue—and we said we will work with them on this and we will support them, but at some point, we want this matter to close off and everybody agreed. The logic of it and what eventually happened was that some of the Orders were not, in fact, published and, therefore, there was a defect in the extension of the deadlines. This little piece of legislation is simply to try to correct that little snafu, as it were. We understood it then and we understand it now.

It was a problem that happened under the UNC administration but, with all due respect to my colleagues here, they were simply trying to do the right and the best thing. We understood that then and we understand it now. I do not now why, all of a sudden, it has become a political issue, and we have wandered off into the wilderness of reform of company legislation and so forth, when the issue at hand is very simple and straightforward.

Madam President, Sen. Seepersad-Bachan is new and does not have the history or the understanding as to how this Senate works. The Senator went into a long discourse—before my colleague interrupted her—talking about company law reform, and saying that corporate governance is the buzzword, and that the Government must legislate corporate governance and so forth. In that regard, let me assure the Senator, that this administration, is very aware of the issue, but allow me to suggest that there are countries that are far larger and more sophisticated than ours, that are struggling with the same problem and have managed to run into bigger issues than we have, at this point. So, we do not need to lead the world in this issue. I rather suggest, that I doubt that we could, even if the Government wanted to. We need to see a lot of what has to take place outside our shores.

Madam President, notwithstanding that, let me just assure this Senate, as to what and where this Government is going. What has been drafted already is the Insurance (Amdt.) Bill, which is going to strengthen the resources and powers of the Supervisor of Insurance. The Government has already dealt with a small part of that here, when the Physical Regulation to the Central Bank Bill was passed. There is a new bill that would be coming very shortly to strengthen the resources and the powers of the Supervisor of Insurance.

Beyond that, there is the Employee Share Ownership Bill; the Securities Industry (Amdt.) Bill, which will strengthen the regulation of securities and

vehicles such as mutual funds and so forth. There is also a Financial Institutions Bill that is in the drafting stage that is going to deal with matters, such as cross-boarder regulation of financial transactions. It is going to supervise groups of companies, of which a financial institution is a part, and it is also going to deal with the reporting requirements of auditors of financial institutions. The Government is also proposing and looking at a Financial Ombudsman Bill that will hopefully deal with the resolution of disputes over the products and services of financial institutions. What the Senator said is simply unworkable. The Government cannot have a committee to come and deal with all these things. The Government has to deal with things one at a time. This is one simple issue that must be dealt with one at a time.

One of the other things that you should know—and I am pleased to tell you—is that the Ministry of Finance is presently discussing with the World Bank—and they are currently engaged in an exercise on the best practices for corporate governance in the country, and something will be coming out of that. So it is not as if nothing is going on. A lot is happening and, more than that, there is tremendous confidence in what we are doing.

Madam President, I draw your attention to an article on page 4 of the *Express* newspaper this morning. This was a report that was done as a result of a UWI Institute of Business survey of corporate executives and it says:

> "The survey found that 71 per cent of executives found their companies were performing better than six months ago and a further 10 per cent said their companies were performing 'much better'."

The proof is in the pudding. That is the reality and there is absolutely no point in making this matter a political football. It is a very simple issue and we would like it to be dealt with on that basis.

Sen. Mark said a number of things that have given me some cause for concern and, I think, it is something that we all need to have in the forefront of our minds. Sen. Mark said that companies were wilfully flouting the law and that we were asking them to condone that. Madam President, we are not asking that at all.

I just want to remind you and Members of this Senate that the Leader of the Senator's party has called for civil disobedience, including the non-payment of income taxes. What exactly is the goodly Senator saying to us? What is the Senator saying? That is a breach of the law. That is a flagrant breach of the law. I think it is silly, but I do not know what they are trying to suggest. Then the Senator said—I think, it needs to be noted, and not only all of us here in this

Senate but the population as a whole needs to take every note of it—that the Opposition was not going to support the Government, even in a matter like this, which is a non-partisan issue. So we know what we must do. If they feel that it is their responsibility, on every single occasion that we come here, to try to oppose what we do; and if they feel that is responsible governance then, Madam President, we will meet them on the field of the electorate any day, any time and anywhere.

I thank you very much. [*Desk thumping*]

Sen. Robin Montano: Madam President, I have said it many times, and I would say it again, if ever you want to understand a problem, go back to basics, and no amount of obfuscation could take us away from that. I listened with great interest, this afternoon to the Attorney General and I did not hear explanations for certain things. I did not hear why this Bill is supposedly inconsistent with sections 4 and 5 of the Constitution. I have looked at it, indeed, I had some other lawyers look at it, as well, to try to explain it to me, and for the life of me—maybe, I am missing something—I do not see where this Bill is inconsistent with sections 4 and 5 of the Constitution.

Just for the record, section 4 of the Constitution deals with enshrined rights and section 5 deals with the protection of those rights. Where in this Bill? If there is an inconsistency, then please explain, I would be the first one to admit, well, I missed that, but I do not see it. When I see something coming in that I do not understand, I go back to a simple rule of my grandfather, who has been dead now—poor fellow—for some 40 years. My grandfather always taught me "when in doubt don't". I am in doubt so I "won't".

Again, I listened to all the explanations of the Attorney General about the amendments, and the amendments incidentally, are a brand new Bill, because the amendments are deleting everything, except clause 1 of the Bill, and it is adding a new clause in section 2 which is, "this Act should have effect even though inconsistent with sections 4 and 5." Then in what I could call the old Bill, clauses 2, 3 and 4 are renumbered and, effectively, the real meat of the old Bill is in clause 3, which is deleted, and a new Bill comes up. So we have, effectively here, a brand new Bill, in the form of an amendment or amendments, which was tabled today.

I agree with all the things that Sen. Seetahal said. Then I heard the Attorney General say again "Well, in the committee stage, you will get more amendments"; which, would be a brand new Bill, and we would not have the opportunity to debate. I am asking, what in the name of heaven is going on? I have been in the

Senate before. I have some experience and, I must say, I have never seen this happen before, where a brand new Bill was basically brought as amendments, and then we are told that there will be further amendments, to the brand new amendments in committee. It does not make sense.

Then I looked at the Companies Act section 346(1) which deals with the penalties and so forth. Well, maybe, I should read the whole section so that the record would, at least, make sense. Section 346(1) says:

> "When a former-Act company fails to apply to the Registrar for a certificate of continuance within the time limited therefor under section 340, then, after the expiration of that period—"

Then it goes on to say what the former-Act company may not do; it may not sue or counter sue without leave or be a defendant; it cannot pay a dividend; and every director is penalized.

Then section 346(2) says:

> "(2) Notwithstanding subsection (1), when a company described in that subsection is issued a certificate of continuance, the company may then, upon such terms as to costs as the Court may order, maintain an action, suit or other proceeding as though the company had never been disabled under that subsection."

So there is something there.

Now, I heard my brother speak this afternoon but, quite frankly—I do not know if it is known that my brother has his LLB; he never qualified as a lawyer—he made a better contribution than the Attorney General, and he is right about the things that he said. I, too, have a commercial practice, and in the period that went on—that is after 1995—I, too, found myself scrambling on behalf of many small companies that had never done the things that my brother spoke about. I know that, as an accountant, my brother also was scrambling.

Madam President: Senator, could you please refer to the Senator as "the Senator"?

Sen. R. Montano: Of course. I am so sorry. No disrespect was intended at all. It was love that was making me refer to him like that and if love is out of order, then I apologize, I am guilty. In any case, my Senator brother—is that acceptable? He was an accountant in private practice and he had many companies, so when he spoke, it was from personal experience that he was talking; and, I know exactly because I had the same thing as did many other lawyers.

The Bill does not deal with the points that Sen. Seetahal made; it does not deal with the points that Sen. Seepersad-Bachan made; and it does not deal with the points that Sen. King made. It comes back to what is happening here, unfortunately, that we are not getting proper explanations; we are not getting a proper overview; and we are not getting full and complete information. I agree with my Senator brother that there are things that should not be partisan, and should be bipartisan; and I agree that this sort of thing ought to be one of them.

Madam President, with respect, the problem is this. When one does not get a proper explanation it becomes very difficult to know what is being hidden. Is there something being hidden? Is there a hidden agenda? It is no good to say, no, there is not. Do you know how many times I have seen things both in this Parliament—not this particular Parliament but, I mean, in the Parliament of Trinidad and Tobago—whereby, one side or the other, has managed to pull a fast one on the Parliament of the day, and has managed to sneak something in, that the other side did not see at all, only when it comes out six months later. So we are saying, "Hold it sheriff, she is heading for the famous strawberry patch." What is going on?

As soon as we do not get full and complete information, the Government forces us back into the situation "when in doubt don't" and that is the important thing. With respect, the issue of civil disobedience, non-payment of taxes and so forth was raised. I have been receiving reports in the last two days that sugar workers are receiving notices of assessment from the Board of Inland Revenue, hitting them for $3,000 each. I have received reports of many sugar workers receiving this and, I wonder, is this a plan by the administration to use the Board of Inland Revenue to pressure these poor men, who cannot pay it, to accept the VSEP? This is a very serious matter and, of course, we are going to investigate it further.

Let us come back to the Bill and deal with the issue. "When in doubt don't." We are in doubt, and Sen. Mark has put it rather colourfully. I would put it in different language because I sat in the Senate for 4½ years on this side, and I know what it is like to be in Opposition. I helped bring the PNM back. They could deny it if they want, but I was one of the major factors then. I understood then, what an Opposition was about.

Madam President, for the record, let me state what is my party's position. We will support every single piece of legislation that comes to this Senate, and to this Parliament, that is for the betterment of Trinidad and Tobago; we will support it. If we think that it could be amended for the better, we will propose the

amendment, but if we think that it is not for the benefit of Trinidad and Tobago, then we will oppose it, and we will oppose it with every fibre of our being, and that is what Sen. Mark meant. We do not oppose for the sake of opposition; we oppose for the sake of Trinidad and Tobago.

Thank you very much. [*Desk thumping*]

Madam President: Well, if there is no other speaker, Madam Attorney General. [*Desk thumping*]

The Attorney General (Sen. The Hon. Glenda Morean): Madam President, first of all, with respect to the question of how many companies—I did indicate earlier that there were approximately 27,000 companies incorporated under the old Companies Ordinance. The number of companies continued since April 15, 1997—which is the date of the commencement of the Companies Act—to date is approximately 8,358.

The number of companies, which are subject to the Validation Bill, would be approximately 266, and these are the companies that have applied for certificates of continuance, between August 15, 2000 and May 31, 2001, and this is the number with which we are concerned. The number of companies continued after May 31, 2001 to date, is 200. The number of companies being continued, at present, is just about four or five per month. That is the average, but we are not too concerned with that figure. What we are concerned with is between the window, August 15, 2000 to May 2, 2001.

Now, the point was made by Sen. Seepersad-Bachan that no amendments of the Act were contemplated, and that is not correct. There is an ongoing exercise, with respect to this 1995 Act, to update and amend the Act. A committee has been working on that and is still working. The committee has had discussions with the Law Association of Trinidad and Tobago and other stakeholders. It is intended to bring amendments before the legislature, sometime later this year.

In fact, a draft amendment Bill was prepared in 2000, under the last administration, arising out of comments and suggestions from some of the stakeholders. This draft has been taken apart and is being redrafted, and is being informed by a lot of the contributions made by some of the same stakeholders. So it is not correct to say that there is no continuing exercise with respect to updating the companies legislation. As was seen by the previous administration, and as we have agreed, there is the need for this validation and this is all that we are seeking to do. This Bill is just about revalidating; it is not about amending the Act, as such.

Something was said about section 346(1)(c) of the Act. Under that section, there is a liability; a penalty imposed for every day the company carries on business after the time limit. It is difficult for us to ascertain whether or not a company has been carrying on business. A company may have been dormant for many years but may now be applying for continuance in order to continue its business. In any event, the amendment is not seeking to deal with that; it is seeking to correct the error that was made by the administration.

I will give Senators a chart of the history of the certificate of continuance and how it was published. There was an Order in 1999. That was the first Order that was prepared by the Chief Parliamentary Counsel (CPC); sent to the Government Printery to be published on April 12, 1999; and the latest date by which that Order should have been published, was on April 14, 1999. It was published on April 12, 1999, so that Order was published on time.

There was a subsequent Order that was published on October 13, 1999 and that was published on time. There was another Order on June 12, published on June 13, 2000 on time. There was a fourth Order that was published on July 14, because of successive extensions being given, and that was published on time. However, there was an Order on August 15, and that was published on August 29, 2000. That Order was published late, and there was where the problems started, and this is why we have used the date August 15, 2000. There were subsequent Orders that were published, going right down to December 12, 2000, and that Order was also published late. So all these Orders were not published on time.

Madam President, to compound the problem, there were further Orders being published, some were on time; some were late. The last Order was published on April 17, 2001, that is, Legal Notice No. 57 of 2001. That one was published on time. So there were Orders being published—some slip-up with the administration at times. The CPC may have sent it for publication within the time, but it was not published in the *Gazette* on time. So that it is to correct this difficulty that this validation is sought.

Now, with respect to the question of the special majority, it is not always that we could anticipate the different situations, which would crop up, that would give rise to constitutional challenges. However, I have given an example, in a case, where a former-Act company had declared a dividend and could not, without leave of the court, distribute it to its shareholders. The shareholders may have been able to bring legal action against the former-Act company. Once this Bill is passed, the shareholders would lose that right, and that is a right that would be lost. It is this possibility, that rights may be affected, that makes the Bill require a

special majority. We are not saying that is going to happen, but that possibility is there, and this is why I said, out of an abundance of caution, we ask that the Bill be passed by a special majority.

Sen. R. Montano: I did not understand that. Will you repeat that?

Sen. G. Morean: I will go it over again. If a former-Act company had declared a dividend, and could not, without the leave of court—because of the fact that it had not been continued—distribute it to its shareholders; those shareholders may have been able to bring legal proceedings against the company. Once the Bill is passed, the shareholders would lose that right. It is this possibility, that rights may be affected, that makes the Bill require a special majority.

The question was raised as to the effect of section 346(2). Section 346(2) addresses only cases in which companies—that is, former-Act companies—have applied for certificates of continuance. It does not address cases in which former-Act companies might have continued to operate and may not have applied for certificates of continuance. So that proviso that is given—that second provision there in subsection (2)—does not address the problem.

Well, I have already indicated, that with respect to Sen. Seetahal's and Sen. King's contributions, with respect to the circulated amendment, I, too, agree, that the first part is really too wide, in that it is doing more than we are seeking to do. I have indicated that a new draft be done to correct that position. As I said before, this is really a simple, but necessary amendment.

Madam President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Sen. Morean: Madam Chairman, I think we should have the amendments properly typed, rather than my having to go through them from here. So that I have asked that we take the tea break now and come back and deal with them.

Senate resumed.

Madam President: Hon. Senators, this Senate will now be suspended for the tea break and we will come back at 4.40 p.m.

4.10 p.m.: *Sitting suspended.*

4.40 p.m.: *Sitting resumed.*

Committee resumed.

Sen. Morean: I was looking at the legal opinion given, with respect to whether this Bill needs a special majority and, I think, I will impose my opinion on it. I do not think that it really needs a special majority. I have read it through; I have consulted with my officers; and I do not think it needs a special majority.

I agree with Sen. R. Montano because the example that has been provided, really is an example in supposition, and it is not very clear that such a situation would arise. It could arise and if it does arise in the future, well, there are always avenues for challenge, but rather than do something that may be a bit tenuous, I would prefer to use my judgment. If my judgment is bad, well history will say whether or not it was.

Sen. Mark: Madam Chairman, I do not understand that kind of approach to parliamentary business. We are debating a very important Bill, and the Attorney General—out of the blues, like she just came from Mars—tells us here now—

Sen. Morean: No.

Madam Chairman: More moderate language, please.

Sen. Mark: Okay.

Madam Chairman: The Attorney General did explain that after listening to Sen. R. Montano, she has now come back to agree with the Senator. I do not think that is a problem.

Sen. Morean: Are you disagreeing with your colleague? Your colleague has said that and I agree with him.

Sen. Mark: Madman Chairman, I would prefer that we get a proper opinion on this matter, because I do not think, we should just sit here and be told by the Attorney General that because my colleague said something; she holds on to it and then she discusses it.

Clause 1.

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

Sen. Morean: Madam Chairman, I beg to move that clause 1 be amended by substituting “2003”for “2002”.

Madam Chairman: Hon. Senators, the question is that clause 1 be amended to read: "This Act may be cited as the Companies (former-Act Companies) (Validation) Act 2003".

Sen. R. Montano: Madam Chairman, having regard to what the Attorney General has said, in the proposed amendments, "insert after clause 1 a new clause 2" is that deleted?

Sen. Morean: That part of the amendment has been withdrawn.

Sen. Seetahal: Are we dealing with the amended or the original? That is what I think Sen. R. Montano was asking.

Sen. R. Montano: That is what I am trying to find out.

Sen. Seetahal: I thought we were dealing with the original. Attorney General, if we are dealing with the original, as we should, then the amendments would come. It would seem to me that we should have dealt with the Preamble.

Sen. Morean: Well, the Preamble is not part of the Bill. We will come back to that at the end of the Bill. That is the procedure and we always do that.

Question put and agreed to.

Clause 1, as amended, ordered to stand part of the Bill.

4.55p.m.

Clause 2.

Question proposed, That clause 2 stand part of the Bill.

Sen. Morean: I withdraw the amendment that we had made so we are on to clause 2 as in the Bill. There is no renumbering.

Amendment withdrawn.

Madam Chairman: This is the original Bill.

Sen. Prof. Ramchand: Madam Chairman, where it says, "4" as renumbered it should read "3"?

Madam Chairman: We have not reached there as yet.

Question put and agreed to.

Clause 2 ordered to stand part of the Bill.

Clause 3.

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

Madam Chairman: Sen. King circulated an amendment to clause 3. Sen. King, would you like to comment?

Sen. King: Madam Chairman, I feel that the companies which have not complied ought to be made to comply with the Act. Therefore, even though companies which have failed to apply for certificate before June 2001, those which have applied between the two dates specified in the amendment here, shall be valid and lawful to the extent and so on. I agree with that only if we include the sub-clause 3(3). What I am suggesting is that those two clauses above would not apply after a date. So that we have a closing date whereby companies must register, so that we do have legal participation in business in Trinidad and Tobago. Otherwise, they are working outside the law. So that would be a sort of deadline to apply.

Sen. Morean: What I would ask is whether the amendment now, as circulated, which says:

> "(4) Subsections (1) and (2) shall not apply to a former-Act company which, by the 31st day of May, 2001, had not applied for a certificate of continuance."

Now, the rationale for that is this: The time originally stated in the substantive Act, was August 2000; then that time was extended by periods.

Sen. Seetahal: I think the valid Orders would have been up to August 2000.

Madam Chairman: Yes, 2000.

Sen. King: Well, I do not think so, because I have a valid Order here dated November 15, and extending the time up to December 29, 2000.

Madam Chairman: No, was it not 2001. That was published late. That was not valid. That is the problem. This is why I went through that table where you had all up-to-date Orders published in time: July 14, 2000; and you had published late from August 29, 2000; November 2000; and December 2000. Although those Orders were published, they were late, so that there would be a gap.

Sen. D. Montano: Madam Chairman, just to help the Senator. That final clause (C) is closing it off on May 31. So that anybody who was not continued by May 31, is not exonerated by any legislation, he is exposed. So it is only those companies that had not been continued, but did manage to do it up to May 31, would be captured by this Bill. This Bill does not capture anybody who has not continued after May 31.

Sen. Seetahal: Madam Chairman, I understood that persons who had up to June 01, 2001 and sought continuance were to be covered. I am not sure that there was any confusion with that. The confusion was—and I think the Attorney General clearly understood it—that the sections A of the proposed 1(a) and 2(a) seemed to give indefinite extensions. That is why the Attorney General has now proceeded to submit, under (C), a sub-clause (3). It is not that we did not understand, Sen. D. Montano, I think we did. But the problem I have with that sub-clause (4) is that it makes nonsense really of the (a)s. If we read A, which says:

"(1) Subject to subsection (4), any act done or omitted to be done by a former-Act company which—

(a) failed to apply for a certificate of continuance before the 1st day of June, 2001…"

Madam Chairman, you see that. And now we go on and read clause 4(C) with that. It says:

"(4) Subsections (1) and (2) shall not apply…"

Madam Chairman: We are not on clause 4 as yet; we are talking about clause 3.

Sen. Seetahal: It is clause 3. I am talking about sub-clause (4). It says:

"(4) Subsections (1) and (2) shall not apply to a former-Act company which, by the 31st day of May, 2001, had not applied for a certificate of continuance."

If we read (a) with that—why do we have (a) at all if we have that sub-clause (4) which says that if you have failed to apply before, then you are not covered? There is no point in having an (a), Madam Attorney General. Sub-clause (a) says that if you have failed to apply for a certificate of continuance then you are covered. Then you come back with sub-clause (4) and say that if you did not apply before May 31, then you are not covered. So you are giving something here and you are taking it away. The two things just do not make sense. If 1 may suggest, why do we not just delete (a) of (1)?

Madam Chairman: That is what I thought they had done. Because that is what I had instructed—that you take out (a).

Sen. Seetahal: But you are putting it in and then you are saying, Madam Chairman, that it does not apply. I was saying that just physically delete (a) of (1),

and in (2), you delete the whole of (a), and then in the bottom section there, you delete—

Sen. Morean: You do not need that covering clause.

Sen. Seetahal: You would need a piece of it, but not the part from—

Sen. Morean: —"subsections (1) and (2) shall not apply to a former-Act company"

Sen. Seetahal: That is clause 4. You would not need that.

Sen. Morean: Let us deal with it first.

Sen. Seetahal: It is the same section, Madam Chairman.

Sen. Morean: She is right, because I took that out.

Sen. Seetahal: Madam Chairman, what I am saying is, if we were to deal with subsection (1) now and approve it, when we come down to the bottom, the two things would be inconsistent. It is in that context that I suggest, to be of some assistance to the drafters, we delete the whole of (a), in subsections (1) and (2). Then you see that catch-all general section there which says, "shall not be called into question merely because the former-Act company failed to apply," we delete from the words "failed" in the second line, to the word "or" in the fourth line.

Madam Chairman: I think they have a reason for putting that in. Let us just hear what it is.

Sen. Seetahal: All right. Perhaps, I can read what I am suggesting. This is the substituted section. Substitute the following sub-clause:

> "(1) Subject to subsection (4), any act done or omitted to be done by a former-Act company which applied for a certificate of continuance between the 14th day of August 2000 and the 1st day of June 2001, shall be valid and lawful to the extent that it would have been had the former-Act company applied for a certificate of continuance before the 15th day of August, 2000."

So that is how (1) would read.

Sen. R. Montano: Just for clarification. If you do that, what we are dealing with is that any act that has been done by a former-Act company which applied for a certificate of continuance between the August 14, 2000 and June 2001. In other words, we are not concerned then with anybody who might have applied before August 14, 2000.

Sen. Seetahal: They are already validated. I think that is what was made clear. And we are not concerned with those after June 14, 2001. That was made clear. So that is fine.

Sen. R. Montano: You are right.

Sen. Morean: Let me see if I can venture an explanation why the (a) was put in. We are dealing with those companies that applied for a certificate of continuance between August 14, 2000 and June, 2001; because June 1, 2001 was the cut-off date. Since you have been extending that time for applying for the certificate of continuance, a company may not have applied for a certificate of continuance between the earlier period, because of the fact that they have been committing no infringement of the law. Because if you say that you have extended the time, they would have been covered.

Sen. Seetahal: What earlier period, Madam Attorney General?

Sen. Morean: From the August 14, 2000, assuming they did not apply. Now they may have sat back and not done anything and not apply.

Sen. R. Montano: In other words, somebody may not have applied on August 10, 2000.

Sen. Seetahal: If they failed to apply why should they be granted?

Sen. Morean: If you extended the period should that not be extended to them, even though they did not apply?

Sen. Seetahal: I think the purpose of the law was to cover people who applied, and because of some omission they were not getting the benefit of having applied. I understood this to be the purpose of the law. Not persons who sat back there and just said that they would wait, in the hope of getting an extension by right. I understood this is what we are talking about here. Yet persons who had applied for the extension—

Sen. Morean: But the Orders were not saying, look here, you should have applied within that period. In blank, you are saying, I am extending the time for applying. So their time would necessarily have been extended too.

Sen. R. Montano: Attorney General, let me see if I understand you correctly. I applied for a certificate of continuance on August 10, 2000; then surely, I am covered by the previous Order. I am not covered by this Act. So where is my problem?

Sen. Morean: The problem here is that the Order is extending the time for applying. So that even though you did not comply within the period before it was extended, your time is now extended.

Sen. R. Montano: Okay, I agree. If I applied on August 30, 2000, I am now caught by this. If I applied on August 13, 2000 I am saved by the Order. I am sorry. I am not following your thought process.

Sen. Seetahal: I do not see why we should cover people who failed to apply. That is the point.

Sen. R. Montano: In other words, are you concerned about those people who have not applied at all?

Sen. Seetahal: Why should we be?

Sen. R. Montano: Because if you are concerned about those people who have not applied at all, this does not save them.

Sen. Morean: Okay, we agree to omit the two (a)s. Therefore, we now have to amend subsection (4), which says:

> "4 (1) Any act done or omitted to be done by a former-Act company which applied for a certificate of continuance between the 14th day of August, 2000 and the 1st day of June, 2001, shall be valid and lawful to the extent that it would have been had the former-Act company applied for a certificate of continuance before the 15th day of August, 2000."

That is (1). Sub-clause (2) now reads:

> "(2) For the avoidance of doubt and subject to subsection (3), any act or thing done or omitted to be done by a former-Act company which applied for a certificate of continuance between the 14th day of August, 2000 and the 1st day of June 2001, shall not be called into question merely because the former-Act company applied for the certificate of continuance between the 14th day of August, 2000 and the 1st day of June 2001 and section 346 of the Act shall not be invoked against the former-Act company."

Madam Chairman: Does subsection (3) remain the same?

Sen. Morean: Yes.

Madam Chairman: Are we clear on this now?

Hon. Senators: Yes.

Madam Chairman: That is the new clause 3, as was read by the Attorney General. Any other comments? There were no more changes in that last section. No other comments.

Sen. King: Madam Chairman, may I ask: What are we doing about those companies which have still not complied? That is why I was trying to bring in sub-clause (3), so that we do give them an extension and make them legal. Could we get an answer to that?

Sen. R. Montano: With respect, Madam Chairman, before the Attorney General answers, could we just deal with this and then deal with that? [*Interruption*] No, that is a new clause 3 we are talking about.

Sen. Morean: I had said earlier that as time goes on, fewer and fewer companies have been applying for continuance. Are you dealing with companies that still have not complied? Well, they would have to seek their continuation by some other means. Because from what we have seen, those companies that are already interested in continuing have made applications, and as time went there were fewer and fewer applications. It is not that those companies cannot operate in certain ways. It is just that certain things are not applicable to those companies.

Madam Chairman: Madam Attorney General, with respect to the amendment circulated by Sen. King, that was a sub-clause to clause 3.

Sen. R. Montano: Madam Chairman, Sen. King's amendment now comes on to what would be clause 4.

Madam Chairman: You mean a separate clause now.

Sen. R. Montano: What was read out—as I understood it—is a new clause 3.

Madam Chairman: Yes.

Sen. R. Montano: Sen. King's amendment will now fall under what will become clause 4. So that we are being—if I can use the vernacular—a "little previous."

Sen. Morean: No, you are saying that hers would be subsection (4) of 3. And you are also saying that subsections (1) and (2) of 3—in other words, subsections (1) and (2) do not apply after July 01, 2003. And that is to take care of the question you just asked.

Sen. Seetahal: Therefore, we do not need to put in the proposed amendment of the Attorney General, because it is quite clear.

Sen. Morean: Yes, because we have taken out (a) and (b).

Sen. R. Montano: Sen. King is, basically, extending the deadline to July 01, 2003. In other words, she is giving people who have not had the opportunity, an extension up to July of this year.

Madam Chairman: Madam Attorney General, the Clerk is advising that we deal with the amended clause 3—according to this—and then we would come back to decide if we are putting this to the amended clause 3. Do you understand that?

Sen. R. Montano: Madam Chairman, for the sake of absolute clarity, could we just have the Attorney General read the proposed clause 3 and then put it to a vote?

Sen. Morean: It states:

> " (1) Any act done or omitted to be done by a former-Act company,which applied for a certificate of continuance between the 14th day of August 2000, and the 1st day of June 2001 shall be valid and lawful to the extent that it would have been had the former-Act company applied for a certificate of continuance before the 15th day of August 2000.
>
> (2) For the avoidance of doubt and subject to subsection (3), any act or thing done or omitted to be done by a former-Act company which applied for a certificate of continuance between the 14th day of August 2000 and the 1st day of June 2001, shall not be called into question merely because the former-Act company applied for the certificate of continuance between the 14th day of August 2000 and the first day of June 2001 and section 346 of the Act shall not be invoked against the former-Act company.
>
> (3) Subsection (2) shall not apply to proceedings which have already been concluded."

That is subsection (3) of course. Subsection (3) is saying, "that subsection (2) shall not apply to proceedings which have already been concluded."

Are we all clear on that now?

Assent indicated.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Madam Chairman: We would move on to clause 4 and then we will come back. to the new clause.

Clause 4.

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

Madam Chairman: Clause 4 reads as follows:

"This Act binds the State"

Any comment on that?

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

New clause 3(3).

Madam Chairman: The question is that a new clause 3(3) be added to the Bill as follows:

First Column	Second Column
Clause	Extent of Amendment
Add a new sub-clause to clause 3(3)	Sections 3(1) and 3(2) do not apply after July 01, 2003.

New clause 3(3) read the first time.

Question proposed, That the new clause be read a second time.

Sen. Morean: The reason we went through all these modifications of the amendments was to prevent this very thing, because of what people found, as the Government encouraging persons to be lawless, so this would be the same thing that has been complained about. You would want to give a blanket provision—because this is what this seems to be saying—that all those persons who, for whatever reason, failed to file their applications for continuance can now do so up to the date given.

Sen. Seetahal: What date is it?

Sen. Morean: July 01, 2003.

Sen. Dr. Saith: Madam Chairman, I think we were all operating on the basis that 2001 was the cut-off date. I think what happened is the way the Bill was worded, it appeared that we were leaving a loophole for persons to escape that 2001. We have now closed the loophole. It would be ironic, having closed the loophole, to then say, having closed it we are opening it back, and we are giving you another six months. If there is some feeling that at some time, one needs to extend it, then, I think, we should come back with the legislation that extends it. It should not be tacked on to a Bill just to validate a particular period. That is my suggestion.

Sen. Morean: Sen. King, through you, Madam Chairman, this would not be a validating Bill, it would be an amending Bill.

Sen. King: Well, I think we have amended amendments for the last—

Sen. Morean: No, the amendments were to validate, not to amend the substantive provisions as such, but to validate what had been done through administrative error. That is what this whole exercise was about.

Sen. Seetahal: Madam Chairman, it would also be looking into the future too, which would be in breach of section 341 of the Companies Act.

Sen. King: If 1 could be pacified by knowing what the penalties are for these companies which have not complied, and they have employees, what happens to them? I have a concern that we are not covering them.

Sen. Morean: As I indicated before, the companies can operate, but there are certain problems that would arise. And section 346 states:

"When a former-Act company fails to apply…

(a) …may not, without leave, sue in any court but may be made a defendant to a suit;

(b) no dividend may be paid to any shareholder of the former-Act company; and

(c) every director…of the former-Act company is liable to a penalty of one hundred dollars a day for each day during which the former-Act company carries on…thereafter."

Sen. King: Do we have an account of how many people have paid $100 a day for not complying?

Sen. Morean: I do not think anybody—

Sen. King: I mean, these are the concerns and we must face them.

Sen. R. Montano: And the fine only comes in when you are doing business. The fine does not come in when you are not operating.

Sen. Morean: You recall that I had said that the problem here is one of the system, in that the Registrar of Companies really has no way of checking to see which companies are doing business that have not filed certificates of continuance. May I suggest, Sen. King, through you, Madam Chairman, that we can come with an amendment. But to tack it on to the validation, I do not think it would be appropriate now.

Sen. King: Madam Chairman, does that imply another day? Or, can that be done today?

Hon. Senators: [*Laughter*]

Sen. Prof. Ramchand: Madam Chairman, I have a comment on the willingness to forego the revenue and say, okay, the deadline is July 2003; because persons took your land and they are squatting on it; they were given amnesty; persons blew up the Red House, they were given amnesty. Why can we not have an amnesty, and say, well, it is up to July so and so, and you clear up everything?

Sen. Seetahal: The point is, through you, Madam Chairman, to Sen. Prof. Ramchand, we are dealing with the situation, and it is not a question of amnesty. Persons have had six years to ask and apply for articles of continuance. It is not an amnesty in that sense that you are speaking about. If you do not renew your driving permit after a certain time there is a penalty. What we have been doing is foregoing these penalties. It is not a question of the employees suffering. The companies are still functioning and doing whatever it is. It is that the companies have penalties and they themselves would suffer. And I am suggesting that we do not extend this foregoing of the penalty in perpetuity. That is one point.

The second point is that this Bill as the Attorney General has been maintaining and making the point, is a validation Bill; validation for past things that may, without it, be illegal. If we are talking about something, where we are saying, okay, in the future, if you do not do this, we are extending the time. So that it has to come under a separate Act.

Sen. Morean: The officer is just advising that that is the position. The problem here, as I indicated earlier, is that this is a validation Bill; and the validation cannot go into amending the substantive Bill. The validation is just correcting what we did wrong. So I would undertake, Sen. King, to take note and to determine whether we could come with an amendment to allow the time to be extended for those persons. In fact, this is why I had given the statistics earlier, to show that through the years the numbers have dwindled. There were 200; then the last set was 500, and that sort of thing.

Sen. Seepersad-Bachan: Madam Chairman, this is just to address Sen. King's point. Section 518, which repeals the Companies Ordinance, clearly states that 435 and 300 apply to these same companies; whether they are former-Act companies. And (b) says that all wages and salaries, et cetera would be paid. So I am just asking the question for clarification from the Attorney General, that this particular section here, 435(1)(b) will not address that situation.

Madam Chairman: This winding-up proceeding is something different you would be dealing with.

Sen. Seepersad-Bachan: If the company continues under the old Companies Ordinance, are we, therefore, saying that they are not obligated to pay their employees?

Sen. Morean: No, we are not saying that.

Sen. Seepersad-Bachan: That is right. So they are obligated to pay. And in the case of winding-up there will be a provision for the compensation of employees.

Sen. Dr. Saith: Madam Chairman, can I make a plea again. We have a validation bill which seeks to put a cut-off date of June 1, 2001, which was what the people at the time intended. We, for whatever reasons, introduced some clauses which opened an area to take it beyond June 2001. We have now closed it, let us focus on getting this done. The rest of the issues that are being raised are policy issues, which have to form part of any overall amendment to the Companies Act. Because even if we agree that it is a good thing to do, this is not the mechanism to do it. It cannot be done in this Bill. So if we focus back on that, we may not go off, as we are going off now into a lot of other discussions which really, in the end, do not—

Sen. Morean: Okay, in those circumstances, Sen. King, would you withdraw the amendment?

Sen. King: I do not think that there might actually be a time when this Act may be brought back.

Hon. Senators: [*Laughter*]

Sen. King: I mean, we are really living here in this world and we want to see things happen.

Sen. Morean: As my colleague, Sen. The Hon. Dr. Lenny Saith has just said, that this would involve policy. And that is not a decision that I can sit here and make without having the approval of Cabinet.

Sen. King. Madam Attorney General, given your suggestion that you may be bringing back the Companies Act and that there would be opportunities for amending. I will withdraw the amendment.

Amendment [Sen. M. King] withdrawn.

Sen. Morean: Very well. Thank you.

Preamble.

Question proposed, That the Preamble stand part of the Bill.

Sen. Morean: I am seeking to amend it to remove the provisions that deal with the special majority.

Question put and agreed to.

Preamble deleted.

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. Dr. Lenny Saith): Madam President, having finished that Bill and given the time, I would like to move the Adjournment of the Senate, and we would continue the debate on these other Bills at the next sitting.

I beg to move that the Senate do now adjourn to Tuesday, February 18, 2003 at 1.30 p.m.

Greetings to the Muslim Community

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Before I take my seat, Madam President, I think Senators are aware that Muslims from all other countries are, at present, performing the rights associated with the pilgrimage of haj to Mecca. And tomorrow, 1 am told that Eid Al-Adha represents the culmination of the haj, and we would like to extend greetings to the Muslim community on this occasion, and to wish those Muslims from Trinidad and Tobago, who have gone to the haj, a successful haj and a safe return.

Thank you.

Sen. Sadiq Baksh: Madam President, we, too, on this side of the Senate, join with members of the Muslim community throughout the world and in Trinidad and Tobago, in the celebration of Eid Al-Adha tomorrow, and the culmination of haj.

Sen. Brother Noble Khan: Madam President, let me, too, on behalf of the Independent Bench, extend to this august House and the nation at large, Eid Mubarak, Eid Greetings, on the commemoration and celebration of Eid Al-Adha, commonly known in Trinidad and Tobago as Bakra Eid. Let us hope that the spirit of sacrifice which it symbolizes, and which it represents over the period of time, be extended to us in our way of sharing, giving and loving. And may God Almighty continue to shower us with his blessings.

Thank you.

Madam Chairman: Before I put the question, let me join with hon. Senators, in extending my own greetings of Eid Mubarak to the Muslim community.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.42 p.m.