

*Leave of Absence*

*Tuesday, May 23, 2006*

**SENATE**

*Tuesday, May 23, 2006*

The Senate met at 1.30 p.m.

**PRAYERS**

[MADAM PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

**Madam President:** Hon. Senators, I have granted leave of absence from today's sitting of the Senate to Sen. Ato Boldon, who is out of the country.

**PAPERS LAID**

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the abridged financial statements of the Deposit Insurance Corporation for the year ended September 30, 2005. [*The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill)*]
2. Annual audited financial statements of Export Centres Company Limited for the year ended September 30, 2004. [*Sen. The Hon. C. Enill*]
3. The Civil Proceedings (Amdt.) Rules, 2006. [*The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams)*]

**Civil Proceedings (Amdt.) Rules**

**The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams):** Madam President, may I also advise that the Statutory Instruments Committee considered the Civil Proceedings (Amdt.) Rules, 2006 and found that there is nothing to which the attention of the Senate should be specifically drawn. The minutes of the committee were circulated to members.

**QUESTIONS TO MINISTERS**

**Sen. Wade Mark:** Madam President.

**Madam President:** What are you under?

**Sen. W. Mark:** I am under "Questions to Ministers." I know that you have been appealing—[*Interruption*]

**Madam President:** You did not give me a chance to get up and say anything.

**Sen. W. Mark:** Sorry, my dear. Sorry, Madam President.

**AMENDED REPLY TO ORAL QUESTION****Special Purpose State Companies  
(Scrutiny of Contracts)**

**Madam President:** Before we move on from questions, I think Sen. The Hon. Christine Sahadeo would like to make an amendment to an answer which she gave sometime ago, please.

**The Minister in the Ministry of Finance (Sen. The Hon. Christine Sahadeo):** Madam President, on January 31, 2006, I responded to Senate question No. 26, posed by Sen. Wade Mark to the Hon. Prime Minister and Minister of Finance. Part (i) of the question read:

“Could the Minister of Finance tell this Senate whether these special purpose state companies will be generally subject in their contracts to private law or public law?”

The response was as follows:

“The special purpose state enterprises are wholly owned state enterprises and will therefore be subject in their operations to public law.”

This response was correct in part, but also wrong in part and I now wish to amend the response to read:

While it is true that the special purpose state enterprises are indeed wholly owned by the State, it does not follow that the operations of these companies shall be governed by public law and as such, be amenable to public law remedies.

Governing law and the principles to be applied to these companies is a matter for the courts, which will, it is hoped, determine the question on a case by case basis, consistent with the relevant principles of law.

Thank you, Madam President.

**Sen. Mark:** Is the Minister indicating to the Parliament that those special purpose state vehicles and enterprises would not be subject to the various joint select committees; in other words, as well as the PA(E)C? Are you saying that they would be subject to those? The reports would be tabled and they can be brought before these committees?

**Sen. Sahadeo:** That is correct.

**Sen. Mark:** Thank you, very much.

**Madam President:** Thank you, very much.

**Sen. Dr. Gopeesingh:** Who would be doing the auditing of these special purpose state enterprises? Since they are public companies and state enterprises they are automatically governed by the Auditor General. Who would be doing the auditing for them?

**Madam President:** The Auditor General.

**Sen. Sahadeo:** They are another state enterprise. The reason we have referred to these as special purpose is because the policy is for them to deliver on certain infrastructure development works. They are really another state enterprise and, therefore, subject to the Auditor General.

**Madam President:** Shall we go on, please?

#### WRITTEN ANSWERS TO QUESTIONS

**Madam President:** Hon. Senators, we have received responses to questions Nos. 55 and 56 which have been circulated. Have you got yours, Senator?

**Sen. W. Mark:** No, Ma'am.

**Madam President:** Well you will be getting. If there are any more responses to written questions they should be given up to the Clerk for circulation. Sen. Mark, I hope that we will be getting the others soon.

*The following questions were asked by Sen. Wade Mark:*

#### **Applications for Residential and Citizenship Status (Details of)**

- 55.** Could the Minister of National Security provide the Senate with the details on the number of applications submitted by foreigners for residential and citizenship status and approval granted over the period January 01, 2002 to March 31, 2006?

#### **Residential and Citizenship Status (Details of Applicants)**

- 56.** Could the Minister of National Security provide the Senate with a detailed breakdown of the various nationalities of the persons who qualified for residential and citizenship status over the period January 01, 2002 to March 31, 2006?

*Vide end of sitting for written replies.*

**JOINT SELECT COMMITTEE  
(Replacement of Member)**

**The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith):** Madam President, I am surprised that this is here because I had indicated to the Clerk that I was seeking advice from the Attorney General as to whether this is properly before us or if it should be before the House of Representatives.

**Madam President:** It is a Joint Select Committee we are talking about.

**Sen. The Hon. Dr. L. Saith:** A Joint Select Committee, sorry, because there was another Motion. This is to replace Mr. Augustus.

Madam President, I beg to move the following Motion:

*Be it resolved* That the Senate appoint Sen. Wade Mark to replace former Sen. Roy Augustus on the Joint Select Committee appointed to report on Municipal Corporations and Service Commissions, with the exception of the Judicial and Legal Service Commission.

*Question put and agreed to.*

**FINANCIAL INSTITUTIONS (AMDT.) BILL**

[Third Day]

*Order read for resuming adjourned debate on question* [May 09, 2006]:

That the Bill be now read a second time.

*Question again proposed.*

**Madam President:** Hon. Senators, on Tuesday, May 09, 2006, we were in the process of debating the Financial Institutions (Amdt.) Bill. We had three speakers: the presenter, Sen. The Hon. Conrad Enill; Sen. Carolyn Seepersad-Bachan and Sen. Mary King.

**Sen. Wade Mark:** Thank you very much, Madam President. It was Lord Acton who said: "Power corrupts and absolute power corrupts absolutely." The provisions contained in the Financial Institutions (Amdt.) Bill, 2006 will result from an over-concentration of power in the hands of a political appointee, located at the Central Bank. We are convinced and have already said, that the Central Bank is not as independent as it ought to be. What is even more serious with this piece of legislation is that a full-fledged politician in the personality of the Prime Minister and Minister of Finance, whose dictatorial tendency and propensity to abuse power and process has become manifestly clear in this country, particularly over the last four years.

I want to say from the very outset that this piece of legislation is very offensive. It smacks of a kind of dictatorship, in terms of the kind of ruling over the financial services sector in a period where this Government speaks to the issue of liberalization of the national economy, a market-based economy and the issue of a free enterprise system. I am no friend of the free enterprise market system. I am a revolutionary democrat. I believe in putting power into the hands of the poor, the dispossessed and the oppressed in our country, not into the hands of an elite group, as we see the PNM has been doing over the last few years. I will demonstrate that this piece of legislation is going to put too much power into the hands of the politician; in this instance, the Minister of Finance.

Would you believe, in a so-called free enterprise system, the Minister of Finance is going to determine if and when a merger would take place, if there would be acquisition of property by another business and what percentage of that would be tolerated? Do we want to go back in times in an environment of globalization and technological changes that are sweeping the global marketplace? Is this a back-in-times party that the Government is engaged in? We see no justification for this piece of legislation that is before us and I will demonstrate as I proceed.

Madam President, this Bill represents the Government's attempt to invest into the Central Bank duties and responsibilities that were, hitherto, the functions and duties of the Securities and Exchange Commission under our laws in this republic. Therefore, the question that must be posed is: What is the motive for this particular action on the part of this regime that seems to be on a control course? As I am on that, I want to give you the assurance—as one of the most amiable members of the former ruling party, as I am seeing them in the past—that we are watching with very serious concern what we are hearing through the grapevine about your status in this Parliament. The UNC would stand firmly on your side, in the event that the ruling party decides to take action against you at anytime for your truthful statements in the newspapers. We will say more about that on the hustings.

The Minister of Finance, by his own admission, in a statement before us last week, stated that the Bill seeks to strengthen the current supervision regime by empowering the Central Bank, for the first time, to approve all mergers and acquisitions of material interest, up to a percentage threshold of combined market share of 40 per cent. The Minister admitted that the Central Bank, hitherto, did not have that power.

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May I refer you to the Fair Trading Bill which was passed last week in this honourable Senate. You would see under clause 3(1)(h) it is stated:

“banks and non-bank financial institutions which fall within the purview of the Securities Industry Act, 1995;”

Here we have an admission by the Government that they are not going to bring the banks and the non-bank institutions under the purview of the Fair Trading Commission. Why? It rightfully belongs under the Securities and Exchange Commission.

Let us go to the Securities Industry Act, 1995. I would like to share with you what the Act says in section 6. I quote:

“For the purpose and discharge of its functions, the Commission has power, subject to this Act, to...

review, approve and regulate takeovers, amalgamations, mergers and all forms of business combinations in accordance with this Act or any other written law in all cases, in which it considers it expedient or appropriate to do so.”

We have something called the Securities and Exchange Commission. This law was passed in 1995 and the Commission came into being in 1997. Here the Government, through the Minister of Finance, without any proper explanation to this Parliament, is telling us that the power that the Securities and Exchange Commission now has, is to be removed from the Securities and Exchange Commission and put under the control of the Central Bank and the Minister. Why is that so? What explanations did the Minister offer you and this honourable Senate? We did not get any proper explanation from the Minister on this matter.

May I indicate to you further that I looked at the Securities and Exchange Commission annual report of 2005 and on page 4, under the message from the Chairman, Mr. Osbourne Nurse, it states:

“In other legislative matters, the takeover bylaws...”

These deal with mergers, takeovers and acquisitions and all the different forms of inter-corporate linkages.

“In other legislative matters, the takeover bye-laws became law in March 2005.”

They have a law dealing with takeovers and that, according to him, became law in March 2005. The Commission expects that the new regulations, in respect of the structure of regulatory fees, will come into effect in early 2006. The Minister in

the Ministry of Finance, Sen. The Hon. Enill, owes this Parliament an explanation. Why is he trying to duplicate the work of the Securities and Exchange Commission?

I have looked at various legislative frameworks dealing with who or which agency is responsible for supervising and governing takeovers, mergers and amalgamations. Whether you go to Singapore, Malaysia or in the Caribbean, it is the Securities and Exchange Commission. Why is it that the Government of Trinidad and Tobago, through the Minister of Finance, is seeking to undermine the role of the Securities and Exchange Commission? Is the Securities and Exchange Commission weak? If the Securities and Exchange Commission is weak, then the Minister of Finance must bring the appropriate amendment. I want to say something later about the Securities and Exchange Commission. I have been getting some disturbing news about improprieties and irregularities taking place at that commission, under the chairmanship of a “fella” called Osbourne Nurse. I would say more about that in a short while.

I want to refer you to the reform of the financial system of Trinidad and Tobago to tell you how this Government is utterly confused. Their policy is in total disarray. They do not know what they are doing. Maybe they have a silent and a hidden agenda, as they have with the Chief Justice. We would talk about that at the appropriate time: the political conspiracy by this administration to invade and undermine the independence of the Judiciary in this country. We will not allow you. We will run the PNM out of town before it undermines the independence of the Judiciary in this country.

**Madam President:** Come back.

**Sen. W. Mark:** I go to page 30 of this report. We see, again, some confusion. Under page 30 we speak to the issue of financial architecture of the mutual funds industry. It states:

“The introduction of the SEC in 1997 was meant to fill this regulatory gap. However, this institution has still not developed rules for the functioning of the market, nor has it put in place a system for monitoring mutual funds.”

The SEC is supposed to develop regulations to deal with mutual funds, which you and I invest in the Unit Trust Corporation, which I would talk about in a short while because the Minister of Finance has to give us an explanation on what I read in the newspapers recently about the Unit Trust Corporation. I have some funds inside there and what I read in the newspapers has me very disturbed. I want him to give us an explanation about the Unit Trust Corporation.

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“The Central Bank has issued guidelines not enforceable in law on mutual funds established by institutions licensed under the Financial Institutions Act. However, the proposed mutual funds legislation will fall under the ambit of the SEC.”

The Central Bank is issuing guidelines, not enforceable in law, on mutual funds, established by licensed institutions, but the proposed mutual funds legislation will fall under the SEC. It goes on:

“This could create difficulties in terms of regulatory jurisdiction as mutual funds could then become subjected to two regulators: the Securities Exchange Commission and the Central Bank of Trinidad and Tobago, with the former regulating the capital market business and the latter the banking business.”

There appears to be total confusion in this particular matter.

The Government is duplicating the role of the SEC and the Central Bank and we need to get some answers. We would like to know the expanded role of the Central Bank and the involvement of the Minister of Finance in determining the dispositions of mergers and acquisitions. This is cause for serious concern. We would like the Minister of Finance to tell us whether there is a diminishing role for this institution called the SEC, whether the Government is seeking to weaken this institution, or should the Government be seeking to strengthen and further empower and expand the role of the SEC. There are so many problems in this institution that I would like the hon. Minister to address those problems.

I think the time has come for us to have an enquiry into the institution called the Securities and Exchange Commission. We are getting some disturbing information about how people are hired and the kind of moneys people are paid at that institution. We have gotten information where the institution is now renting a building in Port of Spain at a cost of \$100,000 per month. I understand that the building is owned by the Public Service Association/Public Service Credit Union. I am informed that the rent is approximately \$100,000 per month. I understand that these people paid that money for nine months or thereabout. That building was not occupied by the SEC. Whilst they were paying \$100,000 per month for the building, they have not occupied it. I think that this is an area that requires some investigation. We believe that there is a lot of misuse and abuse of power at the SEC and the time has come to launch an independent enquiry into the operations of the SEC.

We understand that senior officials would leave this country to buy stationery in Canada. What justification is there? We want the Minister of Finance to launch an enquiry into this particular institution. We have much more to say on that, but I will pause for the time being.



We would like to suggest that the amendment to the Financial Institutions Act be considered in the context of globalization and technological change. Therefore, the new policy measure that the Government is seeking to promote will serve, from our perspective, to stunt the growth and further development of the national economy of Trinidad and Tobago. We believe it is myopic on the part of the regime to focus only on mergers and acquisitions, whilst other inter-corporate linkages, as vehicles of integration and consolidation, go unnoticed. It appears to us that regulating and controlling business—the PNM under this regime is not concerned with controlling the Parliament. They are not concerned with only controlling the Executive, of which they are in charge. They are not concerned or satisfied with controlling the police and other coercive arms of the State; they now want to control business. I find this particular measure quite offensive, in an environment of liberalization and neo-liberal capitalism in Trinidad and Tobago. It is either you say that you are going towards a free market capitalist system, or towards a socialist economy. We cannot be going two paths at the same time. I am not saying for a moment that this Government is anyway near there. This is more a fascist regime than anything close to a revolutionary, democratic regime.

It is our view that regulating and controlling business seems to be the focus of this regime. That is why we ask the question: Is this Bill necessary? Ours is a small economy. Our markets are small, characterized by a few firms and high concentration. The traditional tests employed in merger analysis, in large economies, are largely irrelevant in small economies like ours. That is the key question. Are merger controls necessary for small economies? We have to be very careful that we do not import north-Atlantic concepts and paradigms. We must support our national champions of business, what they call in the Marxist literature, “the national bourgeoisie”. We must support the national bourgeoisie in our country. We must protect and allow the national bourgeoisie to grow, flourish and develop, because these local enterprises, whether it is Ansa McAl, Neal and Massy or CL Financial, have to compete with mega-trading companies and global corporations. To impose merger controls, as they are seeking to do, is not the right road to go. Merger controls impose and introduce cost. This is something that we need to look at. Our country's economy is based on trade; our markets are open.

I saw in the *Saturday Guardian* of May 13, 2006—where Ansa McAl, where my colleague used to work before he became the Minister of Public Administration and Information—where it was stated that Sabga said that mergers are the key to growth. A big businessman called Anthony Sabga is supporting mergers. He is saying that mergers are critical to growth, development and expansion of the business sector. He goes on to outline, in the Ansa McAl chain

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of companies, how they have merged. They have recently merged the Ansa Merchant Bank and Tatil. Tatil and Ansa Merchant Bank are now one merged company. He went on to say that there are many instances. The media division of Ansa McAl is made up of television, newspapers and the radio stations. All these are now under one organization; it is a division. Why is the Government seeking to impose this kind of control on the society? What is the reason at this time? This Government cannot blow hot and cold. You cannot bowl and bat at the same time. You have to tell the country that you are on a particular course of development and that you want to open the economy and liberalize the environment and allow the business community to strive.

This Bill is an assault on business in this country. I am not a big supporter, but in the environment that we are in today, a liberalized environment, you must give the local business an opportunity to grow, expand and develop. We are seeing where the Government is seeking to stymie, stifle and strangulate big business. Is the Government going to tell this country in 2006 that no business could merge unless they have the approval of the Central Bank? When the Central Bank says no to merging, or yes to merging, if they go beyond 40 per cent, you must go to the Minister of Finance and the Minister of Finance will determine if you can merge or not? That is a most retrograde, backward step in our country. Business should flourish, grow and develop. Should we not have conduct provisions, instead of merger control regimes? Should we not have guidelines to tell businesses what they can and cannot do? When the Government puts this section in legislation, to tell a businessman that he cannot merge unless he comes to Sen. The Hon. Conrad Enill or the hon. Prime Minister, what is the Government telling people in this country? What is the incentive to grow and develop your business in this country? The PNM wants to control everything. Why is the Government trying to control mergers?

*[Sen. Enill gestures to Sen. Mark to give way]*

You will get your chance when you are winding up. Why are you trying to control mergers?

**Madam President:** Are you giving way?

**Sen. W. Mark:** No. The last time I spoke he took plenty time and I could not finish and I want to finish. He will get a chance.

Are merger controls needed or do we need conduct provisions? Conduct provisions will catch anticompetitive conduct that may result from mergers. We are arguing that public policy towards business has to be concerned not just with regulating business behaviour but with what is required to grow and develop.

Local businesses and outfits need to compete within an environment that is really facilitative. It is our view that the intellectual architecture on which this idea about competition policy is being constructed is in large measure imported from the powerful north. Mainly, you would find these in neo-classical literature or economics. To say that we are proposing and pursuing a policy that is going to be in the best interest of the national bourgeoisie in this country, we feel that the Government is going backwards. We feel that the Government needs to step back and deal with it. That is why in Jamaica, Dr. Saith, there is no provision in the legislation called the competition law of Jamaica to deal with mergers. They are allowing their businesses to flourish in Jamaica. *[Interruption]* I think they might be doing better than us even though we have all this money.

It is our view that the Bill, in its current form, is totally unacceptable and it is obnoxious. It violates the rights of citizens who are in the financial services sector and it concentrates too much political power in the hands of a compliant Governor and a Minister of Finance who has demonstrated an infinite capacity to abuse power. We are not in favour of the Bill in its current form. We believe this Bill ought to be withdrawn from this Parliament.

If you follow this Bill very closely and turn to clause 5, you would see where the Government, under the Financial Institutions Act, is deleting the words “not including a financial institution,”. If you go to the actual provision you would see the implications of that. I am not concerned with this particular provision.

Under clause 6, we are going to be giving employees of the Central Bank, an officer or a director the power to disclose information to other institutions within the Caribbean region. You are talking about confidential information. There is no accompanying penalty in the provisions, under clause 6 of this Bill. You are going to disclose confidential information on CL Financial, Ansa McAl or Neal and Massy to some other Caribbean entity and in the event that they violate confidentiality, as the bank is maintaining it has, there is no provision for sanctions or penalties in this particular provision of the legislation, as they had in the Fair Trading Commission.

Go to clause 8 of the Bill. We have to read this very slowly. It states:

“39A.(1) Notwithstanding any other law, a merger...”

They are not saying “would not” or “may not”. Hear the new Idi Amins, Mussolinis and Hitlers of this country:

“Notwithstanding any other law, a merger shall not...”

Just as they told the Chief Justice resign or be charged. Here they are telling the business community:

“Notwithstanding any other law, a merger shall not take place where one of the merging companies is a licensee or the holding company of a licensee, without the prior approval...”

Of whom? Some local ayatollahs, some local dictators in Central Bank. If you want to merge with my company, both of us have a bank. Look at the sweeping definition in the interpretation section of this Act that speaks to the issue of financial services.

“‘financial services’ includes without limitation, the business of banking, any business of a financial nature, the business of a credit union, the business of insurance, the business of securities and any business relating to pension funds;”

This is wide as it is broad; it is sweeping and all-encompassing. You are telling the business community, in the financial services sector, that you shall not merge until the Central Bank tells you that you can merge. If the Central Bank says yes you can merge, you can merge. If the Central Bank says, given the law, you are going beyond 40 per cent, you have to go to the Minister of Finance and he would tell you whether you can or cannot merge. Too much bureaucracy and high-handedness is contained in this legislation.

Sen. The Hon. Dr. Lenny Saith is aware of that. You need to get away from the bureaucratic gridlock in the country. As the Minister of Public Administration and Information, you know of the kind of challenges. My good friend, Sen. The Hon. Conrad Enill speaks to the issue all the time, of the bureaucracy in this country and he wants to overthrow the service commission—not he, but he would like it reformed. He would like the commission reformed because he wants more power. He cannot hire or fire his permanent secretary and he cannot give them orders. He wants power. He said that. Here he is saying that in the business community, he is going to trap, stymie and strangulate them. Why, in 2006, are we bringing backward legislation to strangle the business community in the Republic of Trinidad and Tobago? Maybe the business community is fearful and needs people to speak for them because they are not speaking up.

**Sen. Dr. Saith:** They picked you?

**Sen. W. Mark:** I do not know. I am just advancing the position. Let us continue. It goes on in clause 8(4):

“In determining whether or not to approve a proposed merger, the Central Bank shall take into account such relevant matters including without limitation—”

I think that expression should be deleted. The words “without limitation” without clearly outlining criteria, give the Central Bank the flexibility that requires a special majority in this legislation. The Government is giving the Central Bank too much power to violate the rights of people. We need a special majority or delete that clause.

Madam President, you and I would like to merge our companies in a credit union sector, insurance sector or banking sector but before we do so we must go to the new Hitler of this republic and the new Hitler must be told:

- “(a) the terms of the proposed amalgamation agreement...
- (b) the criteria set out in the Second Schedule as they will apply to the proposed merged company;
- (c) the size and concentration of economic power in the proposed merged company; and.
- (d) whether the business or a part of the business is a licensee—
  - (i) that is one of the merging companies; or
  - (ii) of which a merging company is the holding company,

has failed or is being conducted in an unlawful or unsound manner or is otherwise in an unsound condition.”

Look at the power we are putting in the hands of the Central Bank. The Central Bank is not an independent institution. The Governor is appointed by the Prime Minister, who is in charge of the Cabinet. We are in a different period. Conditions have changed. We were a democratic regime. We were not a dictatorial regime, as you are today; taking away people's rights and freedoms. The people of this country used to exhale and breathe easily during the period of the UNC. Right now is pressure. They want to challenge you when you speak.

**Madam President:** Drop that.

**Sen. W. Mark:** Okay, sorry. Not “dem”.

Let us go on again to subclause (5).

“In considering the criteria referred to in subsection (4)(c), the Central Bank shall take into account, without limitation—“

Again, the term “without limitation”. It gives them the opportunity to parachute extraneous ingredients into their decision-making. That is whimsical and fanciful power you are giving these people to exercise. They are going to exercise their powers as they see fit, but there is no provision in the law to protect my rights. You have to give me the protection of the law if you are going to have this kind of power.

“the Central Bank shall take into account, without limitation—

- (a) the size of the proposed merged company in terms of any combined market share that will be serviced or controlled by the proposed merged company in Trinidad and Tobago;
- (b) the size of any of the affiliates of the proposed merged company;
- (c) whether such size and concentration will prevent or lessen substantially, or is likely to prevent or lessen substantially, competition in the financial services industry in Trinidad and Tobago.”

After doing all that.

“(6) Unless subsection (7) applies, after due consideration of the matters referred to in subsection (4), the Central Bank shall—

- (a) approve the proposed merger;
- (b) refuse to approve the proposed merger; or
- (c) approve the proposed merger subject to such conditions, requirements or restrictions as the Central Bank deems appropriate.

- (7) Where the percentage of any combined market share in Trinidad and Tobago of the proposed merged company and any financial entity that will be affiliated with it would exceed forty per cent, the Central Bank shall forward to the Minister the application referred to in subsection (2), together with its recommendation, the proposed amalgamation agreement and any other relevant information.”

What is the role of the Central Bank? The Central Bank is a conduit. The Central Bank is doing all this research and gathering all this information but once it goes beyond 40 per cent, the Central Bank is compelled, under this law, to send

this matter to a politician. It would be sent to the Minister of Finance. I do not know what his technical skills are, but I know that in the Central Bank you ought to have technical and professional skills and technical resources to deal analytically with these questions. When you send this to the Minister of Finance, here what goes on:

“(8) In determining whether or not to approve the proposed merger...”

The new Minister of Finance; the one who said resign or be charged—I am sorry for them “fellas” across there. The day Manning falls out with Danny Montano, he would say: “Danny resign, or ah fire yuh.”

“In determining whether or not to approve the proposed merger; the Minister...”

Hear this one. This thing becomes more ludicrous as you read on. This is a banana republic. This is not a country that is serious about growth, expansion, transformation and development. This man is trying to transform here into Guyana, a Forbes Burnham. Forbes Burnham dead “yuh” know. All right! I hope he knows that Forbes is dead.

“In determining whether or not to approve the proposed merger, the Minister shall consult with the Central Bank and shall take into account the public interest, which shall include, without limitation—”

What is the “public interest”? Is there any definition of the “public interest”? We call on the Government of Trinidad and Tobago, Dr. Saith, to establish an independent commission of enquiry into all the circumstances surrounding the invasion of the Judiciary. We want all the players to be involved: the Prime Minister, the Attorney General, the Chief Justice and the Chief Magistrate. If you are talking about the public interest, the public interest demands that there be an independent commission of enquiry into that whole matter. I ask this question because when you look at “public interest” there is no definition. What would the Minister of Finance determine as public interest, the PNM party group; some big businessmen who are financing the PNM now? What is the public interest? There is no definition of the public interest in the legislation.

It goes on to say:

“(a) the interests of the financial services industry...”

That is what the Central Bank is doing. The Central Bank is doing exactly that. This is what the Minister of Finance is going to redo.

“(b) the interests of consumers of financial services...”

That is a function of the Central Bank. Where is the Minister of Finance coming into all this? How is the Minister of Finance going to determine the interest of the consumers in the financial services sector?

**Madam President:** Hon. Senators, the speaking time of the Hon. Senator has expired.

*Motion made,* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. T. Gopeesingh*]

*Question put and agreed to.*

**Sen. W. Mark:** Thank you, very much. What we are seeing in the legislation is a situation of duplication, because there is an agenda and motive behind this. Why would the Governor and the Minister of Finance, having gone through all the assessments, analyses and evaluations, want to do over that particular piece of work? I would like the Minister of Finance to spell out in the legislation the criteria that would be used when he speaks to the issue of “without limitation”. It is our view that the Cabinet can introduce many extraneous factors in order to justify its action. We believe, in this instance, the legislation ought to be very clear.

What is a bit of concern to us is if the Minister and the Central Bank refuse a merger proposal, where in the legislation is there provision for an appeal? We know there is something called the Tax Appeal Board, but in this day and age do you think the Tax Appeal Board can deal with this matter? What skills, technical training and resources are there in that place called the Tax Appeal Board? It is a retrograde step in 2006, to give the Tax Appeal Board the power to deal with mergers and acquisitions. They cannot deal with taxation; they could deal with mergers and acquisitions? Madam President, we do not support this measure whatsoever.

**2.30 p.m.**

Madam President, clause 8(15) says:

“A purported merger done in contravention of this section shall be null and void, but shall be without prejudice to the accrued rights of any other bona fide party without notice.”

We have to ask the question, in terms of equality of treatment before the law, is this legislation going to be retroactive? If it is not going to be retroactive, are they going to impose a violation of my rights, as a businessman, to get involved in a merged situation?



The Government does not only stop at mergers, but it goes on to acquisitions. Is this a Clico Bill? Is this a CL Financial Bill? I want the Minister in the Ministry of Finance to answer, what has informed this piece of legislation.

**Sen. Dumas:** Obsession.

**Sen. W. Mark:** Madam President, the same criterion used in the case of mergers is repeated in the case of acquisitions where it goes to the Central Bank, and the Central Bank would then say that it is approved, no problem. If you go beyond 40 per cent of the market share then you have to go to Hitler and Adolf Hitler would tell you if—

**Madam President:** Senator, stop calling the Senator by other people's names.

**Sen. W. Mark:** Madam President, I just said Adolf Hitler. I did not call anybody's name. If I had said Patrick Manning, then I would have been talking about him.

**Sen. Dr. Saith:** On a point of order. Could you tell me where in the Bill it says to go to Adolf Hitler? [*Laughter*]

**Sen. W. Mark:** Do you want to ask me that? As soon as I am finished, I am going to let you know. Madam President, may I continue? I have made the point that we have serious considerations and objections to this particular term, "without limitation". It gives the Governor of the Central Bank and the Minister of Finance too much power to introduce extraneous elements into their reasoning and thinking and, therefore, they could abuse their power in this particular process.

As we go on, again, under "acquisitions", we are asking the Minister in the Ministry of Finance to let us know where are the provisions to facilitate an appeal by the acquirer, if the Minister and/or the Central Bank refuses to issue a permit to the proposed acquirer. Where are the provisions in the legislation to allow persons to appeal? Do they have to go to the Tax Appeal Board? Sen. The Hon. Dr. Saith, you are a businessman, and I find this legislation to be quite backward. I cannot believe that in 2006 you would support this piece of legislation. Sen. The Hon. Howard Chin Lee, you are a man of business, and I cannot see how you can support this legislation that is stymieing businesses. My friend, Sen. The Hon. Danny Montano, is also a businessman. Why is the PNM introducing retrograde legislation of this nature in the year 2006? What is the rationale for it?

Madam President, let us go to clause 9 of this Bill. If you go to section 56 of the Financial Institutions Act, you are going to see where they are going to include additional provisions to deal with any person who is aggrieved by a

decision of the Central Bank. They are saying that if you are aggrieved by any decision of the Central Bank—in the context of their rejection to your proposal to merge and your proposed agreement to amalgamate or to acquire shares in another entity—they want to add the following provisions where you could be deemed a controlling shareholder to be unfit and proper under section 38(6). So, the Central Bank has a new power to deem a controlling shareholder no longer fit and proper under this section.

Madam President, who is to determine that? What are the criteria governing that provision? So the Central Bank could tell anyone that he or she is deemed a controlling shareholder and he or she is no longer fit and proper under section 39(6) of the legislation. Who determines that? That is subjective!

It goes on the say that the Central Bank could:

“require any person to reduce his entitlement to exercise or control twenty per cent or more of the voting power of a licensee or another company of which the licensee is a subsidiary under section 39(6).”

So, if I control 50 per cent in an organization or a business entity, the Governor of the Central Bank, based on politics or based on other factors, could take a decision to order me to reduce my entitlement to exercise control. If I have 20 per cent or more, he could tell me to reduce my voting power. Madam President, to my mind, this requires a special majority. How could you tell a man who has 50 per cent voting rights in an organization that he must reduce his voting rights to less than 20 per cent? How could you do that? This is a violation of the constitutional rights and freedoms of citizens to own and enjoy property! How could you do that? This is a fascist intervention. A judge would say, it is a dangerous infiltration.

Madam President, I want to advise the Government that it is treading on dangerous ground. This is a backward piece of legislation. I am saying that if you want to deal with voluntarism, deal with it; if you want to deal with guidelines, deal with them; but to come in the year 2006 and introduce such harsh and oppressive provisions governing business enterprises in Trinidad and Tobago is a backward step. We are respectfully suggesting to the Government that this measure be withdrawn. This Government is not serious about business in this country. If this Government were serious about business development, growth and expansion, it would not have introduced this piece of legislation.

Madam President, the people in Tobago are saying that foreigners are taking their lands. Why is the Government not bringing back the Aliens (Landholding) Act? They should introduce it because it was thrown out of the window. The

people of Tobago are saying that they are being colonized or decolonized. Why is the Government not bringing back the Aliens (Landholding) Act? It should be proclaimed, and foreigners would not be able to buy up land in Tobago and enslave Tobagonians as if they are back in slavery. Why is the Government not doing this? We are talking about the abuse of power; concentration of power. We understand what is going on and we hear what is going on, but the Government comes now to concentrate more power into the hands of a governor; to concentrate more power into the hands of a Prime Minister, who is the Minister of Finance! Is that fair?

I would defend the rights of the business community. I think this is an assault on the business community. I think that this measure, along with the Bill that was passed here last week, constitutes retrograde legislation in this country in the year 2006.

Madam President, we on this side would not be able to support this Bill. This Bill violates the rights of the citizenry of this country. This Bill is very backward in many regards and many respects. The Minister of Finance has too much power, and he could abuse that power. The Governor of the Central Bank is, in effect, an appointee of the Prime Minister, and by extension the Cabinet. He does not have the independence that we believe he should have. That is why we have been calling for constitutional reform. We want to deal with this matter, because there is too much power in the hands of the Prime Minister. He has everybody around him as cowards. We are seeing the Prime Minister going down a road of dictatorship, and Sen. The Hon. Dr. Lenny Saith would not rise and tell the Prime Minister to halt, stop.

Madam President, the Government should withdraw this piece of legislation. If the Government does not withdraw this Bill it would be tested in the courts of this country. This Bill violates the rights of people. I want to repeat that the Minister in the Ministry of Finance, who introduced this measure, has not thought it through properly.

My final point, in this half of a second that I have, is that I would like the Minister in the Ministry of Finance to tell this Parliament if he is on a trip to undermine the role of the Securities Exchange Commission (SEC). As I am on this matter, I would also like the Minister in the Ministry of Finance to tell us in this Parliament—I read an article on page 18 of the *Sunday Newsday* dated May 14 where the Unit Trust Corporation invested \$11.6 million in December 2005 equivalent to 40 per cent of the issue share capital of a company which is engaged in the development of a natural gas pipeline. The project is estimated to cost \$550 million.

The Auditor General indicated in her report that under the Unit Trust Corporation Act they ought not to exceed 10 per cent of investment in any company, and they have invested 45 per cent. I want the Minister in the Ministry of Finance to explain to us why the UTC did this, and the impact that would have on unitholders like me, and the hundreds of thousands of unitholders in this country.

Madam President, I thank you. [*Desk thumping*]

**Sen. Prof. Kenneth Ramchand:** Madam President, after asking myself the usual question, what is the meaning of this piece of legislation for the ordinary people of this country, I came up with some disturbing answers. I want to see in this contribution where my primitive misgivings would lead me.

Madam President, it was a painful exercise preparing this contribution. I had to find out about many things. I hope you would forgive me for sticking closely to my notes, and I hope Senators would forgive me for not giving way at any point, not only because I need my full sixty-three minutes, but because I do not want to lose my trend of thought.

The presentation of the Minister was almost visionary, and I give him credit for the values and ideas he has projected, but none of the architecture is included in the Bill before us. With due respect, I have to say that what we have cannot even be described as the building blocks. As I understand it, he has focused mainly on acquisitions and mergers; the new sections 39A and 39B. That is what he has focused on. I am a little surprised as a layman that mergers and acquisitions are only now becoming the subject of legislation.

On the face of it, there could be no grounds for objecting to a decision to subject mergers and acquisitions to supervision and to principled control, but we have to give some thought to who exercises oversight over the financial institutions. We have to do that from the point of view of the required special competences, and also from the point of view of their independence from political control.

Madam President, according to the new sections 39A and 39B, whether we are dealing with mergers or acquisitions, this is how it works. Where the combined market share of the new entity would be 40 per cent or less, the decision rests with the Central Bank. If the combined market share would exceed 40 per cent, the Central Bank shall forward the application with supporting documents and its recommendations to the Minister and the Minister would decide. So what we have is a dual system in which the Central Bank determines some of the applications, and the Minister determines the ones that are likely to have more impact. I would return to the role of the Minister and my reservations after a while.

I want to comment first on the role of the Central Bank. I want to show very bravely that the Central Bank's exercise of its regulatory power over insurance companies and pension funds has led to a loss of investor confidence in the stock market, in local companies, and it has created an environment in which local companies have become attractive to takeover targets by foreign financial institutions.

We have to go into the story in order to grasp the moral. A secondary reason for going into the story is facing reality; for fear of making it worse, none of the experts seems to want to talk about what is happening to the stock market.

Early last year, the arm of the Central Bank which has regulatory oversight over insurance companies and pension funds, instructed these entities that their portfolio of investments contained too heavy a weighting in stocks, compared with their holding of fixed income securities. The Central Bank pointed to the regulation which mandated that no more than 50 per cent of pension fund investments must be in equities, that is to say, stocks or shares. Pension fund administrators were told, in effect, that they could not invest any more funds in that class of long-term assets known as equities, but only in Treasury Bills, bonds and other fixed income instruments in which we know the nominal rate of return is currently lower than the rate of inflation.

The insurance companies and pension fund administrators could not deny the need to ensure that there was enough solid cash to meet commitments and obligations, but they made a fundamental submission. Since they have been investing in equities for many years, the average cost of their equities portfolios was significantly lower than the value of these portfolios when valued at the market prices that obtained at the time of the Central Bank instruction. It was abundantly clear that the pension fund could quite easily find itself in breach of the 50 per cent rule, even if it had the most conservative investing policies, simply by virtue of its equities portfolio increasing in value over time. Therefore they asked: Should the equity holding not be valued at average cost for the purpose of deciding whether or not they have reached the 50 per cent investment limit?

I am going into these details because we cannot understand legislation about mergers and takeovers if we do not understand the environment in which mergers and takeovers occur. The recent ebbing in the stock market has put mergers and takeovers very much on the agenda.

In our country, institutional investors, insurance companies and pension fund administrators account for 80 per cent of all demand. The regulator's intervention effectively forced the major players to the sideline—these major players who were also a stabilizing force off the market—spelling doom for the stock market and disaster for the individual investor.

It is ironic that the regulator moved at a most unlikely time. It was a time of low interest rates, when the alternative rates of return on fixed income securities were low. It was also a time when inflation was edging upwards, so that companies with pricing power could expect to increase nominal earnings over the medium term, and investments in these companies could be expected to be good vehicles in which capital could be kept safe from the eroding effects of inflation. It was also a time when there was no issue of solvency or capital adequacy of these financial institutions.

Madam President, would you believe it? The regulator struck even though there was no bubble in the stock market. Most listed firms were trading at 16 times estimated earnings at most. Some major companies like Guardian Holdings Limited (GHL) and Sagicor were trading at low market to book values, and those few companies which were trading at relatively high price to earnings multiples were doing so for easily explained reasons. Of course, some stocks were overvalued, some were undervalued, and some were fairly valued, just as you would expect in a healthy stock market, but one quixotic regulatory swoop occurred and a freeze descended upon institutions where 80 per cent of all demand dried up. The consequences were immediate and dramatic, as anyone like me who has been on the stock market for 13 months could attest.

I was just playing “farse.” I had about \$10,000 knocking around and I went and bought Guardian Holdings Limited shares and RBTT shares. I say that if you cannot beat them, join them. After I bought these shares; down, down, down. If I had plenty shares I would have killed myself; I would have been ruined. [*Crosstalk*] I took an interest in this thing and I saw my shares going down. I feel I am a wise fellow, and these were very solid companies, so why these shares should be going down.

Many blue-chip companies lost 50 per cent or more of their market value over this period. Although Sagicor doubled its earnings, today it is still trading below what it traded for early last year. Grace Kennedy, RBTT and Guardian Holdings Limited plummeted to prices not seen in years. Worse than that, for certain companies which hold large equity portfolios as part of their business operations, like Guardian Holdings Limited for example, their reported earnings took quite a dramatic hit, not because of any core operational issues, but because their investment portfolios lost hundreds of millions in market value as a result of this induced market crash. Since its reported earnings fell, companies which held Guardian Holdings Limited shares had to report a loss of market value on their accounts. Their profits suffered and their share prices fell further. Madam President, one burst of misguided regulatory fervour created a downward spiral. Madam President, as I told you, I know; the last fell on me.

Stocks across the board traded at irrationally low prices; prices that you would expect to obtain if the economy was beset by depression, or if the International Monetary Fund (IMF) was knocking at the door, or if consumer confidence had dried up and economic activity was at a standstill. This should not happen in an economy which is booming, in which consumer demand is high, and in which virtually every sector of the economy is heating up with the exception of, of course, the agricultural sector.

There is no gainsaying that we have managed to make a stock market in a booming economy behave as if it was a stock market in a depression. In both the recently debated Fair Trading Bill and the present Bill, much prominence is being given to the interest of the consumer, meaning people like me, the ordinary citizen, but my opinion after reading both Bills is that both operations have to do with the Government's wish to be a powerful referee between the major players only in order to make sure that the game runs in ways that suit the different interests of the Government or the special interests of other players in the field.

As far as I am aware, no other government in the world has ever demanded that 80 per cent of buyers should stop buying. As far as I am aware, no other country has ever sent such a message to its citizens: beware of your stock market; stay away from investing in your local companies, no matter how well they are performing, no matter how well they are managed and no matter how fast they are growing. No other government has placed such disincentives to local saving and investment, and has undermined by its own action the confidence of its citizens in investing in locally listed companies.

What credibility could there be in the "ol' talk" about the interests of the consumer? Our people should be encouraged to save and invest locally; to have faith in local and Caribbean institutions and their economies; and to know that they could participate profitably in our country in things like the stock market. Madam President, not everybody could afford to buy up large tracts of land and get into real estate development, but everyone who has a job can afford to buy a few shares. Do you know how many poor people would put their money in the UTC and would buy stocks and shares if they had the confidence that there was something rational and logical going on there?

Madam President, recently, the Governor of the Central Bank remarked on the large demand for foreign exchange and its outflow as if that was the cause of a set of problems, but it was as a direct consequence of the spiral which started when pension fund administrators began to comply with the mandate that individual investor's money began to flow to US dominated funds and directly outwards to the United States Stock Exchange and other international exchanges. Let us not confuse cause and effect.

The local stock market did not decline because investors were turning to US denominated funds. Investors were turning to US denominated funds because the local stock market was being throttled as a result of the Central Bank's requirement, and so we came to the merger and acquisition consequence.

The Minister talked about aggression in the market. You could call it aggression, but you should really call it "aggression with long tentacles". As a result of the artificial suppression of our stock prices, our Pan-Caribbean companies have become the targets of foreigners, and this goes to the root of the Bill. It is no secret that banks have attracted the attention of the not so gnomish gnomes of Canada. Already, First Caribbean International Bank (FCIB) is owned by Canadian Imperial Bank of Commerce (CIBC). Once the shares by Barclays to CIBC are finalized this year, CIBC will own 87.4 per cent of FCIB.

Scotiabank is described on their website as a "majority-owned subsidiary of the Bank of Nova Scotia". The Bank of Montreal has published an article on the attractiveness of Trinidad-based banks as takeover targets. A Canadian banking analyst, Ian De Verteuil, has published an article entitled "Opportunities in the Sun," which speaks of these very possibilities.

Madam President, the party "done" start. Is the legislation before us a response to threat or opportunity? I for one find it hard to swallow that after nearly 50 years of independence, the hope of our stock market lies in re-colonization.

I would return to this point in a moment, but I have to put the other side of the fear of colonization by takeover, and I want to do so by looking at some of the words that are pretending to be definitive pronouncements in this legislation, some of the highly subjective and arbitrary terms that wear the cloak of objectivity.

I would not take the extreme position of the character in a Shakespeare play who says: "There is nothing either good or bad, but thinking makes it so," but I would say it of some of the terms that appear in the present Bill and, for that matter, in the Fair Trading Bill. There are terms like "monopoly," "acquisition," "unfair trading practices," "anti-competitive" and "dumping". These terms have different values in different contexts. There ought to be a lot of deliberation by sincere, careful and highly qualified persons before these words are used. They are conclusions to be arrived at after much analysis of financial facts and investing context. If we do not think before we use them, these words would become simply a branding iron to give effect to whatever short-term and short-sighted policy is the order of the day.



Let us look from the perspective of institutions that want to merge or be involved in the acquisition process. Madam President, look at me, I never thought a person who believes in ownership principles not favoured by capitalists would have to be arguing like this. Like Sen. Mark, I am embarrassed to be backing up big businesses today, but the legislation forces me. I am not talking about my ideals, but I am talking about the workings of the system within which we worship. I have a responsibility, as a Member of this Chamber, to look at many sides of a question, so let me do like Sen. Mark and speak up for capitalism.

In certain industries, including banking and insurance, size is a good thing, or could be a good thing. That is why you hear the phrase “economies of scale”. Some of my avant garde friends speak about “economies of knowledge and information”. There is an optimum size for all businesses, and this size may be very large. It is my understanding that FCIB, the Caribbean’s largest bank, could source funds at 2 per cent, whereas RBTT could source funds at 4 per cent. FCIB’s cost of funds is lower, because they are larger, and because of their international connections. FCIB is majority owned by CIBC, based in Canada. Similarly for Scotiabank. Scotiabank has greater access to US funds, because its parent company is the Bank of Nova Scotia in Canada.

The bigger banks, the local banks that are substantially held by North American banks, have the potential to operate in some areas more effectively than those banks without international alliances. In our system, the size of a merged entity alone can never be offered automatically as a reason for not allowing a merger.

Every bank and every insurance company must be free to seek global partners. If one local bank becomes smaller relative to its competitors as a result of a merger of two of its competitors, that bank must be free to expand either by acquiring or by being acquired.

Our local banks and insurers have been aggressively expanding throughout the Caribbean and Latin America; the United States of America, in the case of Sagicor; and Europe, in the case of Guardian Holdings Limited. In the last annual report of Guardian Holdings Limited, Mr. Arthur Lok Jack stated that GHIL has outgrown the capacity of the local capital market for both debt and equity.

I do not like to talk like this at all, but that is how our system works. Until that great movement of the people when the citizenry become aware of their rights, responsibilities and powers, it is a system with whose contradictions and ambiguities and sudden shifts and metamorphoses we have to live. We need refined social consciences, flexibility, a broad and deep understanding of context, and supreme technical skills to manage with an appearance of equity while gaining profits.

Madam President, let us look at some of the arbitrariness and shiftiness we have to deal with. Let us stay with monopoly. In the same way that Trinidad Cement Limited (TCL) is now considered to be a monopoly which is exploiting its monopoly status, not too long ago TCL was considered to be an industry under threat by large Thai producers who were dumping cement in Trinidad at below cost. So, just recently they were a victim and today they are monopolists. Our Anti-dumping Commission found this to be the case, and TCL was saved from these anti-competitive prices. So, which is it? Is TCL a victim of other cement producers' anti-competitive trade practices, or is TCL a victimizer and price gouger? People use these terms when they like. If Thai or any other cement comes in at a cheap price now, would it still be dumping or would it be regarded as fair competition? Madam President, the answer seems to depend on the demand that Government projects have for cement, as well as who wants to import cement, and whether this importer is a friend or a foe of the Government. On these petty, transient, seasonal issues the fate of a company rests.

Madam President, a little oddity; it may interest you to know that some years ago, under another government, our Anti-dumping Commission found that a local cheese producer was being unfairly competed with New Zealand cheese producers, and extra duties were placed on imports of cheese from New Zealand. So, we all paid more for cheese, because there was a local producer somewhere out there that none of us has ever heard of. So, in that case, fair trade did not mean that consumers enjoyed lower prices. Let us get rid of the myth once and for all. In that case, fair trade meant that some cottage industry was protected, to the detriment of everyone other than a handful of people who, as far as I know, may not even be in the cheese business today.

Anti-dumping is so often a cover for protectionism, protection of some small and inefficient producer; it is never for the protection of the consumer, and the same thing applies in the regulation of financial institutions. I raise these issues about subjectivity because the Central Bank is being given the power to determine some of the applications from financial institutions that want to merge, or of companies that want to acquire, and the Bill is laden with these two-faced terms.

Madam President, even when the Bill uses figures instead of words, there are still areas of uncertainty. In determining whether or not to approve a proposed merger or issue a permit to a proposed acquirer, the Central Bank is being asked to consider whether "such size and concentration will prevent or lessen substantially, or is likely to prevent or lessen substantially, competition in the financial services industry in Trinidad and Tobago". The Central Bank has to form an opinion as to whether a merger or acquisition greatly reduces competition.

According to sections 39A(7) and 39B(6) the question is not about reducing competition. If the market share of the new entity would exceed 40 per cent then the ruling criterion is not the effect on competition, but the number 40 which is the same magic number the Minister assures us is used by the Barbados authorities in regulating First Caribbean International Bank.

Madam President, when I look at you, you do not look like an obeah-woman to me, but I would still ask you, how do you know what is 40 per cent of the market share before it is actually achieved? What trickster god has spread the conviction that once you are picky about the possibility of 40 per cent market share at the time of the merger, you do not have to worry that a year or two after the merger, the market share would climb way above 40 per cent? I do not see anything in the legislation that envisages that. On the day of the merger it is 40 per cent, and two years later it is 51 per cent. What does the legislation have to say about that?

So I am coming back. What really is the test? Is it the number 40? Is the number 40 being taken to be the threshold for market dominance? Is the rule to be found in the phrase “must not prevent or lessen or must not be likely to prevent or lessen competition”? I am confused. Is “market dominance” the same as “reducing competition”? I do not think so. Things are very irrational.

In 2001 a proposed merger between General Electric and Honeywell was approved in America. It was held to be not greatly reducing competition, but the same merger was blocked in Europe, because it would have led to market dominance. I do not know what kind of slipperiness we are dealing with. This legislation does not make it clear. Companies should get a clear message from the legislation about what these terms mean. When the Central Bank tells the Minister, this thing looks very juicy, and the decision is therefore yours, by what criteria will the Minister decide?

In some very highly suspect ways, this Bill is different from the Fair Trading Act. The Fair Trading Act provides for a Fair Trading Commission to be appointed by the President. The commission is clearly independent of political control. What we have in the present Bill is an arm of the Central Bank which would decide on applications for mergers or takeovers once the market share does not exceed 40 per cent. If the proposed merger or acquisition would result in a business combination controlling more than 40 per cent of market share, it is not the Central bank that makes the decision, but the Minister of Finance alone who would say, yes or no.

Madam President, the wording of this Bill is clear. The recommendation of the Central Bank is only one of the factors the Minister would consider. He shall consult the Central Bank, but he does not have to accept the advice. So a Bill that is designed to avoid concentrating power in the hands of economic entities concentrates power in the hands of one man.

The Bill does not say that he must follow any recommendations, but only that he must give reasons. His final decision could quite easily be based on nothing at all, so long as he says that his decision is in the interest of the financial services, then that is it. He may even accompany it by saying this hurts me more than it hurts you. He could say what he likes.

Madam President, if you think of the Fair Trading Act, there is an attempt to set out a credible appeal process. It is clear that beyond the Fair Trading Commission and the Community Competition Commission lie the courts, including the Privy Council and the Caribbean Court of Justice. These final Courts of Appeal have expertise in commercial matters, but beyond the verdicts of the Central Bank and the rampant Minister, in this Bill you have the Appeal Board.

When you go back to the original legislation—put your money back under the mattress. Do you know what recourse you would have if you wanted to take over RBTT and the Minister said, no? The recourse that you would have is to go to the Tax Appeal Board. Does the Tax Appeal Board have the competence to adjudicate on matters of mergers and acquisitions and economic benefit or detriment? I would like the legislation to state explicitly that after the Tax Appeal Board there is recourse to the same courts that people contesting the decisions of the Fair Trading Commission may go. I want it to be explicitly stated in the Bill. I do not want to take it for granted, and I do not want anybody to mutter “judicial review”. I want to see it in the Bill, and after it is put in the Bill, we have a problem.

The experience in Europe with respect to appeals from decisions of the Merger Task Force is that once a merger has been blocked, the system of judicial review of the decision is useless. I quote from *The Economist* dated December 15, 2001 which says:

“...at present, companies must wait months before their case can be heard in the European Court. By the time a case reaches the court, markets have usually moved on to a point where the original deal is no longer feasible.”

There is a profound point to be made here that once a merger or acquisition is blocked by the regulator, a system of appeal which does not guarantee a speedy hearing is for all intents and purposes, no appeal at all.

Any legislation which seeks to empower Government in matters like this which does not include provisions for the speedy hearing of appeals is bad legislation. I would like to see the legislation amended to guarantee speedy hearings.

Madam President, if someone told you that Tony Blair has made a decision to prevent GHIL from buying a London-based motor insurance company, what would you think? You would think that Tony Blair has gone mad, and that it is not his place to be interfering with the normal affairs of business.

If George Bush personally prevented BP from taking over Amoco, how long do you think it would be before he is impeached and jailed?

Madam President, let us hypothesize an example of an event which would trigger, under this Bill, the intervention of the Minister of Finance. I am just making this up. Scotiabank is majority-owned and controlled by the Bank of Nova Scotia in Canada. Suppose, for the sake of illustration, that the Bank of Nova Scotia makes a bid to acquire RBTT, this acquisition would result in both Scotiabank and RBTT being controlled by the same parent company. This would be considered to be a merger between Scotiabank and RBTT under this Bill. This proposed merger would probably result in the Bank of Nova Scotia in Canada controlling over 40 per cent of the market for banking services, and the Minister alone would be the one to say yes or no. As I said, I do not think it is a good thing for one person, especially a politician, to have that power.

If Royal Bank of Canada wanted to acquire RBTT, the Central Bank would have the power. On my reading, the Central Bank would be the decider if FCIB, which is controlled by Canadian Imperial Bank of Commerce, wanted to acquire RBTT. There are no guarantees that the Minister would not find grounds to assume jurisdiction just as the regulator in the United Kingdom found a way of preventing Lloyd's Bank from taking over Abbey National, although the acquisition would not have breached the established threshold. These are very dodgy things.

Madam President, listen to some bacchanal. Suppose these three banks that are listed wanted to acquire RBTT, the Minister would effectively have veto power over the Bank of Nova Scotia's bid and the other bidders could bid less for our local asset. All of this is just to illustrate what could happen under this Bill.

*Financial Institutions (Amdt.) Bill*  
[SEN. PROF. RAMCHAND]

*Tuesday, May 23, 2006*

I am sorry that Sen. The Hon. Dr. Lenny Saith is not here. He talked about how my shares are rising. I know why my shares are rising, and it is not that the stock market is rising. It is only my shares in RBTT and GHIL that are rising, and I know why. I am giving you all some hints. Go and buy up quick. I am relieved. I am not thinking of killing myself. The stock market is not recovering. Those two stocks may pull others up. They may create an environment, but it is not that the Central Bank's regulation does not matter.

The Fair Trading Bill which was recently debated in this House proposed that the President appoint Fair Trade Commissioners to determine mergers and acquisitions within the non-finance sectors. These commissioners would hopefully be specialists in the whole business of mergers and acquisitions and monopolies and their regulation. I hope this commission would represent a concentration of competence and expertise in the very matters which are the focus of the amendments to the Financial Institutions Act that are being proposed in this Bill.

The Minister talked about creating a new supervisory regime, and I would suggest that a professionally manned Fair Trading Commission ought to be the body that the Central Bank refers its recommendation in the cases of acquisitions and mergers which result in combined entities which control over 40 per cent of market share.

Madam President, I am convinced from the Minister's presentation that he has certain ideals and values that he would like to see built into the system. I offer this proposal as the most logical, sensible and transparent procedure, and one that would increase all parties' confidence in the fairness and in the integrity of the processes, and the system within which we operate. I am sure from the Minister's presentation, which is quite out of sync with the actual Bill and what he has projected in his presentation, is that he wants to create a just and equitable system.

Madam President, thank you. [*Desk thumping*]

**The Minister in the Ministry of Finance (Sen. The Hon. Christine Sahadeo):** Madam President, thank you. Before I go into some of the issues and concerns of the Bill to amend the Financial Institutions Act, 1993, I think it is important for us to take a minute or two to peruse the implementation of the initial Financial Institutions Act, 1993. This was really implemented to deal with the changing environment of the banking system and the need to tighten regulation and supervision of financial institutions. In addition, it addresses a major defect of the previous legislation, and it was really the lack of intermediate enforcement powers of the Central Bank.

Madam President, prior to the passage of the Financial Institutions Act, 1993, the need to update legislation and widen the scope of the Central Bank's powers of regulation in the interest of depositors of banks and non-financial institutions was seen as important as early as 1986. At that time, as you would appreciate, it was the introduction of the Deposit Insurance Fund. When that was introduced, it really lent a lot of stability to the system and we saw some level of rejuvenation.

Madam President, at that time, the legislation was really based on a need to provide a framework for effective supervision of financial institutions to allow banks to participate in a wider sphere of financial activities; the necessity for tougher entry requirements for financial institutions; the establishment of minimum accounting standards; the setting up of stipulated criteria for analyzing the performance of loans, classification of assets and accruing of interest of non-performing loans and minimum capital and liquidity requirements; regulation of controlling interest; regulation against unsafe practices; and where necessary the sharing of information between the regulator and the auditors.

Madam President, this was the building block. This was in fact the whole emergence of the financial sector in terms of strength and growth and from thence we have really seen a huge growth in this sector, and one in which this Government continues to focus on and pay attention to.

In like token, during these times, and in response to a changing landscape, this Government recognized the inherent risk, and today it has brought this Bill in an effort to ensure that financial stability is enhanced and sustained.

I am sure you would recall the failure of several non-financial institutions in the 1980s which included institutions such as, Trade Confirmers Limited, Southern Finance Limited, International Trust and Max Securities. As I said, we had some instability introduced in 1986 for deposit insurance funds.

In 1989 we also saw the restructuring of Workers Bank. We had a second restructuring in 1993 which was a more robust restructuring where we had the National Commercial Bank, which was a company quoted on the local stock exchange, and we also had Trinidad Cooperative Bank coming together in that restructuring.

Madam President, let me remind you that this restructuring cost this country the quantum of \$1.9 billion at that time, and it continues to cost the Government in terms of annual payments being made in terms of interest on these amounts which have been set up with the First Citizens Bank or FCB as it is now called.

**3.30 p.m.**

Madam President, therefore the responsibility of a robust financial system is critical. All the speakers who went before I am sure by now know we are in interesting times. We have bright, young, fine minds working in all these financial institutions—all the institutions. They can create almost anything. You would hear, the more you read about financial products and services, almost anything can be created. What we are saying, Madam President, they are fascinating, interesting times and never before has the risk been as great.

Therefore, how do you counteract this? How do you cater for the inherent risk in markets like these? We really have one major issue at hand here and we must recognize what is the role of the regulator. And today, at least since we began debating this Bill, we have heard lots of concerns about the regulator and the role and function of a regulator. I think if we really were to distill what we have all said, at the end of it, we would all agree on the important role of the regulator.

In recognition of the White Paper on the Reform of the Financial System of Trinidad and Tobago, we must applaud the Central Bank for their initiative in establishing a Regulatory Policy Council. On July 19, 2005 there was a media release to this effect where the Central Bank established a council which is chaired by the Central Bank and comprises the heads of the following regulatory agencies: We had the coming together of the Trinidad and Tobago Securities and Exchange Commission; the Trinidad and Tobago Stock Exchange; the Deposit Insurance Corporation; and of course, as I said, this is chaired by the Central Bank and in addition to that the Permanent Secretary of the Ministry of Finance. I am referring to this, as I said, which was really issued in the media. It was a media release on July 19, 2005 and it indicated the main functions of the council, and I would read these:

- “1. To develop complementary supervisory initiatives and harmonized solutions to regulatory issues.
2. To prevent and eliminate conflicts and unintended supervisory gaps in financial services supervision.
3. To co-ordinate financial services supervisory activities and to work with trade associations to develop joint projects that complement the three agencies’ supervisory activities.”



Madam President, on the agenda included the trends in the development of the financial market which include:

- a. The potential systemic risk in the market;
- b. The risk resulting from the proliferation of financial conglomerates;
- c. The growth of cross-border operations within the Caribbean region; and
- d. The definition of the respective primary or secondary roles of regulators...”

This committee also established and began working on a Memorandum of Understanding in order for them to embark in terms of information-sharing which is one of the critical aspects of this Bill. In terms of information-sharing, probably, this is one of the items in the proposed amendment here in this Bill that really is of critical importance.

Let me congratulate Sen. Prof. Kenneth Ramchand; he almost sounded like a financial guru, because he really did make an interesting contribution but I have to correct one or two issues which he may have gotten mixed up about. He congratulated, for example, the FCIB in terms of its operations; its global content in terms of expanding beyond our boundaries, et cetera. What he also indicated in terms of mergers; when FCIB undertook that merger in Barbados with CIBC there was a restriction to FCIB on 40 per cent in terms of their loan portfolio. In other words, here you had a merger being approved, yet, at the same time they were saying, “We are going to restrict you in terms of the national interest”.

Let me discuss this whole issue in terms of mergers and this 40 per cent restriction. And I want to record, Madam President, that the mergers and acquisitions referred to only those in local financial institutions. So if it means you are going to merge with any large entity beyond these shores, beyond here, it means that restriction does not apply, because in essence it means their loans, et cetera do not apply here. It does not stop, therefore, a local company from acquiring a foreign company or vice versa. So when I hear comments in terms of: “You know there is restriction; why this 40 per cent”, I think by now—we have just finished the Fair Trading Bill and what we have said, categorically, this is all in the national interest. It is in the national interest and all of us here, certainly, we all give national service, and I would have thought this is something that would have been applauded.

Madam President, as a matter of fact, in the US and Canada, there are state departments which look only at mergers and acquisitions. We are talking about Trinidad and Tobago; we are talking about the Caribbean and we are saying there

are countries which have a much longer history, countries which certainly are quite sophisticated in a lot of what they have done and we are saying here that they have state departments that review and approve mergers and acquisitions.

Madam President, as I said before, the sharing of information with financial regulators is really very, very critical and salient to where we are today. In terms of this sharing of information, it really allows what you call effective, consolidated supervision.

The Basel Core Principle—One of the major fundamentals of the Basel Core Principle is this consolidated supervision. Let me just give you an example. It means, until the passage of this Bill, the Central Bank would not be able to obtain information from another branch that is being established in another Caricom territory. And the implications mean if that branch or subsidiary, whatever it may be, has certain concerns or issues in terms of, going concerns, when this whole supervision, what you call consolidated supervision takes places, it can now make much more sense than it would have made based on only being able to review the entity as it pertains in Trinidad and Tobago.

The Basel Core Principle is an international guiding policy in terms of financial institutions. There is a famous saying in terms of what it prevents, it is called, I think, “contagion risk”; you sneeze and I get the cold. What this type of control does, this sharing of information prevents this type of behaviour. What is interesting, we talk about Trinidad and Tobago being in the lead. Let this honourable Senate know that we are actually behind the rest of the Caribbean in this area; most of the other Caribbean territories are ahead of us in terms of the sharing of information. It means we are lagging very much. What it means is that we are unable to have reciprocity of information in terms of the sharing experience.

I think it was in 1996, in Jamaica, they really had a financial crisis. They had a situation where there was a failure of some of their financial institutions resulting in the costing in approximately 50 per cent of the GDP in 1996. Let me say, again, that the sharing of information certainly would really prevent the failures of banks. It certainly ensures that information exchange would be used to the benefit of all the people, all the potential—all the investors as a whole.

Madam President, I should congratulate Sen. Mary King in her contribution, her exposé in terms of educating every one on the various money markets and the various types of instruments for investment. Let me clarify one of the major issues of the Money Market Fund because a lot of concerns and issues were—I think Sen. Seepersad-Bachan also mentioned some of the concerns.

First of all, regarding the Money Market Fund, these are what you call, off-balance sheets. It means that by and large these are not recorded as part of the banks' assets. So let me again say, it is an off-balance sheet, not because in certain accounting terms you say, it is bad, you are hiding things, it is the method of accounting; it means everybody who invests in this it—comes together; you call it a mutual fund, et cetera.

It means, if at all—and I am not suggesting it will, so I hope I am not inaccurately reported in the media—you have one of these funds not performing it is not going to impact on the financial institution directly. But as I said earlier, you may have certain issues or concerns in terms of creditability, et cetera, but it will not impact directly and it is not part of the banks' assets; not part of the banks' portfolio. So the concern raised by Sen. Seepersad-Bachan regarding the issue of the impact on mutual funds—a mutual fund does not fail, the value may fall, substantially, and that type of thing based on—

The other issue which I think Sen. King elaborated on: really, what is a mutual fund? A mutual fund, Madam President, is, really, one of those interesting products put together where you can invest in a mutual fund and you diversify your risk, because you are not like a share investing in one entity. You would now have a conglomeration, a grouping of investments and therefore you would have diversified your portfolio. So by and large with prudent management of these funds it is very difficult to see very large depreciation, of course, unless some big institution or two fail and then you have the entire market crashing, as it did in the United States sometime ago.

So, Madam President, in the area of mutual funds let me say again, I hear the concerns. The question is, right now, you have them under the ambit, actually, of the Securities and Exchange Commission, not the Central Bank. I will touch in a little while on some of the guidelines which are being prepared by the Securities and Exchange Commission while they are working on legislation to bring this to bear.

**Sen. Seepersad-Bachan:** Madam President, I am just a little concerned with what I am hearing from the Minister, because according to the *Reform of the Financial System of Trinidad and Tobago*, the White Paper, the mutual fund has been highlighted, and in fact it says here, there is the absence of formal regulatory and supervisory structure for the mutual funds industry, and this is an important issue that needs to be addressed. There is a conflict in terms of whether it falls under the SEC or the Central Bank. It does highlight it here, the lack of legislation, the lack of a regulatory framework as an important issue.

**Sen. The Hon. C. Sahadeo:** Madam President, I do not think I disagreed with the Senator. I indicated in essence what is a mutual fund; what I elaborated on—and let me further elaborate as I seem to have confused the goodly Senator and I do not know if anybody else.

When you want to be an investor, you decide what risk you would take and, normally, you have a direct correlation between risk and return. And therefore you decide if you want to invest in a share—I think we were getting some advice from Sen. Prof. Kenneth Ramchand; he was telling you which shares to invest in. It means, hopefully, people who took his advice and the shares appreciate—if they depreciate, I do not know if they could go against Sen. Prof. Ramchand, if those shares fall back.

Madam President, the Securities and Exchange Commission has guidelines at this time while they are preparing legislation to bring to this said Parliament where you would now legislate. We have seen so much legislation, at the end of the day you first work with guidelines. And we are working in a very dynamic environment, and, yes, I agree that the guidelines must be put in place, but at this time I am making the point that the banks and financial institutions are not at risk regarding that area called the Money Market Fund.

The additional point I am making, as any investor—and we seem to have a lot around these tables; I heard Sen. Wade Mark talk about his investments; we have a lot of financially prudent people, Madam President, so I better be careful how I address these issues. But the point I am really making here is that it is an area at this time which is being looked at and the guidelines are being prepared by the Securities and Exchange Commission. As a matter of fact, a baseline study was done on the Collective Investment Vehicle Industry, and it is a very thick document which was prepared based on that whole baseline study, which really, if I were to refer to it would take up too much of my time. But just to give you a brief insight, they say, the Collective Investment Vehicles or Collective Investment Schemes are forms of financial instruments that are available to investors allowing them to pool their investments for management by professional investment managers. Collective Investment Vehicles include the entire mutual fund industry, including Money Market Funds; Equity Funds; hybrid funds and certain types of annuity and pension funds. Based on that, the Securities and Exchange Commission has developed a set of guidelines for these Collective Investment Schemes.

Madam President, as we all know, legislation takes some time; sometimes it takes too much time. I want to assure this Parliament that I have been reliably advised that legislation is presently being drafted in terms of bringing into law some of the present guidelines for Collective Investment Schemes.

A lot has been said regarding insurance companies and what you call annuity products. There are a lot of issues and concerns regarding, what you call, “one-year annuities”. First of all, Madam President, you would be pleased to note here that this area of activity and its control moved across to the Central Bank where we have the expertise and the authority in this regard. One of the biggest concerns, and I heard it, I think, more than once; more than one of the Senators made comments on it, is where products are deemed to be fixed deposits but couched in such a way they are deemed to be annuity, and how do you deal with it.

As I said before, finance is a fascinating area and you would have an emergence of all types of products and services. The question is, how does the regulator manage this risk? How does the regulator put systems into place to prevent the collapse? I am pleased to correct some of these misconceptions because under the Insurance Act, I think it is, these deposits would have to be covered by what is called the statutory fund; you must match these insurance liabilities with a statutory fund. So in effect, although they are not covered by the deposit insurance they are—in fact, mechanisms have been put in place in the insurance industry where these statutory funds are being set aside to ensure it has that coverage.

Let us say you have a situation where an insurance company goes under, the statutory fund in which there are guidelines for investment is supposed to cover, at least, the insurance liability. What it says, therefore, once they are properly managed and supervised by the Inspector of Banks and Insurance, they are not just covered up to \$50,000 but they are protected for the full amount. As we know in liquidation you may have some little hiccups here and there, but you do not just have coverage of \$50,000, you have coverage of the entire amount. I hope I am not deemed to be selling one-year annuities, but I just thought it was important that I clarify that concern.

Madam President, a lot of concerns have been raised regarding this 40 per cent and I think from speaker to speaker we went ahead and there were lots of concerns in terms of: first, why 40 per cent? Somebody would jump up and say: why 30 per cent? But I think the big issue is, why you have to ensure control; how do we ensure therefore—what is the rationale for control? As I said before, it is all in the national interest.

As I outlined a while ago in terms of how do you measure the market, right now the Central Bank has under its auspices—they regulate all the financial institutions and non financial institutions; they know, for example, what is the

total loans by all these institutions, so they would know how many billions of dollars they are worth. So if you are going to have a potential merger they would say, if these two entities come together and it is going to exceed that 40 per cent; they are saying in the national interest you can have some issues.

It does not only involve loans, it involves credit cards; it involves deposits, so it means they would go through the list of all the items that you can categorize in that bank to determine when these two units get together—that 40 per cent—when the merger is completed, how it is going to impact on any of those assets in the balance sheet or liabilities in terms of it being in excess of 40 per cent. I think, Sen. King you were asking, how do you do it? And what is interesting, as I indicated before with FCIB—and we have a very practical example—in Barbados they were able to evaluate it and say, in the area of loans you would exceed that 40 per cent and in that area you are therefore stymied or controlled from going beyond in that market. What it means in that area of activity you would then be stymied and say, “I cannot go beyond 40 per cent”.

So in terms of that 40 per cent, I think by and large it is a number which has been used; it is one which has been used within more recent times and I think it is one, which has more or less been accepted. I think the 40 per cent model has also been used in Canada. So by and large we are saying it is a fairly robust model to adopt and if it is one that is being used by so many of these countries, certainly, it is one that we should also be looking at.

A lot of concerns were raised regarding the “fit and proper” and I think a lot of the statements which were made were very subjective. If we refer to clause 10(c), it lists all the areas in which you are talking about fit and proper:

“The other matters for consideration:

- (1) The nature and sufficiency of the financial resources of the proposed controlling shareholder...”

It means, if now you have adequate resources, as the bank continues to expand and they need additional capital, et cetera, from their shareholders, are you going to be stable? Are you going to have the capital to continue supporting the financial institutions?

- “(2) The soundness and feasibility of the proposed controlling shareholder or proposed acquirer for the future conduct and development of the licensee’s business.
- (3) The business record and experience of the proposed controlling shareholder or the proposed acquirer.
- (4) The interests of the financial services industry in Trinidad and Tobago.”

Madam President, you would always have some level of subjectivity, but I think by outlining what is deemed to be in this area, clause 10(c), they sought to clarify some of these issues.

As was enunciated by my colleague, Sen. Conrad Enill, and I think several of the other speakers, it is a very clear mandate of this Government in pursuing the overhaul of the financial legislation which underpins the financial sector. The modernization of our financial sector is a necessary condition for creating here in Trinidad and Tobago an international financial centre. We have already put in place machinery for improving the regulatory oversight of insurance companies, as I said before. The White Paper which was referred to extensively here on the financial system, carves out the future financial landscape and charts the course for the institutional development and legislative agenda that are necessary to lay the foundation for a modern financial system.

A lot of concerns were raised in terms of credit unions and pensions which they have not seen at this time. Let me say again, a lot of guidelines are being prepared at this time by the Central Bank in terms of these areas and legislation is presently being drafted also and we say in the very near future we are optimistic they would be coming here.

I want to touch again on one area which I think was elaborated extensively by Sen. Prof. Kenneth Ramchand. I think he took the Government to task and everybody to task and I hope it was not based on personal reasons because his assets base seemed to have fallen for a while because of what was happening to the stock market.

It is no secret at all that when the Supervisor of Insurance went across to the Central Bank where they had a more august and detailed set-up there, they really sought to enforce what was legislation and what prudent principles should apply. Unfortunately, we are all growing older—we do not like to admit it—and sometime in the near future or not so near future we are all going to be concerned about our pensions. And whereas, like my colleagues here, we have to go to the market; we have to invest; we have to get money in a legitimate manner and the stock market has always been an avenue, in terms of—and pretty vibrant. As a matter of fact, our stock market has out-performed most stock markets, not only here but internationally.

In terms of insurance companies and the mandate of 50 per cent equity, this was not a scribbling of a Government who had nothing to do or a central bank; this was based on international policy—international standards. You would have heard nice terms like “market to market”; you would have heard there is now the

“International Accounting Standard (IAS) 39” which mandates a certain type of accounting treatment. In other words, what that International Accounting Standard stipulates is how you are going to record, be it your realized or unrealized gains and how you would record your investments at the end of the financial year.

What it stipulates, really, you have a maximum of 50 per cent in equity holdings. And I, like Sen. Prof. Ramchand, would like to say, can you look at historic cost? Is there a possibility? And that continues to be dialogued.

**4.00 p.m.**

I share his concern being an investor too; I would love to see the share price. Let me interject here that a lot of the gurus have indicated that what we are really seeing is a correction of the market. This means that the share prices were, to some extent, overstated. Anybody who did an analysis of the shares would have told you, "Listen boy, dis ting too good; watch it." I just thought I should let you know; so please do not blame us for everything. It really was a situation of all the stock markets.

This happens over a period of time; there is buoyancy; the market is liquid; interest rates were low; people decide to invest in shares and you have a pull; demand and supply, bingo, you have high share prices. You have bullish markets; what do you get? When you are an investor, you take risks; and the word "risk" means you are unsure. Otherwise you could buy lotto; you win the ticket; you do not have to buy "no" stocks and shares.

The big concern I heard being raised by many, many of the Senators was: Why do we have an almost arbitrary 50 per cent? Why do we have to have it stated in terms at current market values? Let me reassure this Senate, that this is based on International Accounting Standard No. 39; it means all the insurance companies have to comply, otherwise they would get a qualified audit report.

Madam President, there was one concern I did not hear at all: seeking to protect the investor and your long-term, the pensioners. Sen. Dr. Gopeesingh was in class with me as a mature student for some time. He reminded me that we are talking in terms of equities and the risk of the equity market. I think I said so more than once. Therefore, the reason for that limitation of 50 per cent is to manage and to ensure. We just talked about how volatile the stock market is and, therefore, if you are going to have more than 50 per cent—[*Interruption*]

**Sen. Prof. Ramchand:** Madam President, just for clarification, I would like the Minister to know that I agree with her and I think she took my point. My point was that we have to work out how we calculate the 50 per cent. I was not



objecting to it or blaming the Government; I was merely saying that we need to have some kind of dialogue about historic, average and current costs. That was really the main thrust of what I was saying.

**Sen. The Hon. C. Sahadeo:** I hope I have clarified it. We are guided by an International Accounting Standard and it is not what we want to do. Of course, I should elaborate here. There is a lot of dialogue right now with the Inspector of Insurance. I think you mentioned the other avenues in terms of property; you have real estate, bond markets and the money market funds. So there are a lot of other areas for these insurance companies to invest in, but because the market was so buoyant, this was where they went.

The point I want to make is to protect the pension funds, because it is critical in all countries that we recognize if we do not protect these pension funds, we are going to have a lot of problems in years to come. We know when institutions failed, the problems we have had. As a matter of fact, we are hoping that when we bring pension legislation it would deal with a lot of reform. A lot of areas have to be looked at.

One of the provisions we would have to look at is portability and transferability. I think last year in the budget when we talked about pension reform, portability and transferability was one of the areas which we said was certainly new to Trinidad and Tobago and it was very interesting that we were going where other countries had already gone. It was one area we probably took too long to address.

When we talk about prudential criteria for the management of pension funds and fit and proper criteria for fund managers and trustees, we are working in an arrangement in the financial services industry in terms of how we are going to continue to monitor and ensure and we are also talking about what controls we are going to put in place to ensure that this sector is really well managed, as we all know what could be some of the crippling effects if this sector fails and the implications for other sectors. Before we leave here today, I am sure all of us would be pleased to note that, at least, our pensions are being protected. At the end of the day, we recognize that there is need for more supervision.

There is another area of concern which I did not touch on, the 10 per cent. Another issue and concern was the control required in acquiring 10 per cent in a company. Once you have 10 per cent or more in any institution, you have the ability to exert influence. In that regard, the fit and proper rules which I discussed before must apply. Again, there were some questions mentioned earlier in terms of fit and proper rules.

*Financial Institutions (Amdt.) Bill*  
[SEN. THE. HON. C. SAHADEO]

*Tuesday, May 23, 2006*

I hope I was able to clarify a few of the concerns. Certainly it is quite interesting to see some of our non-financial friends making such detailed and deliberate contributions. At the end of the day we will all be very pleased to note that we are trying to protect all the citizens of Trinidad and Tobago. We are trying to protect an industry of which we have seen the fallout in previous years. We have also seen other countries which have suffered when there was a failed financial institution. This is just the beginning of a consortia of amendments that we are going to be bringing forward in terms of having a more robust financial sector.

Madam President, I thank you.

**Sen. Dr. Tim Gopeesingh:** Madam President, we have heard contributions from Members of the Government, from the hon. Minister in the Ministry of Finance and from Sen. Christine Kangaloo—Sen. Sahadeo, my apologies. Sorry, Christine, you might be on my mind.

Basically, what the Government seems to be trying to do is to bring legislation that would regulate the financial sector, based on the emerging globalization in the financial market and the rapid transformation of the financial sector over the years, with the advent of massive telecommunication systems, a lot of money being circulated around the world and the cross borders that are occurring. Nations are now really open to financial liberalization globally; therefore, Trinidad and Tobago is no exception to it.

Based on that, it would seem that governments had been moving, at some times in the past, to regulate the financial sector. A number of amendments were made to the Financial Institutions Act and then the last one in 1993. There was one prior to that in 1989.

The first point I want to make on this issue, is that Act No. 2 of 1986 was to amend the Central Bank Act, Chap. 79:02 and the Financial Institutions (Non-Banking) Act, 1979. It was assented to on February 08, 1986. I want Senators to pay particular attention to this:

"Whereas it is enacted inter alia by subsection (1) of section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

"And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House."

Madam President, the Bill brought before this Senate today and the previous week is similar; to amend the Financial Institutions Act. Minister of Finance, that Act required a three-fifths majority, because that Act— *[Interruption]*

*[Sen. Jeremie stands]*

**Sen. Jeremie:** Excuse me, would you give way?

**Sen. Dr. T. Gopeesingh:** No, let me make my point. You could make your notes, hon. Attorney General.

**Sen. Jeremie:** I just would like one second of your time.

**Sen. Dr. T. Gopeesingh:** Madam President, I am tired of it.

**Hon. Senators:** Ooh!

**Sen. Jeremie:** I am so sorry. *[Crosstalk]*

**Sen. Dr. T. Gopeesingh:** My contribution continues, Madam President. He would have his time.

**Sen. Dumas:** How can you be tired? "You just come; you can't tired yet."

**Sen. Dr. T. Gopeesingh:** This Act in 1985 required a three-fifths majority, because it was going against the Constitution. This Bill goes against the Constitution and rights enshrined in the Constitution; the right of the individual to enjoyment of property.

**Sen. Dumas:** Read all of it man.

**Sen. Dr. T. Gopeesingh:** When businesses take place and corporations are formed—*[Interruption]*

**Sen. Dumas:** Read all of it.

**Sen. Dr. T. Gopeesingh:** —and company A wants to go with company B; why should they be prevented from doing so on their own, voluntarily, when they are prevented from enjoyment of the property? It is their right to merge and to have acquisitions. If you were to take that right away and put it into the hands of the Central Bank and the Minister of Finance, you have to have a special majority

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in this Parliament, because of what was done in 1986. This is enshrined in the Constitution, the enjoyment of property. The shareholders of a company may want to merge and they may want to go into an acquisition, a joint venture, and they would be prevented by virtue of this Bill, because it says that once you go beyond 40 per cent you have to get permission from the Central Bank.  
[*Interruption*]

[*Sen. Jeremie rises*]

I think you should probably give your information to the hon. Minister when he is responding. [*Crosstalk*] Are you moving on a matter of clarification?

**Madam President:** Senator, are you going to give way?

**Sen. Dr. T. Gopeesingh:** No.

**Madam President:** No? I am afraid the Member says he is not giving way, Mr. Attorney General.

**Sen. Dr. T. Gopeesingh:** He would have an opportunity to answer the question in the response he gives to the hon. Minister of Finance when he responds.

**Madam President:** Maybe he is trying to clarify something, Senator.

**Sen. Mark:** "He eh give de CJ no chance to clarify anything." Why must we give you?

**Sen. Dr. T. Gopeesingh:** This Bill takes away the fundamental freedom of individuals in terms of the freedom of enjoyment of property. It is the same dictatorial tendency that is going on in so many sectors of the society by this Government; a dictatorial tendency you see reaching the highest office in the land in terms of the Chief Justice and the same sort of dictatorial situation they want to see emerge in the financial institutions.

Madam President, the financial institutions of Trinidad and Tobago are the bread and butter of the people. If these are not working well, do you know how many people's jobs would be lost; how much money would be lost; how much savings would be lost? When you want to take away that right from an individual of freedom of property or freedom of association, you are going into dangerous territory and, therefore, you are going against the Constitution. That is that first point I want to make.

This Bill seeks to also establish some sort of regulatory mechanism for the financial sector. It is noteworthy that this present administration undertook some work in the past on a Green Paper and then a White Paper on the financial sector. That engaged the minds of a number of very competent people in the financial sector and work started in 2002 and ended in 2004, from a Green Paper to a White Paper.

The hon. Minister of Finance spoke about a number of recommendations on reform of the financial system of Trinidad and Tobago, which is the White Paper. He drew a lot of analogies from the recommendations that exist on this reform of the financial system. We are wondering why this administration is deciding to bring a piece of legislation which only encompasses a minute part of the financial system. I want to indicate that it seems to be a piecemeal approach to the management of the financial sector.

In the reform of the financial system, this document spoke at length in the introductory area of financial reform and I would like to quote paragraph X:

"The existing regulatory and supervisory framework is fragmented and the system is now subjected to three different Regulatory Authorities—namely, the Financial Institutions Supervision Department, which falls under the umbrella of the Central Bank..."

So the Central Bank is supervising the financial institutions. Next, it says:

"The Commissioner of Co-operative Societies and the Securities and Exchange Commission—some more effective than others. There is therefore a critical need to upgrade the regulatory framework to provide for a single Regulatory Authority."

We want to ask this administration: You have a Commissioner of Co-operative Societies and you have the Securities and Exchange Commission; you already have the Central Bank which deals with financial institutions, why are you coming with another piece of legislation in terms of mergers and acquisitions? All the minds in the nation, over a period of four years, indicated to the Government that it should have a single regulatory authority. Why are you trying to bring piecemeal legislation to this Parliament to just talk about mergers and acquisitions?

Mergers and acquisitions take place with companies so that they could benefit from economies of scale and economies of scope. Mergers and acquisitions are just a miniscule part of intercorporate linkages that would bring about economies of scale and economies of scope. Sen. Sahadeo would bear testimony to this.

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There are joint ventures; strategic alliances; strategic alliances with cross-over equity; strategic equity investments and minority positions; franchise operations; subcontract manufacturing; mergers and acquisitions—one part of all that I am indicating so far; outsourcing under long-term contracts of important support functions or processes; licensing and cross-licensing agreements; certain marketing and management agreements.

I read all these to indicate that mergers and acquisitions are one of the 12 areas for intercorporate linkages which can assist financial institutions in terms of economies of scale and economies of scope. I hope you take note and tell us why you are bringing one part of it, just mergers and acquisitions, to be debated in Parliament, when some of the best minds in the country, including yours, Senator; you are a very bright man in finance—[*Interruption*]

[*Sen. Sahadeo rises*]

**Sen. Sahadeo:** Madam President, can I correct one statement?

**Sen. Dr. T. Gopeesingh:** Certainly; I would give way.

**Hon. Senators:** Ay, ay! [*Crosstalk*]

**Madam President:** All right, Senators.

**Sen. Dr. T. Gopeesingh:** Madam President, "woman is boss".

**Sen. Mark:** The AG is a man of dubious distinction.

**Sen. Sahadeo:** I just want to remind this Senate that the mergers and acquisition refer to locally licensed financial institutions. It does not obviate the fact that you can have all these nice acquisitions and mergers of international organizations.

**Sen. Dr. T. Gopeesingh:** The hon. Minister made a statement on the question of mergers and acquisitions. I do not know whether she is getting the point that mergers and acquisitions are just one aspect of the 12 or 15 areas of intercorporate linkages. I am sure you would know that when companies have to look for economies of scale, they go to a number of areas like joint ventures and strategic alliances. Why were all these not incorporated in the thinking of the whole system for financial institutions and intercorporate linkages, rather than just looking at one of them?

The next point is the question of why are you putting responsibility for regulating these financial institutions into the hands of the Central Bank Governor to whom, we all know, that under the freedom of Information Act we have no

access? The country has no access; citizens do not have access to; they have exempted the Central Bank from the Freedom of Information Act. Why are you putting these regulatory mechanisms for financial institutions into the hands of a politically appointed Central Bank Governor and a Minister who is a political appointee?

Do you think that international financial or business corporations understanding what is happening in Trinidad and Tobago would have the confidence to come and invest in this country? When you say that you want to make Trinidad and Tobago the finance capital of the Caribbean, including the ECS countries, when they understand that the whole regulatory framework depends on a politician, the Minister, and a political appointee, the Central Bank Governor, would they have confidence to come and invest in your country? You do not generate the confidence from within your own country, far less to have international financial institutions investing in your country.

To substantiate my point, Madam President, I want to draw your attention and the attention of the Senate to the statutes of the Republic of Singapore, the Securities and Futures Act. Which emerging developing country must not compare with Singapore? Singapore is a leading example of progress and development. If they took the Securities and Futures Act and put it under the Securities Service Commission and not through their central bank and not through the minister, why are we, as a developing country, frustrating growth and development in an era of globalization, when we know that financial markets are spreading widely in the world and integrating and crossing borders? The Securities and Futures Act of Singapore puts this in the hands of the Securities Exchange Commission and not in the hands of a government-appointed person.

Look at the Central Bank Act of Barbados and you would see where they have put financial institutions under the Securities and Exchange Commission; that is another example. Singapore drew up a code of takeovers and mergers.

**Sen. Enill:** We have that.

**Sen. Dr. T. Gopeesingh:** But it is not regulated by the Securities and Exchange Commission and not by politicians.

**Sen. Enill:** Who said so?

**Sen. Dr. T. Gopeesingh:** You know what your side is capable of; I mean, you could lock up Gopeesingh today; you lock up Panday tomorrow and lock up everybody; so you know what you are capable of doing. Anyway, we know that.

**Sen. Mark:** Oppressors, that is what you all are.

**Sen. Dumas:** No special plea, man.

**Sen. Dr. T. Gopeesingh:** When it comes to the heart, do not worry about it; we know that we are touching your heart.

**Sen. Jeremie:** You were locked up by the last Director of Public Prosecutions. [*Crosstalk*]

**Sen. Dr. T. Gopeesingh:** Your Prime Minister said, "I wonder on what grounds Dr. Gopeesingh got off, so I am going to ask the DPP." He wants to have a role in the DPP's office and he has a role again.

**Madam President:** Senator, come back to the legislation.

**Sen. Dr. T. Gopeesingh:** Yes, Madam President.

**Sen. Mark:** The Prime Minister has taken over the Office of the DPP.

**Madam President:** You too, Senator. [*Crosstalk*]

**Sen. Mark:** "You doh know dat?"

**Hon. Senator:** No.

**Sen. Dr. T. Gopeesingh:** And the Attorney General has taken over the police. [*Crosstalk*]

[*Madam President pounds gavel*]

Madam President, in the era of globalization, we know that a number of financial conglomerates have emerged and have been expanding their operations in both the domestic and regional markets. [*Crosstalk*] "Dey playing mas and dey fraid powder."

**Sen. Mark:** The AG is in charge of National Security.

**Sen. Dr. T. Gopeesingh:** Madam President, there are complex financial institutions occurring around the world. There is a contagion effect, and the Members in finance would know what that means. They saw what happened in Brazil; it spread to Colombia and India. Do you remember when India and Thailand went through terrible devaluations because of the contagion effects, because of businesses collapsing as a result of the globalization process and they could not meet the demands? What would prevent us from collapsing, when large financial institutions want to come into this country, but you have it regulated by politicians?



Hear what the members of the task force said on page 10 of the White Paper, Madam President:

"Currently, not all institutions...are subjected to financial reporting standards."

I was happy to hear the hon. Senator talk about International Financial Reporting Standards (IFRS). Do we have these international reporting standards in Trinidad and Tobago for financial institutions? If we have some companies having it and others not having it, where is the supervision and mechanism for this?

"Other significant weaknesses impacting the system include an uncompetitive taxation regime,"

I will talk about that regime shortly.

"Absence of a competition policy, a monopolistic telecommunications infrastructure and the lack of internationally recognised certification and accreditation requirements for persons providing financial services of an advisory, investment, consultancy or related nature."

I want to ask the hon. Minister responsible for state enterprises: Do we have the human capacity in the Central Bank to do forensic analysis of companies to determine whether somebody meets the requirements for a merger and takeover? How far are they going to be able, with their capabilities, to determine what is happening? They have difficulties in determining what is happening in the credit unions; in pension funds; in non-banking institutions and they want to talk about looking after the business of regulation of financial institutions at the moment?

The whole regulatory reform mechanism takes into consideration technology and democratic trends. All these financial services around the world, North America, Europe, Asia and Australia have cross-border types of process. This is why the General Agreement for Tariffs, Trade and Services (GATTs) came into being. These complex conglomerate groups are operating across national borders and increasing challenges to regulators. Are we going to put politicians to deal with cross-border challenges?

Madam President, with globalization today, 80 per cent of the countries in the world are open. Their borders are porous and open to financial systems. You have electronic banking systems; it is so wide. And you want to tell us that you are going to have mergers and acquisitions under the Central Bank, under a political directorate. Yet still you say that you want to have a Pan-Caribbean Financial Centre, which would be regulated.

**Sen. Mark:** That is a contradiction.

**Sen. Dr. T. Gopeesingh:** How are you going to have that? The financial people told you that you must have a single regulatory authority; yet we still have a Securities Exchange Commission; we have one looking after the Co-operative Society and now you still want to have a Central Bank thing.

This is different from the Fair Trading Bill. In that Bill, you said that you were leaving out the whole question of mergers and acquisitions to the financial institutions, where the whole financial instruments or regulations are so very blurred. [*Interruption*]

**Madam President:** If you are going to start something new, it would be better if you do it after the tea break.

Hon. Senators, we will suspend until 5.00 p.m.

**4.28 p.m.:** *Sitting suspended.*

**5.00 p.m.:** *Sitting resumed.*

**Madam President:** Senator, you had 24 minutes, you may continue.

**Sen. Dr. T. Gopeesingh:** Thank you, Madam President.

Before we took the break, there were three essential points that were made, as far as this Financial Institutions (Amdt.) Bill is concerned. The first was the question of the constitutionality of it in terms of the requirement on the Constitution broaching the freedom of property which all companies enjoy and all shareholders enjoy in companies.

The second was the issue of having the regulatory aspect of financial institutions under three different areas, when one of the major recommendations was to have a single regulatory body to look at that.

The third area was the question of whether we have the capacity within the Central Bank to do the types of analyses and supervision that is required, if this Bill becomes an Act.

There are a number of other areas which need to be discussed and analyzed. Some degree of implementation needs to be made in terms of solving some of the problems relating to financial institutions.

The first issue I would like to touch on is the question of banks. I know we have the supervision of banks within the Central Bank, but there are a lot of areas that we need to look at very carefully. I draw to the attention of this Senate the

profits of a number of banks. Republic Bank in 2003 made a profit of \$658 million before tax; in 2004, \$829,796 million; in 2005, \$939,386 million. I am very happy that Central Bank was able to give me these figures themselves when I asked for them. In 2002, Republic Bank's profit was \$503 million. You have Republic Bank making a profit in 2005 of \$939 million.

Madam President, in 2005 RBTT's profit before taxation was \$1.1 billion; in 2004, \$974 million; in 2003, \$692 million and in 2002, \$566 million. Within a short period of four years, you see the profits of one bank moving from \$566 million to \$1.1 billion.

Madam President, FCB is a small bank, which made a small profit, \$197 million in 2002; in 2003, \$233 million and in 2004, \$315 million. Scotia Bank, which has a smaller number of banking homes, made a profit of \$273 million in 2003 and \$280 million in 2004.

I gave these figures to illustrate that the banking sector seems to be moving with great rapidity in terms of profitability, still the consumers, the people who deposit money in the bank, who try to have some savings and try to borrow money to meet their mortgages for their homes, seem to be suffering. Therefore, there is necessity for the Supervisor of Banks to take an active interest in terms of the transactions on a day-to-day basis occurring in banks, the cost of which goes to the ordinary consumer and the low income group of people.

Too often citizens have to pay for small transactions. At the end of the month, when a poor individual has to pay almost \$200 per month for different types of transactions in the banks, this is too punitive. The quality of service is poor in banks. People have to wait long hours for service. The staff turnover is very high, with young staff turning over rapidly and a lot of time is wasted in simple transactions, while the profits in the banks are moving astronomically. Nothing is wrong with a company or any firm making a profit, but it must not be at the expense of poor people.

What is responsible for this as well is that there is a big gap between the deposit rate and the lending rate. If someone deposits money, he would get probably 6 or 7 per cent on a current account and the lending rate is 14 and 15 per cent. So there is a big gap on the discrepancy between the deposit rate and the lending rate. This needs to be supervised; this needs to be regulated. Nothing is wrong with that being regulated by the Central Bank, but this is important. This is one of the areas that is largely responsible for the large profits.

There seems to be a bankers' club operating. All of them want to make large profits. They set their interest rate, lending rate and borrowing rate and then they say, "All of us going to operate on that; let us make large profits," and poor people are suffering.

**Sen. Mark:** Cartel.

**Sen. Dr. T. Gopeesingh:** All of us go through that. You want to lend; you want to put a deposit in the bank, you get a small percentage. When you go to borrow your same money, you have to borrow 7 or 8 per cent more. That is unconscionable. [*Crosstalk*]

What about the buying and selling of foreign exchange? Foreign exchange is bought at the lowest possible level and sold at the highest possible level. Foreign exchange is bought in the bank, hon. Minister, at TT \$6.20 and sold at TT \$6.31 or TT \$6.32. This is supposed to be regulated. Some control should be used. I brought it up in this context: If you want to have the Central Bank looking after this, nothing is wrong, but not the Central Bank looking at mergers and acquisitions. This is something that the Central Bank needs to look at. The cost should not be put on to the low income people, but they should be regulated as far as that is concerned.

I gave an illustration of the profits the banks are making and we know about their poor service. A poor lady the other day wanted to use the bank's washroom and we know what happened. We do not need to speak about that in public again, but it is quite easy for us to see that banks do not care about the people whatsoever. That is where you and your team got to come in, hon. Minister of Finance.

The next area I want to touch on is the question of the taxation regime. That is one of the recommendations made by the members of the task force. They spoke about a regime of taxation:

"The taxation regime for the financial sector should be reviewed to ensure that the sector is competitive and that tax induced distortions within the sector are removed."

Our administration simplified the taxation regime in Trinidad and Tobago. From what we were able to achieve, it made the system of filing tax returns easy and we were able to bring the taxation down for corporations as well. But what seems to be happening now is that even though you have reduced the corporation tax, hon. Minister, the rate of inflation is offsetting the real benefits from the fall in the taxation regime. So if you give a corporation a reduction in their corporate tax, the rate of inflation in terms of buying new machinery is being eaten and gobbled up and the buying power is being eroded. One has to look at that carefully in terms of corporation taxes.

We come back to the old issue of taxes within the energy sector. You know that there are probably lots of joint ventures, mergers and so on occurring in the energy sector. We are still uncertain about what tax regime these companies operate under. Many of these oil-producing companies offset their profitability when they say they have lost or they have not been successful in their drilling operations. All the losses are offset against the profits they make from royalties for oil and gas. So we come back, hon. Minister, to the question of the taxation regime in the energy sector and in companies in the energy sector.

The next area I want to touch on for a short moment is the Unit Trust Corporation, which my colleague and brother, Sen. Mark, spoke about earlier on. The Unit Trust is a public company. It is audited by the Auditor General. It is not exempt from scrutiny. It takes the poor people's money. Poor persons, once they have some savings, go to the Unit Trust, because they feel that there is merit in going there and the State would look after their money. But many persons are disillusioned about what is happening with the Unit Trust.

The Auditor General raised concerns that the Unit Trust established subsidiaries in Belize. The Auditor General was at a loss to know on what basis it had this subsidiary in Belize and how did people's money go across to Belize. So if their investment in Belize is flawed and it goes crashing, what would happen to the people's savings in the Unit Trust Corporation? This is where you need a lot of regulation and supervision in terms of those areas.

The Unit Trust may want to have a private auditor. We saw what happened to Enron. It was a devious means of covering financial institutions in the Enron area and we do not want that to happen to the Unit Trust. The Minister ought to explain to the population this whole question of the Unit Trust at some time.

Other financial institutions and banks—There is a practice nowadays that is seeping through all financial institutions to move into non-traditional areas. Insurance companies are moving into banks; banks are moving into insurance companies and they do not have any guidance on that approach. There is no guidance in terms of what insurance companies and banks can do and vice versa.

Now you have companies in insurance, banking and real estate. How do we separate the assets and liabilities of these three types of companies and then come under one holding company? Suppose the real estate business crashes, what happens to the person who has gone for life insurance in a particular financial institution? They will crash as well. So this is where the Securities and Exchange Commission needs to come in. It is not a matter of acquisitions and mergers so

much, but a matter of supervision. The Securities and Exchange Commission should have an established code of conduct, like the Singapore code on takeovers and mergers; not to be brought under the ambit of politicians. So there are a lot of dark areas as far as these companies and holding companies are concerned.

Madam President, you know about Guardian Holdings Limited, which was Guardian Life before; they have now gone into real estate and into some degree of banking as well, and there are other conglomerates.

The whole system in Jamaica collapsed as a result of these interlocking directorates and interlocking institutions; one has to be careful. I know you mean well in terms of bringing about some regulatory framework, but we still stick to the philosophy, that should not come under the Central Bank. That should go under the Securities and Exchange Commission. How do you take funds from banks? In banks people deposit money for a short term; banks should not take that money and do long-term business. There must be some mechanism so it could be curtailed, because suppose the banks make some investments long-term and things crash, what would happen to the short-term depositors?

As I am on that point, I want to ask the hon. Minister: Regarding the Deposit Insurance Corporation, I might be wrong, but \$50,000 is still the highest amount of money the Deposit Insurance Company would guarantee. Sen. Montano, I am sure you would agree with me on that one. [*Desk thumping*] Do you think that is right? Some people may put their whole gratuity and savings in a bank; \$300,000 or \$400,000; what if something happens to that bank? It may happen to all of us; it has happened in the past. The Deposit Insurance Corporation is only giving you \$50,000 more; something needs to be done about that.

**Hon. Senators:** Yes! [*Desk thumping*]

**Sen. Dr. T. Gopeesingh:** If institutions want to go into banking and insurance and other things, they must set up special companies that are well capitalized and well managed.

I have already alluded to this, hon. Minister. I am against the monopolistic approach that banks take in employing legal firms and the propensity to have three or four monopolistic legal firms in Trinidad and Tobago. We can call their names and it is grossly unfair to the individual when he is told that he must go to a particular legal firm to do his transaction. We had brought a decision to change that and you never supported it. This is something at the base of people throughout Trinidad and Tobago. They go to a bank; they want to borrow money, "Well, you go and do your legal transactions with this law firm." You want to mortgage your home, "You go and do your transaction by this law firm."

The ordinary young lawyers operating individually cannot survive because they are eaten up by these monopolistic large law firms, which take all the business and the banks make the excuse that they could have it done quickly. They do not have it done quickly, so something is fundamentally wrong with that.

**Sen. Dr. Saith:** What about all those doctors who form nursing homes?  
[*Laughter*]

**Sen. Dr. T. Gopeesingh:** I would come to that now, Sen. Dr. Saith.  
[*Laughter*]

Let us look at some of the insurance companies. Another area that touches the small man is the question of motor vehicle insurance; this is something you need to look at. You know that there are a number of motor vehicle insurance companies operating in Trinidad and Tobago. As soon as a claim is made, they do everything possible to hive off that claim. They make all sorts of excuses; they ask you to get this and that and after one or two years, you are unable to reclaim the money that is due to the poor person with a car who has paid his full comprehensive premium, but is not able to get the redress he wants. Then you may say that you would go to the financial ombudsman. The financial ombudsman is like a post office. You go and deposit your problems and claims to him and he is toothless.

**Sen. Mark:** Toothless bulldog!

**Sen. Dr. T. Gopeesingh:** He is unable to do anything. So where is the small man going to get finance to take legal action against an insurance company? These are some of the areas where there is need for extreme supervision and regulation and codes of conduct, as far as some of these institutions, companies and banking sectors are concerned.

Credit unions look after low income people. Many times I have to do surgery on patients; they need some money, because they want to do it privately, so they borrow. They want to go to their credit unions. The poor person is affected by credit unions. For credit unions to survive, they have to depend on some degree of banking business.  
[*Interruption*]

**Madam President:** Hon. Senators, the speaking time of the hon. Senator has expired.

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

*Question put and agreed to.*

**Sen. Dr. T. Gopeesingh:** Thank you, Madam President and Members.

Credit unions need to be encouraged. Hon. Minister, this Bill is designed to bring in financial services which include, without limitation, the business of banking; any business of a financial nature; the business of the credit unions and the business of insurance. We were wondering whether you wanted to bring this whole question of acquisitions and mergers under the Central Bank to probably look at and attack one of the credit unions in Trinidad and Tobago, which is expanding very rapidly. Is this piece of legislation meant for a particular credit union? We all know what credit union looks at the poor people in a number of places throughout Trinidad and Tobago.

This administration needs to come clear on the role of credit unions. How far is it going to allow them to go to become sustainable and be self-sufficient to look after the interest of the poor person who borrows a little \$5,000 here and a little \$8,000 there. This is where the small man goes for money, to credit unions and co-operatives. I think this administration has to look at the punitive areas in these credit unions. They must be able to survive.

Pension funds—The present legislation does not protect pension funds. We do not know who are investing or where they are investing. There are a number of privately owned companies which have large amounts of money in pension funds: the banks, holding companies, but they fail to give information as to where they invest their money; what they have done with the money; who are the trustees of their pension funds and, on an annual basis, what sort of rewards or value they are getting for investments in pension funds. There is need for more transparency in the reporting mechanism of pension funds in private companies.

Public companies—the National Insurance Board; the national insurance system. There is over \$10 billion or \$11 billion in the national insurance system at the moment. Madam President, NIB was supposed to set up an investment company. We do not know whether that committee was set up. That investment company was supposed to take the money from the National Insurance Board and invest it properly and derive a significant benefit on earnings for the investment. In fact, they deposit the money into banks and the banks make the profit. We do not know what rewards the National Insurance Board is getting.

Some people are contributing in the public service. I am not too sure about that aspect, as to how many persons are contributing, but at the end of it all when you have \$10 billion or \$11 billion, that investment is supposed to take care of the aging population. We know that life expectancy is increasing. Those of us who are getting older, we know that we need to survive basically on some degree of pension.



**Sen. Joseph:** Some of us are not getting older? [*Interruption*]

**Sen. Dr. T. Gopeesingh:** Well, older faster. When you are in Parliament you become older faster. [*Laughter*]

**Sen. Jeremie:** Not me.

**Sen. Dr. T. Gopeesingh:** There have been a number of studies done in the Central Bank itself. I am sure the members of the Central Bank know that these studies have been done. The studies have indicated for countries that are self-sufficient, as far as pensions are concerned; our country is about 20 years behind, as far as the national insurance system is concerned. Pension funds are a critical and important function for ensuring the well-being and quality of life for the aging citizen.

So work needs to be done in that area. I am touching on these areas so that they could be brought to light in terms of what is required by the Central Bank and the Securities and Exchange Commission and the whole number of areas on the recommendations of the White Paper on the reform of the financial institutions. The legislative framework is one area we are discussing today. I alluded to the financial reporting standards, which we need to get universally accepted throughout all the companies. The single regulatory authority needs to be introduced rather than these three areas. The taxation regime needs to be pure and clean and transparent.

All the financial services are moving through an age of improved telecommunications with electronic banking and wire transfers. In fact, I remember reading in 2003, that \$7 trillion moved throughout the globe by electronic banking systems. Where are we in Trinidad and Tobago? Money would come in through the electronic system, but we are still not capable of managing that, via strong telecommunications facilities.

I alluded to the areas of competition policy and rules to protect the consumers, because we see that a number of consumers are not being protected, based on what is happening in financial institutions and some of the non-bank financial institutions. The necessity for a small claims court has been spoken about, but there is nothing coming on that. The role of the financial services ombudsman needs to be looked at critically to give some meaningful teeth to that office.

Madam President and Members of this Senate, I have tried to illustrate that in keeping with the globalization process, as far as finance and movement of financial capitals and financial business transactions are concerned worldwide, we cannot adopt a policy and philosophy of trying to hold back mergers and

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acquisitions, because we would be unable to be globally competitive. Companies in Trinidad and Tobago, which do not have the capacity and ability to merge and go into joint ventures and strategic alliances would fall by the wayside, because the international companies would be doing much better than our companies.

**5.30 p.m.**

Therefore, I want to reemphasize, like my brother, Sen. Wade Mark, that I do not think that this Bill is the solution to the financial institutions problems in Trinidad and Tobago. We do not support it because of the first area of the constitutionality of it. We believe that it should be supported by a three-fifths majority of the House; we believe that the whole Bill on mergers and acquisitions is one out of about 15 different areas where financial institutions transactions are concerned in terms of developing economies of scale and scope. We feel that you do not have the human capacity within the Central Bank to do all its regulatory work; we feel that the financial ombudsman's situation is very poor and as a result, we find it difficult to support this Bill.

Thank you, Madam President. [*Desk thumping*]

**Sen. Brother Noble Khan:** Madam President, it is good to see this amendment coming before us with respect to a Bill that originated more than 10 years ago, the parent Bill of 1993. What comes to my mind with this Financial Institutions Act, 1993, and this amendment Bill that deals with it, is that more and more we are getting entrenched into an economic system that one wonders how good it is for us and how it will affect the majority of our people. It does bring to bear some fine-tuning of the financial system, and it touches on some of the major institutions that came with Independence and later on with the World Trade Centre, and the world trade office formed part of that package. As the world becomes more sophisticated and we are faced with globalization, the question of fine-tuning our institutions follows.

But, again, like in so many other things, a question arises in my mind: Who benefits, ultimately? Within the countries we say it is the people who benefit, and one would think it is the majority of the people. In this instant case, it seems to be that the beneficiaries of this widening of the participation in the system would be the people, because it speaks about the breaking up, the shattering of big conglomerates. But there seems to be, to my mind, an element or dilemma when you think in terms of the system, because, historically, we in the Caribbean, and particularly Trinidad and Tobago, which is supposed to be occupying the first place, as in so many other areas, financial management—that is one—seem to be

carving out that area and, obviously, we should feel a bit of satisfaction with that and should have institutions in place. But one would think if we were to follow the major plans from which we copy the big countries and we deal with the Central Bank, for example, say, in the USA, one would think in terms of the Governor of that Central Bank only recently retired—I refer to Mr. Alan Greenspan—and one could think of so many years he has been there. One could also think in terms of the American-type system where every four years many of the officers change as far as governance is concerned, and even the areas for the operation of governance. Why did that person hold office in their Central Bank for so many years as against our own self here in Trinidad and Tobago, that we seem to change with every coming government or within a short period of time?

One of the hallmarks of capitalism, I assume, is that the best would float up and also the best would be derived from that system, and one could see that even in a system of government where you have spectacular changes taking place, this institution maintains someone for quite a while, and maybe some of the other institutions too. Putting that against our position here in the Central Bank of our country, I mentioned before the change, particularly at the top—the Governor—is very significant. It has obviously been institutionalized as far as the political situation is concerned.

I think some of us would remember that the parent Central Bank that took place in England and from which so many others evolved—I think if my memory serves me, it was around 1643 or thereabout; it was in the 16th Century that that institution came about—we could look at our position in that light. We have also seen within recent times, too, that the role of the Central Bank had significant changes insofar as expansion is concerned. This has led me to review that there is an apparent attempt, where, historically, as governance expands, the tendency, particularly in the modern day, to move out and to spin out. One gets the impression that in this case, particularly in the area of finance, there is a spinning in. Well, of course, if we continue to spin in, one would get into the centre and be drawn down. One wonders if this would lead us into a black hole. I speak in terms of what takes place in outer space where the entry into a black hole leaves us really in a black hole.

This, again, is with respect to the Central Bank, with so many things being ascribed to it, so many institutions and expansions in that area. Of course, the position of the Minister has been reinforced in certain areas. But, again, if you need to have governance and rule, somebody has to be responsible, and one could understand that. But against the background of the question of creating

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institutions with a true or genuine attempt of creating an independence, especially in small countries like ourselves where fragmentation, diversity and so many other things lead to so much suspicion, one wonders if this model where you have the question of the independence outside the political directorate, is relevant in practice or even in theory. This, I would put on the Table.

The question of control—we are speaking here about an element of an economy where, obviously, it is open and legal, so to speak, in that it is on the books of the law systems. But one wonders in terms of what had been mooted about and very often we do not speak much of, whether the underground economy, where it is alleged that the \$33 million or so that was passed in the budget, plus the State institutions, is substantial. That is under the control of the Government and it is alleged that the underground economy is by far more than that, and maybe even in our own country. So one wonders what controls we are having in that as far as finance is concerned, because it must make its entry into the system. Whatever is underground or above ground, it must make its entry into the system.

We know with the instant transfer of moneys, et cetera, through the computer system that things could really work. Again, there is the question of objectivity for whom. This always occupies my mind. A simple model I was taught long ago as a young person and I still find very patent is: to make money, more has to come in than what is put out. In the small model: A plus B equals C; the “B” being the surplus that you might make—something like that, but I think that this is not beyond what we could think in terms of.

Another point here is the question of the investment portfolios which form part of a new entry on the financial scene. I know within recent times it has been brought about and I had mentioned it here before, that I would really like to see—it was a wish of mine long ago—a woman being a Minister of Finance. I see we have one within, but truly having the full responsibility—not that I am discriminating on gender or anything like that or I have anything against the present Minister of Finance or the Minister in the Ministry of Finance—

**Sen. Enill:** I agree with you.

**Sen. Bro. N. Khan:** I have high respect for them, but I must draw back on the experience of my own self. You know, as you grow up, you are in a society and you see what your mother did and I always wondered how it was with so little she was able to do so much. I say this from personal experience but it applies across the Caribbean. No matter what the origins were, be it from the African mother

continent, the Indian sub-continent or from Europe, China, wherever, or what remains of our indigenous people, the womenfolk were able to carry it. I am speaking about a generation that is not on the present platform of time. Even that I have great respect and admiration for, because even after the last contribution which was made earlier today by the Minister in the Ministry of Finance, I felt an element of admiration and satisfaction and I am sure other Members felt it.

So this is a question of the investment portfolio I am coming to, because with a little they were able to spread much and manage it through. I would deal in terms of the \$50,000 in the fund which the insurance covers. That has been around for quite some time and maybe \$50,000 then might be worth—I know how they talk about shadow prices and movements forward; I am a layman—about \$500,000 today. So I would look forward to bringing that deposit insurance up to a parity status, which would cover up to \$.5 million in the future. It may not be covered under this law, but I am sure by putting it on the Table and, with respect, Madam President, I do not think I am outside the pale of bringing it because we are talking about finance.

This is a suggestion I would like to make and strongly suggest that we address. If I were to hazard a guess, I would say in a very unprofessional way, that the \$50,000 might be now equal to \$500,000, and you could consider that against the background in which we are. I know it is a big challenge because the whole economic system, even what we are doing here, who benefits from it within the organizational structure? We are dealing with financial institutions, a few people controlling some money given by very many, and it seems to be all geared towards those who are controlling it, and for the individual investors like myself—I am an old public servant; the little pension that I get I put it there. My wife is a very simple woman and in case anything happens to me she would have a little money; not much. It might last a year or two and it is catch after that.

One of our colleagues mentioned that the investment rate on a deposit might be 6 per cent. That is high, and the people who take your money lend it at 15 and 14 per cent and all these high rates. So one would expect that according to the theory of it, the market situation would deal and adjust itself, but in small open economies like ours, I think that the intervention by the State or by the regulators, should find some room to come into play here. One wonders how the people from the North, the World Bank and all these people, would look upon that. I think if we are managing ourselves as we claim to do, there is room to consider that aspect of it.

I mentioned already the whole thing about swinging it around and coming to a sort of centripetal force instead of going outer, centrifugal, and I think this is very important when we think in terms of governance, not only in the area of finance

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where we see it crystallized here. The whole evolution of Parliament, I think, was because of money and you would find that strong when it comes to money, that it would be very sacred as far as the people who are controlling and how they go about it.

So these are the short, brief comments I would like to make on what is before us and the question of the diversity of the economy which is a Caribbean hope and aspiration, but we see so very little emerging after these 50 years. We have created entrepreneurs, companies and what have you. They obviously have not grown much. Of course, they say, well, entrepreneurship is not something that—some claim that you are born with it, but it is a skill you could learn. I belong to that school. We could learn; we could adopt. So possibly I do not know if we are adopting the right teaching techniques or if we are not creating the proper mindset and the dependency syndrome that exists is still transferred into this area.

These are some of the areas and thoughts that I would like to think, at this time, that we could consider in this very important Bill which has far-reaching effects.

Thank you, Madam President.

**Sen. Sadiq Baksh:** Madam President, I join the debate on a Bill to amend the Financial Institutions Act, 1993. While no one on this side and no one, generally, could be against the Minister's wishes in making Trinidad and Tobago the Pan-Caribbean Financial Centre—we on this side support Trinidad and Tobago becoming the Pan-Caribbean Financial Centre, not only within the region, but we see Trinidad and Tobago being the hub with all the spokes connecting all the other islands within the Caricom area and within the ACS region and, in fact, widening the base to attract financial investment in Trinidad and Tobago—we see the financial sector as a targeted area for growth in the new economy of Trinidad and Tobago.

Having said that, we now need to modernize the legislation, and where you would see Members on this side saying that we are not inclined to support the legislation, it is only because we feel that it is not modernized enough to be able to satisfy the requirements of a modern 21<sup>st</sup> Century environment. That is an important aspect. We really need to begin to lay the foundation for 2020 and we cannot wait for 2020 to put those systems in place. Since 1993, this is the first piece of legislation in the modernization of the financial sector and I compliment the Minister of Finance for bringing it at this particular time.

We would have loved him to go further and look at the possibilities for the future. We now have companies in Trinidad and Tobago that are aspiring to be global players in their respective fields. We are now beginning to have investment

in the energy sector for the first time by local conglomerates, and because of that, we need, really, to begin to have the financial instruments and the regulatory framework to ensure that it is not exploited in the initial stages—very, very important. Because of the success we would be having—and I expect to have a lot of success with the economy as it is—we would need to really cater for the smart men and women among us who would play smart with a lot of foolishness.

We have had the experience in the past, where financial institutions and insurance companies finding a mechanism in one-year annuities that were going on for almost a decade were able to cash in on the over-supply of money that was in the system. So they found a creative way of utilizing their non-banking institutions to satisfy a requirement in the marketplace. In the United States you would normally get a medal for finding a mechanism to supply a demand in the market. If that is so, we now need to create a mechanism in which we would be able to identify those shortcomings in the shortest possible time and respond as quickly as possible.

The business sector in Trinidad and Tobago really needs to be given guidelines and also flexibility, especially at this time, to grow, prosper and to become the best that it can be. If we are able to create that type of environment, then we would be heading to 2020 with one of the big ideas for Trinidad and Tobago, making Trinidad and Tobago the Pan-Caribbean Financial Centre. We want to support that move and we want to find and trash out all possibilities of putting in place the regulations that would protect, yes, the institutions, but where we differ is that we feel the citizens and depositors need to be protected most. That is the focus. We are not objecting to the focus of preserving the financial institutions, because by nature, if you preserve the financial institutions, then citizens and depositors would be safeguarded. But in the event that one should slip through the crack in having a merger that was designed to con the depositors and the citizens, then we need to guard against it.

As a boy I recall Oliver Jessels coming to Trinidad and Tobago, purchasing Sandbach Motors and closing it down the next day because of an economic benefit. That happened already. The possibility of that happening again is possible. It is our responsibility to ensure that we never repeat the mistakes of the past. We must never allow ourselves to go down the same road twice. It is for that reason that we on this side are saying, we want Trinidad and Tobago to become the Pan-Caribbean Financial Centre; we want to support a Bill that would safeguard the institutions and the citizens, and if this is the first step in bringing the laws that would modernize the regulations and satisfy that requirement, we are

asking the Minister of Finance and the Government, that when they come back with the other amendments to the Financial Institutions Act, they take into consideration a number of other areas targeted for growth in the future.

We need to protect credit unions. We are seeing that they have been trying to move out of the lull in credit union activities for over a decade now. Over two decades ago, credit unions and cooperatives were an important aspect, especially for the man in the street. That was the hallmark of the PNM administration. In fact, the father of cooperatives could well be considered Dr. Eric Williams, because he initiated cooperatives as a mechanism for getting people together, whether they were agricultural cooperatives, fishing or credit unions. You had gas station cooperatives, taxi cooperatives. The Piarco Taxi Drivers Cooperative is a very successful cooperative. But what happens is that you have a number of credit unions not now functioning the way it was supposed to function and getting into areas which I feel—I have no problem with them getting into, but with the proper regulations in place to safeguard depositors, communities and really to safeguard people's hard-earned money. That is the basic thing.

In addition to that, we need to look at the stocks and the stock exchange. A lot of people spoke about it. In another country, anybody who would be issued a rights issue at 10 per cent less than the going price, but within a two-month period, 50 per cent of the equity would not be around. It would have an Enron effect and the executives of that organization would have had to answer. Do you now why? That brings me to an important point in confidentiality at clause 6 of the Bill, where insider information and information from the regulators will not become public.

I am very concerned that you had in place certain laws that did not allow different organizations, be they mutual funds or pension funds, to invest in a vaille-que-vaille manner or to go above a certain percentage of their portfolio into stocks. What happened, whether by error, oversight, whatever it was, you allowed that to take place and created an artificial demand on more stocks because of these funds and then one day, having allowed it to go on for years, you come out of the blue and say you are starting to enforce the rule. I have no problem with enforcing the rule, but I have a big problem when you begin to enforce it six years after you allow everything to go haywire. It is not totally true that the stocks in all cases were over-valued, because we have a partially owned state enterprise, National Flour Mills (NFM), that is now trading for 76 per cent under par. In other words, they had an offer price of \$3 and it went down as low as 76 cents, and that had nothing to do with the change in policy; it had all to do with management and competition.



It is very important for us to safeguard institutions, to safeguard depositors, to safeguard citizens, but the most important, as we on this side see it, is that as we modernize new legislation, that we do it to allow Trinidad and Tobago to become the best it can be and to target certain specific areas for growth in the future economy so that 2020 would be a reality.

I thank you very much, Madam President.

**The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill):** Madam President, let me, at the outset, thank all those who have contributed to this debate, because I think that it will allow us the opportunity to clarify some of the information that may have been understood in a particular way that may not have given the correct impression.

When I piloted this Bill I said, among other things, that these amendments that we were proposing were simply what we consider to be the fast-track amendments which we consider to be urgent and important and that the second phase would be more extensive sets of amendments. I also said that whatever we did, part of the time frame issue had to do with the consultations that we had with the stakeholders. There has been a lot of discussion about business, business, business, but what we are talking about here simply are licensees or banks under the Financial Institutions Act.

The Financial Institutions Act, 1993, has 64 pages of legislation; it also has available the Financial Institutions Prudential Criteria Regulations; Guidelines on Money Laundering for Institutions Licensed under the Financial Institutions Act; Guidelines for the Establishment and Operations of Mutual Funds by Institutions Licensed under the FIA and Guidelines and Operating Procedures for Application for Excess Credit Facilities. So that in a real sense there is a whole body of laws that seeks to regulate the business and the behaviour of licensees which are, in fact, banks. What the amendment that we are proposing seeks to do is really three things: one, to allow for information-sharing between institutions that have a relationship—and I will identify it in a minute; to allow these licensees to continue their reporting to the Central Bank; and for the Central Bank to be aware of changes in the ownership structure of these institutions that will result in a concentration of economic power such that it creates a problem for the public, or a potential problem.

**6.00 p.m.**

There is also the issue of the role of the Minister and I will deal with that shortly.

Let me take this opportunity to report on a few things. First of all, *The Reform of the Financial System of Trinidad and Tobago*, a White Paper dated June, 2004 is our document. It is one in which we determined that there was a requirement to prepare this system for entering into the future. We have followed a path of bringing into legislation where necessary, what we had set up. In our reform of the financial sector we have established the Office of the Financial Services Ombudsman. This was one of things that we said that we would do. This office was launched on April 29, 2009 and commenced operations in May 2005.

**Sen. King:** You said 2009.

**Sen. The Hon. C. Enill:** April 29, 2005. I said 2009. I am so happy to know that nobody is sleeping. I did that to see who was sleeping.

As it relates to the reform, the establishment of the Office of the Financial Services Ombudsman is completed. It deals with two sectors, the banks and insurance companies. They have voluntarily sat and agreed on a set of rules and principles to which they would subject themselves insofar as complaints are concerned.

We adopted the International Financial Reporting Systems (IFRS) and that has been adopted with respect to the banking sector. In the case of the insurance sector, the international body is still in the process of developing these standards. As soon as they are available we would look at them to determine their applicability.

Minister Sahadeo reported on the interim regulatory council. This is the forerunner to the single regulatory authority. We had set out in the reform the path in which we would move to where we are today, to the single regulatory authority. We have taken a step in that situation.

We talked about the development of the regional credit rating agency. That has been completed and is part of the reform of the financial system. We also talked about the development of an automated credit bureau and that is completed.

We talked about upgrading the inter-bank payment system. That is also completed. All that came as a result of the work that we did on this document and the progress that we have had to date in its implementation.

The question of electronic trading on the Trinidad and Tobago Stock Exchange was done. The implementation of takeover by-laws was approved by the Minister of Finance, gazetted and is now law.

The transfer of the responsibility for the supervision of the insurance sector to the Central Bank, part of the document is done. Amendment to the Venture Capital Act was done.

Some of the issues that we are still dealing with such as the establishment of a single regulatory authority, we have put that in process and we are discussing the approach to deal with it. There are two tracks to the amendment to the Financial Institutions Act. We are dealing with one today and the second is currently being developed at the office of the Chief Parliamentary Counsel (CPC). We would bring that as soon as it is ready.

There is the upgrade of the Securities Industry Act (SIA). We have completed the final review and submitted a draft Bill. Once that is approved it would be submitted to the CPC and then it would come here.

The point I am trying to make without going through the other bits and pieces is that we are following quite closely, the plan we had set out in the White Paper and we are completing a number of them.

Let me deal with the question of the Minister of Finance and his responsibility under the Constitution. Then, I would relate the relationship that he has between the Constitution and the Exchequer and Audit Act and the statutory responsibility he has as it relates to the Central Bank Act, the Securities Industry Act (SIA) and the Deposit Insurance Corporation. If I have time I would talk about the impact and implications of a high-priced oil environment.

Let me start with the question of responsibilities under the Constitution. Section 85(1) of the Constitution says:

“Where any Minister has been assigned responsibility for any department of government, he shall exercise general direction and control over that department; and, subject to such direction and control, the department shall be under the supervision of a Permanent Secretary whose office shall be a public office.”

The Constitution envisages that a politician would be in control and have responsibility for a department which he is given. In that sense, it sets out how this will happen and government's policy would be dealt with in Parliament. It talks about how Bills, the Consolidated Fund, money and responsibility are to be dealt with. It also talks about the Appropriation Bill and what is required. The Constitution determines the role for a minister and sets it out quite clearly.

Further to that, the Constitution and the Exchequer and Audit Act are the relevant laws in Trinidad and Tobago that govern the financial accounting requirements in the public sector environment. If you were to examine both Acts

you would see that they spell out the relationships among Parliament and the Minister of Finance; Parliament, the Minister of Finance and the accounting officers; Parliament, the Public Accounts Committee and the Auditor General and that of the receivers and collectors of revenue. These are very clearly spelt out within the laws of Trinidad and Tobago. This Government is following the law.

Let me turn to this question of the Central Bank Act. This Act provides for the establishment of the Central Bank and defines the duties and powers of the bank. It was created a body corporate which shall have as its main purpose, the promotion of such monetary, credit and exchange conditions, as are most favourable to the development of the economy of Trinidad and Tobago. That is in section 3 of the Act.

The Central Bank also has the exclusive right to issue and redeem currency notes and coins. It is required to act as banker for and render economic, financial and monetary advice to the Government; maintain influence and regulate the volume, conditions of supply of credit and currency in the best interest of Trinidad and Tobago; shall maintain monetary stability, control and protect the external value of the monetary unit; administer external monetary reserves; encourage expansion in the general level of production, trade and employment; continuously undertake economic, financial and monetary research; shall review legislation affecting the financial system and developments in the field of the banking and financial services which appear to the bank to be relevant in the exercise of its powers and discharge of its duties.

This bank is managed by a board of directors comprised of a governor; not more than two deputy governors; not less than six other directors, two of whom may be public service directors appointed by the President. The exercise of the function of the President in the appointment of the governor, deputy governor and other directors is done in accordance with the advice of Cabinet or a minister acting under the general authority of Cabinet in accordance with section 80 of the Constitution.

The arrangements under which we operate are clearly set out in the Act that governs what we do. There are a number of references made in this Act in which there is a requirement for the Minister of Finance to intervene. They are in relation to secondment of officers, currency and legal tender and a number of other areas within the Central Bank Act, capital reserves; general and special reserve funds and the business of the bank, where the Minister has a direct responsibility to approve it. In this piece of legislation we are following what the Act says is the responsibility of the Minister and what the Central Bank in the normal course of its activity will go to the Minister for, as it relates to their issues.

The authorized business of the Central Bank is outlined in section 36 of the Central Bank Act. Among its authorized business includes opening accounts for and accepting deposits for the government, the Tobago House of Assembly and the statutory authorities and such other public authorities and financial institutions in Trinidad and Tobago as the Minister may from time to time approve, and financial institutions; purchasing and selling Treasury Bills and securities or guaranteed by the government or the Minister on the advice of the bank; with the approval of the Minister acquiring, holding or selling shares; with the approval of the Minister making contributions to the capital of or advances to international financial institutions and in regulating the volume and conditions of supply of credit and currency and maintaining monetary stability. These are the responsibilities of the Central Bank. In these matters the Minister has a duty under the law to do certain things.

Insofar as relations with other financial institutions are concerned, the Central Bank may after consultation with the financial institution and with the approval of the Minister impose controls in respect of the volume, terms and conditions.

The question that has been raised about the independence of the Central Bank and political appointees is not the fact. The fact is there are laws and regulations that set out clearly where the lines are and who is responsible for what. At this point in time we are seeking to follow through on what is. The amendments we are making today as they relate to the role of the Minister are in tandem with those activities.

There have been issues about the Securities Industry Act. This provides for the regulation of the securities industry in Trinidad and Tobago. Under the SIA, the Trinidad and Tobago Securities and Exchange Commission (SEC) is established as a body corporate whose functions are to advise the Minister of Finance on all matters relating to the securities industry; maintain surveillance over the securities market and ensure orderly, fair and equitable dealings in securities; register, authorize or regulate self-regulatory organizations, security companies, brokers, dealers, traders, underwriters, issuers and investment advisors; control and supervise their activities with a view to maintaining proper standards of conduct and professionalism in the securities market; protect the integrity of the securities market against any abuses arising from the practice of insider trading; create and promote such conditions in the securities market as may seem to the SEC necessary, advisable or appropriate to ensure the orderly growth and development of the capital market.

On one hand the Central Bank deals with licensees, the banks and on the other hand, the SIA deals with the securities industry. They are two separate and distinct functions.

The Deposit Insurance Corporation also has a role. As I understand the comment that has been made, there is a view that the \$50,000 coverage may not be adequate. We are looking at that because it is within the authority of the Minister to change that by order. That is something we would be looking at. [*Desk thumping*]

Sen. King raised an important issue as it relates to concentration of power. In the book *Development of the Securities Market in Trinidad and Tobago, 1997 to 2003, With Prospects for the Future*, something done by the Securities and Exchange Research Division, page 11, 3.2.1 says:

Interlocking directorates a peculiarity of the institutional framework. A striking feature of the institutional framework of the market is the occurrence of interlocking directorates among the boards of the companies listed on the Trinidad and Tobago Stock Exchange. The existence of such interlocking directorates may signal the possible concentration of control in the marketplace.

The review of the Trinidad and Tobago Stock Exchange administrative data as well as companies' annual reports facilitated the creation of Table I which provides some insight into the level of interlock among directorates of firms listed in the first tier of the Trinidad and Tobago Stock Exchange listed companies.

Of the 30 companies surveyed, 25 had one director presiding on the board of another listed company. This translates to 83 per cent of the companies listed on the Trinidad and Tobago Stock Exchange with interlocking directors. There were 16 occurrences of firms with at least one director sitting on more than three boards.

The point being made here is that in a small economy like ours with this activity taking place on the mutual fund side, you have to find a way to determine what happens; when they decide and who controls what. With the amendments before us we are seeking to ensure that we have a say in the determination of who controls this economy. This has nothing to do with the other issue. People talk about competitiveness. Who is going to interfere with that? Competitiveness has to do with economies of scale and scope. We are not talking about this here. We are talking about concentration of power in the hands of a few. That is different.

According to the Act the Central Bank will give licences to banks and financial institutions for the conduct of other business. This institution on a weekly or monthly basis through the Inspector of Banks goes through each institution and by law does a number of things. It looks at the bank; does a statement of reliance; looks at the summary of finance for findings; corporate

governance issues; internal controls; risk management; asset quality; information technology and makes a determination on the financial condition of the institution. That is what it is supposed to do when it has information on all these licensees. Now it is seeking to say that when these things have to change—

**PROCEDURAL MOTION**

**The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith):** Madam President, I beg to move that the Senate continue sitting until the completion of this Bill.

*Question put and agreed to.*

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**Sen. King:** Would the Minister repeat the title of the paper and the year it was published.

**Sen. The Hon. C. Enill:** *Development of the Securities Market in Trinidad and Tobago, 1997 to 2003, With Prospects for the Future* prepared by the Research Division of the SEC. It should be available from the SEC. I know the chairman made this information public in one forum.

The Act that governs licensees is in fact the Central Bank Act. We were seeking to give the Central Bank an additional set of tools to control the market share concentration issue. The only time that becomes an issue is if there is a concern as it relates to concentration of powers that will impact negatively on the system. Most of the comments and issues we have heard do not negate what is being attempted.

The other considerations and concerns expressed had to do with the 40 per cent. Minister Sahadeo dealt with that. It was looking at international norms and what is taking place within the system. We are looking at this amendment instead of the Fair Trading Bill because of the significance of what we have and the information that is available. As it relates to pension funds, we need to look at the issues we have raised. This is currently being handled at another level within the system. The appeal process in this Bill is that which currently exists within the FIA. In situations where there is a requirement for review the first step would be the Tax Appeal Board. We have to look at that in the context of the entire amendment. At this time that is where we have tapped it on. In the future we would address some of the other concerns we have heard relative to mutual funds pension. Those are on a production line coming to the Table.

**Sen. Dr. Gopeesingh:** Would the Minister give way?

**Madam President:** Are you giving way?

**Sen. The Hon. C. Enill:** On a matter of principle, no, Madam President.

Insofar as the economy is concerned in an environment in which the price of oil continues to be what it is, one issue we have to come to terms with is the question of imported inflation. [*Crosstalk*]

**Madam President:** I cannot hear what the Minister is saying.

**Sen. The Hon. C. Enill:** In many instances we are trying to manage the requirements of an oil-importing economy with that of what is going on in the rest of the world. [*Crosstalk*]

**Madam President:** Just one minute, Minister. Members, I am not happy about your language in the Senate. Calling people oppressors and murderers will not do in the Senate. Please, continue.

**Sen. The Hon. C. Enill:** Madam President, at it relates to the matter of the amendments to the Bill and what is being intended, the Government has demonstrated that it is seeking to deal with an issue it believes to be of importance. Generally, Senators have a sense of the intention. We cannot change the Constitution in this Bill. We are seeking to make available to the Central Bank a tool or mechanism that will allow us to understand what is happening in the marketplace and to be able to intervene if we need to in the public interest.

With those few words, 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.*

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

*Clause 4.*

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

**Sen. King:** When I discussed the Bill I mentioned that there is a conflicting definition. If we are changing “controlling shareholder” from 25 to 20, I am also suggesting that if the definition for the “holding company” also includes any person who owns shares up to 25 per cent, it should be the same.



**Sen. Enill:** Is that in the Act?

**Sen. King:** Yes, in the Financial Institutions Act, 1993. You have an amendment to clause 4(2) which changes the definition of a controlling shareholder. It should also change the definition of a holding company.

**6.30 p.m.**

**Sen. Enill:** We will come back to it.

**Sen. Jeremie:** We accept it in principle. We will work on the wording.

**Sen. Dr. Gopeesingh:** I am just drawing an analogy with this amendment and clause 7.

**Madam Chairman:** We have not got there yet.

**Sen. Enill:** Let us go ahead and we will come back to that.

*Clause 4 deferred.*

*Clauses 5 to 7.*

*Question proposed, That clauses 5 to 7 stand part of the Bill.*

**Sen. Mark:** Madam Chairman, I did indicate to the hon. Minister of Finance that there were no penalties in clause 6 for violation of this Disclosure of Information Clause, and I ask him, in the event that someone violates this confidentiality clause, given that they are going outside of borders of Trinidad and Tobago to provide information, what penalties would the Minister advance to ensure that if that happens, their sanctions would be imposed?

**Sen. Enill:** Madam Chairman, this is a Bill to amend the FIA but in section 35(3) of the parent Act, it sets out the penalty for a person who contravenes the provision of the Act. So it is there.

*Question put and agreed to.*

*Clauses 5 to 7 ordered to stand part of the Bill.*

*Clauses 8 to 10.*

*Question proposed, That clauses 8 to 10 stand part of the Bill.*

**Sen. Seepersad-Bachan:** Madam Chairman, during my contribution I indicated the issue of the “Minister”, and I suggested that the Fair Trading Commission, like many other speakers, that we replace the words, “the Minister”. I am suggesting that in clause 8 39A, “the Minister” be replaced by “the Fair Trading Commission” and under clause 8(7) the word “Minister” be replaced by “Fair Trading Commission”.

**Sen. Enill:** We do not support that. The fact is this is specific to licences. This is governed by the FIA at the Central Bank, and we think this is the appropriate place to deal with it.

**Sen. Mark:** Madam Chairman, I do not just expect the Minister to yield. The court will—. We want him to consider under clause 8(8) wherever we find the expression “without limitation” without any clearly defined criteria, we believe that is a dangerous term that can allow anyone, including the Central Bank and the Minister of Finance, to introduce extraneous matters into their deliberations unless there are clear criteria established. So we would like him to reconsider this particular provision.

**Sen. Jeremie:** As I understand it, the public interest is not capable of being precisely defined in respect of market innovation but these are at present what we can identify, so that the words “without limitation” are meant to provide the Minister with some discretion, but in accordance with the normal principle of statutory interpretation which shall include, without limitation:

- (a) the interests of the financial services industry in Trinidad and Tobago; and
- (b) the interests of consumers or financial services...in Trinidad and; Tobago”.

So that “without limitation” is constrained by those two factors.

**Sen. Jeremie:** We have not been able to find it, and that is our proposal.

**Sen. Mark:** Madam Chairman, we believe this is too broad and it is open to abuse, and that is why we suggest to the hon. Minister that that particular provision be reconsidered.

**Sen. Enill:** No.

**Sen. Dr. Gopeesingh:** Madam Chairman, clause 8(11) the last line:

“...shall be sent forthwith to the Registrar under the Companies Act.”

A time limit? I do not think it makes sense —forthwith.

**Sen. Jeremie:** The Interpretation Act provides that where an act is to be done forthwith, it is to be done promptly, a reasonable time.

**Sen. Dr. Gopeesingh:** So the courts interpret “forthwith” as a reasonable time?

**Sen. Jeremie:** Yes, “forthwith” is an ordinary English word.

**Sen. Dr. Gopeesingh:** No, no, “forthwith” is right away.

**Sen. Jeremie:** I could give you some leeway, but —

**Sen. Dr. Gopeesingh:** I am guided by the legal opinion.

**Sen. Jeremie:** Do not be guided by me. There is an Interpretation Act which we passed in this Parliament.

**Sen. Mark:** We are not going to be guided by you. You are a dangerous man of dubious distinction.

**Sen. Dr. Gopeesingh:** Madam Chairman, clause 8(14):

“A person who contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine...”

It is a bit strange that in the Bill we passed recently, the Fair Trading Bill, there are strong penalties in terms of jail sentences for Members breaching the Commission’s regulations and this is somewhat different. Could you explain the differences in the penalties? There is inconsistency in that. Sen. Mark is just referring me to “jail and fine” in the Fair Trading Bill and “fine” in this one.

**Sen. Enill:** Madam Chairman, this is consistent with what is in the current FIA and for consistency we wanted to keep it this way.

**Sen. Dr. Gopeesingh:** Look at what is happening with ENRON where this person is facing probably a jail sentence.

**Sen. Enill:** The substantive amendment would deal with that comprehensively. Remember we are coming with two parts. This is just the first part and in the second part we would look at some of those issues which would require greater discussion and consultation.

*Question put and agreed to.*

*Clauses 8 to 10 ordered to stand part of the Bill.*

*Clause 4 re-introduced.*

**Sen. Enill:** Madam Chairman, I beg to move that clause 4(2) be amended as follows:

Delete the words “definition of ‘Controlling shareholder’” and substitute the words, “definition of ‘Controlling shareholder and holding company.’”

So it would deal with both.

**Madam Chairman:** Hon. Senators, there is an amendment to clause 4(2) which will now read: “Section 2 of the Act is amended by deleting the words “twenty-five” in the definition of “Controlling shareholder and holding company” and substituting therefore the word, “twenty”.

**Sen. Seepersad-Bachan:** Madam Chairman, just a clarification. If you put in “controlling and holding”, there is no definition for “controlling and holding”. That is not in the parent Act. So the two would be in quotes?

**Sen. Enill:** The definitions are two separate things.

*Question put and agreed to.*

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

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

*Senate resumed.*

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

[MR. VICE-PRESIDENT *in the Chair*]

#### ADJOURNMENT

**The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith):** Mr. Vice-President, I beg to move that the Senate be now adjourned to Tuesday, June 06, 2006 at 1.30 p.m.

Mr. Vice-President, on the Order Paper would be listed as Bill No. 1, the Supplementation of Variation of Appropriation Bill. However, it is likely that the Lower House would have debated and passed the Supplemental Variation of Appropriation Bill 2006. If that is done, it would be circulated and we would debate that on Tuesday, June 06, 2006.

**Mr. Vice-President:** Hon. Senators, leave has been granted for one matter to be raised by Sen. Mark on a Motion for the Adjournment of the Senate.

**Telecommunications Authority of Trinidad and Tobago  
(Seizure of Radio Vision Limited's Equipment)**

**Sen. Wade Mark:** Mr. Vice-President, the Telecommunications Bill, 2001 was passed in this Parliament without the benefit of a special majority which was designed to protect people's fundamental rights and freedoms under the Constitution. As a consequence, the Telecommunications Authority cannot, without due process, deprive citizens of their rights without recourse to the courts. That is, the right to enjoyment of property, and the right of freedom of the press.

Mr. Vice-President, the press in this instance, does not only include the print media but also the electronic broadcasting media.

If one looks at the Telecommunications Act, 2001 under section 50, one would see where the Telecommunications Authority has the right to:

“(e) seize and take away any equipment, articles, books, records or documents if it appears that there has been a contravention of this Act, or of any regulation made hereunder, or of any breach of any condition of any concession or licence and such items so seized shall be lodged with the Authority.”

It goes on to say under 51(1):

- “(1) Notwithstanding section 50, an inspector shall not exercise the powers vested in him under that section except upon warrant of a magistrate issued to him for the purpose and, in the execution of the warrant, the inspector shall be accompanied by a police officer.
- (2) A warrant issued under this section remains in force until the purpose for which the warrant is required has been satisfied or for one month, whichever is sooner.”

Mr. Vice-President, what happened at Power 102 FM is equivalent to an attempt by the authorities to curtail the freedom of expression of this particular popular radio station which is well known for its critical points of view particularly against the ruling regime's oppression against the citizenry and the masses generally.

What has happened is that this effort at suppressing the freedom of expression by a body not properly constituted with the power to deprive persons of their rights to the means of expression, freedom of the press and property rights without due process of the law, is one of grave concern.

*Telecommunications Authority*  
[SEN. MARK]

*Tuesday, May 23, 2006*

I would like to indicate that the gentleman who is the executive director issued a statement and this statement was issued some time on May 11, 2006 in which he stated categorically that prior to the establishment of the authority several radio broadcasters were operating illegally without a licence. Notwithstanding that, there were no institutional arrangements for the application of such licences.

It is passing strange that the patience of the Telecommunications Authority of Trinidad and Tobago wore thin on May 11, after severe condemnation on that particular radio station by one of this country's foremost talk-show hosts, Ricardo Welch, better known as the "Gladiator" in respect of the conduct on the part of the Government in the matter involving the Prime Minister, the hon. Attorney General, and the Director of Public Prosecutions in the handling of the allegations of the Chief Magistrate against the Chief Justice.

Indeed, we understand that the PNM has drawn up a programme to hound the Gladiator out of town. We understand that the Gladiator has been appealing to the Prime Minister on the airwaves to pay him some outstanding moneys that have been owed to him for some time now.

This development that took place at this particular radio station is a most dangerous infiltration and should be roundly condemned by all right-thinking citizens, since according to the statement issued by Dr. Prince, it only appeared as a contravention of the Act without any attempt at determining whether, in fact, a contravention of the Act did occur. This is naked oppression; it is a violation of due process and it is a violation of the right to the enjoyment of property. It is a violation of the right to be treated equally by public authorities as well as an infringement of the right of that station and to the people, the tens of thousands, hundreds of thousands, who listen to that station to express their freedom and their views.

Mr. Vice-President, the United National Congress calls on the Telecommunications Authority of Trinidad and Tobago to return immediately, forthwith, the equipment seized by this Authority of Trinidad and Tobago. Further, the UNC calls on the Telecommunications Authority that in the event that there appears to have been a contravention by Power 102 FM, then the Telecommunications Authority should seek to redress the contravention by proceeding to the courts of Trinidad and Tobago to empower the Authority to determine whether there was a contravention of the law. It will, in fact, allow the court to determine whether there was a contravention of the law.

This action by this oppressive authority does not accord with the highest standards of constitutional propriety even though Power 102 FM may have been wrong. The approach taken by this Authority leaves a lot to be desired. All public

bodies are required to have due regard not only to the provisions of the law which govern their enterprise, but also due regard and respect for the Constitution which governs all State actions by any authority.

The UNC, therefore, roundly condemns the Telecommunications Authority of Trinidad and Tobago and by extension, the Government of Trinidad and Tobago which, as you know is responsible for that particular agency.

We believe the actions of this Authority were high-handed, insensitive and almost bordering on illegality with regard to this particular radio station.

There appears to be a pattern of conduct emerging within this particular administration. As they pulled the plug on Power 102 FM you had the Attorney General issuing a statement on the same matter some time on May 14, I think, in which he warned the population and the public that is, the media and the Law Association and other bodies, to tread very warily on this matter involving the Chief Justice.

Mr. Vice-President, three days later you had the Director of Public Prosecutions' office in the personality of the Deputy Director of Public Prosecutions, Carla Brown-Antoine nakedly threatening the media not to get involved because they could face contempt of the court if they continued to speak out on the issue of the injustice being committed against the Chief Justice, at a time when the matter has not been brought before the courts of Trinidad and Tobago.

So in essence, what I am advancing on behalf of the party, the UNC, is that action taken by the Government was oppressive, harsh, insensitive and to my mind, even though that radio station may have been operating on a frequency that the Authority told them to get off, sometime in the future or sometime in the past, the approach, manner and style of this Authority has left a lot to be desired. And, I call on the hon. Minister, Dr. Lenny Saith to explain to this population, through the Parliament why this Authority acted so high-handedly, insensitively and very oppressively, Mr. Vice-President.

I thank you.

**The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith):** Mr. Vice-President, as usual, the Senator has brought a Motion based on completely false premises. And in his usual fashion, he has exhibited paranoia, and his ability to put off false information, hyperbolically his illogical arguments and throwing in a bit of innuendo in it. Typical. I do not propose to deal with the matter that way. I will merely relate the facts and let everyone draw their own conclusions.

*Telecommunications Authority*  
[SEN. THE HON. DR. L. SAITH]

*Tuesday, May 23, 2006*

Radio Vision Limited was using an unusual frequency of 102.5 megahertz in addition to their licensed frequency of 102.1 megahertz and in spite of repeated requests from the Authority the company refused to stop this illegal operation. Let me give you the chronology of events.

On January 12, 2005, the Authority wrote to Radio Vision indicating that use of frequencies in the FM band for repeater stations would not be permitted. On January 18, 2005, the Authority published a public notice stating that all FM broadcasters using unlicensed frequencies for repeater stations must immediately cease transmission on those unlicensed frequencies. The notice further stated that all such stations should immediately adjust their systems to ensure compliance with the terms and conditions of their licence. This was the licence under the old wireless telecom.

On February 04, 2005, the Authority again wrote to Radio Vision and indicated that a copy of the licence that permits them to broadcast the frequency 102.5 was not provided to the Authority. The Authority again called upon the station to immediately cease all use of the frequency of 102.5 which was unlicensed and, therefore, contrary to section 36 of the Telecommunications Act. In the said correspondence the Authority again referred to the penalties under section 55 of the Act. On February 16, 2005, the Authority wrote to Radio Vision and noted that the company had not complied with the Authority's request dated January 12 and February 04, to stop transmission on 102.5. The Authority also noted that all requests and notices made by the Authority to cease transmission had been disregarded by Radio Vision.

On April 26, 2005 the Authority hosted a technical presentation for all FM broadcasters at the National Library building and indicated that repeater frequencies would be phased out and licensed frequencies would be duly reclaimed. At the end of 2005, all licences under the old WTO expired and a new licence was to be granted. On 11 January the Authority again wrote to Radio Vision and indicated to them that they were broadcasting on the frequency 102.5 without a licence and their attention was brought to sections of the Act which call for a licence to be granted by the Authority for such broadcast to take place, and the Authority called on Radio Vision to cease transmission.

**7.00 p.m.**

On or about February 23, 2006, officers of Radio Vision attended the offices of the authority to execute their concession—that is the new concession—which authorized them to operate a public broadcasting service. The officers of Radio Vision refused to sign the licence saying that they wanted to operate on both frequencies, so that, in effect, Radio Vision was, at that time, no longer licensed to operate on any frequency.



We went through the process in 2005 of asking everybody who was broadcasting on MTO to reapply and all 28 stations re-applied. We recommended and Cabinet agreed to issue licences to all 28. Everybody, 27, signed their concession licence except Radio Vision.

On March 08, 2006, the authority again wrote to Radio Vision and referred to the correspondence of January 11 and noted that Radio Vision continued to broadcast on 102.5 in violation of the Act, despite the directions of the Authority to seize the transmissions. The correspondence further stated that the Authority would proceed without further notice to initiate legal action against Radio Vision pursuant to section 65. That was March 08; nothing to do with any Chief Justice.

On or about March 10, 2006, the Executive Director of the Authority communicated verbally by telephone with the CEO of Radio Vision and indicated to him that they were in breach of the law and that they should comply with the directions of the Authority. Mr. Vice-President, despite the repeated warnings, Radio Vision refused to comply with the provisions of the Act and they continued to transmit on 102.5 without a licence, as they were doing on 102.1.

On May 11, 2006, inspectors of the Authority, acting pursuant to section 50 of the Act, executed a search warrant against Radio Vision which effectively authorized the Authority to search for and seize equipment that would afford evidence of contravention of the Act. As a result of the search, inspectors seized one exciter unit from Radio Vision's Gran Couva transmission facilities. Radio Vision was then no longer able to transmit on 102.5. They were, however, allowed to continue on 102.1 although, in fact, they had not signed the licence. That is May 11.

On the same day, attorneys for Radio Vision wrote the Authority and indicated that Radio Vision wished to meet with the Authority no later than midday the next day, that is May 12, to finalize the issue of the licence. On May 12, the Authority, acting under section 65 of the Act served Radio Vision with a summons to answer the following complaints:

- On March 14 they operated a radio communication service without a licence, granted by TATT, contrary to section 31 of the Telecommunications Act; and
- On April 04, operated a radio communication service without a licence granted by the Telecommunications Authority;

On May 12, mere hours after the service of the summons, officers of Radio Vision attended the authority where they indicated their willingness to sign the relevant licence and they further indicated that they would comply with the directions of the Authority in respect of rationalization of the band plant and they did sign the licence finally on

*Telecommunications Authority*  
[SEN. THE HON. DR. L. SAITH]

*Tuesday, May 23, 2006*

May 12 and agreed to the rationalization of the thing. The Authority indicated that no action was contemplated against 102.1 megahertz, which was still transmitting Radio Vision Power 102. Legal action is before the court. I believe a hearing was held today. I want to repeat that at the time of seizure of that piece of equipment, Radio Vision was the only radio broadcasting entity in Trinidad that was operating on one or more unlicensed repeater frequencies.

As you can see, Mr. Vice-President, nothing done in the matter by the Telecommunications Authority constitutes a threat to freedom of the press in Trinidad and Tobago. On the contrary, it is fair to say that the authority went to great lengths to have this matter amicably resolved. As I indicated at the start, the Authority tried for almost five months after the old licence expired to have them cease this illegal broadcasting. It was only when action was taken that the company became willing to comply with the law. I thank you, Mr. Vice-President.

### **Indian Arrival Day Greetings**

**The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith):** Mr. Vice-President, next Tuesday is Indian Arrival Day and since we will not be meeting again before that time, I take the opportunity to wish the national community and all those who will celebrate this day, a happy, enjoyable and safe Indian Arrival Day.

I thank you.

**Sen. Wade Mark:** Mr. Vice-President, I join my colleague to extend also greetings to the Indo-Trinidad and Tobago community, in particular, and the national community in general, on the occasion of Indian Arrival Day, which would be celebrated, as Dr. Saith has indicated, on Tuesday, May 30.

We must be cognizant of the fact that 161 years ago the East Indians of Trinidad and Tobago were brought here as indentured servants. They embarked on an enormous struggle, Mr. Vice-President, and today we would like to pay special tribute to the generations both past and present who have undergone various trials and tribulations over those years to emerge as a very strong and resilient people culturally, socially and economically and today, in spite of all the efforts to oppress them, they have emerged politically strong in this land.

We wish all the people celebrating Indian Arrival Day on Tuesday, May 30, a very safe, happy and peaceful day.

*Indian Arrival Day Greetings*

*Tuesday, May 23, 2006*

I say to my brothers and sisters of Indian descent that the struggle has been long and hard, but together with our African brothers and sisters and the national community, we shall ensure that this society remains democratic and free and that justice prevails for all regardless of race, colour, creed, religion or region.

I thank you, Mr. Vice-President.

**Sen. Dr. Eastlyn Mc Kenzie:** Mr. Vice-President, on behalf of the Senators on the Independent Bench, I wish the country a very peaceful and happy Indian Arrival Day on Tuesday next. I would like to say to them that we hope they would reflect on the resilience of the people and that they would copy the good things—the strength, the fortitude of a people who have worked tirelessly, ensuring the development, not only of themselves, but also the country.

So, on behalf of all of us, I would say a happy, peaceful and safe Indian Arrival Day to all.

**Mr. Vice-President:** Hon. Senators, I myself join in wishing the entire nation a very happy, peaceful, love-filled, togetherness-filled Arrival Day. I hope that all of us would reflect on the positives that could have been drawn from the struggles that we all participated in since the arrival that we talk about.

We cannot single out the Indo community here. Yes, we pay tribute to the Indo community, but we must also understand that it was together that the struggle was waged. It is only in the not-so-recent times that we have been hearing about this Indo/Afro talk. I suggest that we keep away from it and think in terms of the togetherness in struggle and the positives that could be drawn from that.

I hope that in celebrating this very special day, we all reflect on the watchwords of the nation. Let us do it with discipline. Let us tolerate one another and let us think in terms of being very productive as a result of having gone through this struggle together.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 7.12 p.m.*

#### WRITTEN ANSWERS TO QUESTIONS

*The following questions were asked by Sen. Wade Mark:*

#### **Applications for Residential and Citizenship Status (Details of)**

55. Could the Minister of National Security provide the Senate with the details on the number of applications submitted by foreigners for residential and citizenship status and approval granted over the period January 01, 2002 to March 31, 2006?

*The following reply was circulated to Members of the Senate:*

**The Minister of National Security (Sen. The Hon. Martin Joseph):** The Immigration Act, Chapter 18:01 of the Laws of Trinidad and Tobago, confers upon the Minister of National Security, the authority to grant residence status to non-nationals of Trinidad and Tobago. Section 6(1) of the said Act bestows this authority under the conditionality that the candidate meets certain criteria for the granting of resident status. Section 5(3) of the Act gives the Minister the authority to exercise his discretion in granting resident status to any non-national he deems fit.

Chapter 1:50 of the Laws of Trinidad and Tobago, the Citizenship of the Republic of Trinidad and Tobago Act, bestows upon the Minister of National Security, the authority to grant citizenship through registration of non-nationals originally from Commonwealth countries and naturalisation of non-nationals from non-Commonwealth countries. Sections 7(1) and 12(1) of the Act confer upon the Minister the authority to grant citizenship to individuals meeting criteria set out therein.

According to the records of the Ministry of National Security, during the period January 01, 2002 to March 31, 2006 a total of three thousand five hundred and sixteen (3,516) applications from non-nationals for the grant of resident status were received and processed by the Ministry of National Security. A total of one thousand nine hundred and twelve (1,912) applications for resident status were granted during this period.

With respect to applications for citizenship, the records state that one thousand four hundred and twenty six (1,426) applications from legal residents of Trinidad and Tobago were received for registration and naturalization as citizens of Trinidad and Tobago during the period January 01, 2002 to March 31, 2006, with one thousand four hundred and seventy one (1,471) applications, inclusive of a number of applications which were pending as at December 31, 2001, being processed and approved.

An annual breakdown of the period January 01, 2002 to March 31, 2006 is provided hereunder:

PERIOD	RESIDENCE STATUS		CITIZENSHIP / NATURALISATION	
	No. of Applications Received	No. of Applications Approved	No. of Applications Received	No. Applications Approved
2002	753	424	338	276
2003	724	430	281	337
2004	793	424	284	400
2005	1,055	544	438	349
2006 (to March 31)	191	90	85	109
TOTAL	3,516	1,912	1,426	1,471*

\* It is to be noted that while a total of one thousand four hundred and twenty-six (1,426) applications for citizenship were approved during the period 2002 to 2006, more applications were approved than applications received during 2002, 2003, 2004 and 2006. This has occurred due to the fact that applications received prior to 2002 were processed and finalised during that year, applications received prior to 2003 were processed and finalised during that year, and so on.

**Residential and Citizenship Status  
(Details of Applicants)**

- 56.** Could the Minister of National Security provide the Senate with a detailed breakdown of the various nationalities of the persons who qualified for residential and citizenship status over the period January 01, 2002 to March 31, 2006?

*The following reply was circulated to Members of the Senate:*

**The Minister of National Security (Sen. The Hon. Martin Joseph):** The Immigration Act, Chapter 18:01 of the Laws of Trinidad and Tobago, confers upon the Minister of National Security, the authority to grant residence status to non-nationals of Trinidad and Tobago. Section 6(1) of the said Act bestows this authority under the conditionality that the candidate meets certain criteria for the granting of resident status. Section 5(3) of the Act gives the Minister the authority to exercise his discretion in granting resident status to non-nationals, not meeting the criteria set out in section 6(1), as he deems fit.

Chapter 1:50 of the Laws of Trinidad and Tobago, the Citizenship of the Republic of Trinidad and Tobago Act, bestows upon the Minister of National Security, the authority to grant citizenship through registration of non-nationals originally from Commonwealth countries and naturalisation of non-nationals from non-Commonwealth countries. Sections 7(1) and 12(1) of the Act confer upon the Minister the authority to grant citizenship to individuals meeting criteria set out therein.

A perusal of the records of the Ministry of National Security has revealed that during the period January 01, 2002 to March 31, 2006, three thousand five hundred and sixteen (3,516) individuals qualified for resident status under Sections 6(1) and 5(3) of the Immigration Act. This total is representative of applications emanating from nationals of ninety-three (93) different countries.

At Appendix I is a list detailing the countries of origin of individuals qualifying for resident status, under sections 6(1) and 5(3) of the Immigration Act, for the period under review.

With respect to citizenship, the records of the Ministry of National Security state that one thousand four hundred and twenty six (1,426) legally resident non-nationals qualified for citizenship of Trinidad and Tobago under sections 7(1) and 12(1) of the Citizenship of the Republic of Trinidad and Tobago Act, during the period under review. This total represents applications emanating from nationals of fifty-one (51) different countries.

Appendix II is a list detailing the countries of origin of individuals qualifying for citizenship under sections 7(1) and 12(1) of the Citizenship of the Republic of Trinidad and Tobago Act, during the period under review.

## APPENDIX I

Individuals Qualifying for Resident Status under Sections 6(1) and 5(3) of the Immigration Act during the period January 01, 2002 to March 31, 2006

Country of Origin	YEAR					
	2002	2003	2004	2005	2006	TOTAL
Antigua	2	3	2	1	0	8
Australia	0	1	0	1	0	2
Azerbaijan	0	0	1	0	0	1
Bahamas	0	0	0	2	0	2
Bangladesh	0	0	2	1	0	3
Barbados	19	10	8	10	6	53
Belgium	0	0	1	1	0	2
Bolivia	0	1	0	0	0	1
Brazil	2	2	1	0	0	5
Bulgaria	0	0	1	0	1	2
Cambodia	0	0	0	1	0	1
Canada	24	30	26	31	2	113
Cayman Islands	0	0	1	0	0	1
Chile	2	0	0	3	0	5
China	27	25	80	229	37	398
Colombia	8	1	8	3	4	24
Costa Rica	0	0	0	1	0	1
Croatia	1	1	1	1	0	4
Cuba	0	1	3	5	0	9
Curacao	0	0	1	0	0	1
Czechoslovakia	0	7	11	14	1	33

Country of Origin	YEAR					
	2002	2003	2004	2005	2006	TOTAL
Denmark	2	3	0	0	0	5
Dominica	4	5	5	6	0	20
Dominican Republic	0	1	0	2	0	3
Ecuador	0	0	1	0	0	1
Egypt	0	3	0	0	1	4
Ethiopia	0	1	0	0	0	1
Finland	0	0	1	0	0	1
France	0	0	1	4	2	7
Germany	18	20	13	18	2	71
Ghana	2	1	2	9	1	15
Grenada	70	49	37	49	6	211
Guadelope	1	0	0	0	0	1
Guatemala	0	0	0	1	0	1
Guyana	190	195	261	223	48	917
Haiti	1	1	0	0	0	2
Holland / Netherlands	3	1	6	3	1	14
Honduras	0	0	0	0	2	2
Hungary	0	0	0	1	1	2
Iceland	0	0	0	2	0	2
India	37	26	19	40	6	128
Indonesia	0	0	1	2	0	3
Ireland	5	3	2	2	0	12
Italy	2	3	3	4	1	13



Country of Origin	YEAR					
	2002	2003	2004	2005	2006	TOTAL
Ivory Coast	0	0	0	3	0	3
Jamaica	13	22	16	23	1	75
Japan	1	1	0	1	0	3
Kenya	1	1	0	1	0	3
Lebanon	0	1	0	1	0	2
Liberia	0	0	0	3	0	3
Malawi	1	0	0	0	0	1
Malaysia	1	2	0	0	0	3
Martinique	0	0	0	1	0	1
Mauritius	0	0	0	1	0	1
Mexico	1	0	2	0	1	4
Montserrat	0	0	1	0	0	1
Morocco	0	0	0	0	1	1
Naepal	1	0	0	0	0	1
New Zealand	0	1	0	0	0	1
Nicaragua	1	0	0	1	0	2
Nigeria	18	21	12	26	5	82
Norway	0	3	2	1	0	6
Pakistan	4	1	4	6	1	16
Peru	0	2	1	1	1	5
Phillipines	1	1	0	0	0	2
Poland	0	0	0	1	1	2
Portugal	0	1	0	0	0	1

Country of Origin	YEAR					
	2002	2003	2004	2005	2006	TOTAL
Puerto Rico	0	0	1	1	0	2
Romania	0	1	1	2	1	5
Russia	1	0	0	1	1	3
Senegal	1	0	0	0	0	1
Seychelles	0	0	1	0	0	1
Sierra Leone	1	0	1	0	0	2
Singapore	2	0	0	0	0	2
Slovenia	0	1	0	0	0	1
South Korea	0	0	0	1	1	2
Spain	0	2	1	1	1	5
Sri Lanka	0	0	2	0	0	2
St. Kitts and Nevis	3	0	4	1	0	8
St. Lucia	7	7	6	14	1	35
St. Vincent and the Grenadines	89	64	55	60	17	285
Sudan	0	0	0	1	0	1
Suriname	1	5	6	4	1	17
Sweden	3	2	3	6	0	14
Switzerland	2	1	1	2	0	6
Syria	5	9	9	4	1	28
Tunisia	0	1	0	0	0	1
United Kingdom	67	69	58	61	12	267
United States of America	54	56	65	72	5	252

Country of Origin	YEAR					
	2002	2003	2004	2005	2006	TOTAL
Ukraine	0	0	0	1	0	1
Uruguay	0	0	0	1	0	1
Uzbekistan	1	0	0	0	0	1
Venezuela	53	55	42	82	17	249
<b>TOTAL</b>						3516

## APPENDIX II

Individuals Qualifying for Citizenship under Sections 7(1) and 12(1) of the Citizenship of the Republic of Trinidad and Tobago Act during the period January 01, 2002 to March 31, 2006

Country of Origin	YEAR					
	2002	2003	2004	2005	2006	TOTAL
Antigua	2	2	0	0	0	4
Aruba	1	1	2	0	0	4
Australia	1	0	0	0	0	1
Bahamas	0	0	1	0	0	1
Barbados	2	1	5	2	1	11
Belize	0	0	0	0	1	1
Benin	1	0	0	0	0	1
Cambodia	0	3	0	3	0	6
Canada	1	2	4	9	1	17
China	47	15	10	11	4	87
Colombia	0	1	0	3	0	4

Country of Origin	YEAR					
	2002	2003	2004	2005	2006	TOTAL
Croatia	1	0	0	0	0	1
Cuba	0	0	0	1	0	1
Dominica	1	2	0	3	1	7
Egypt	0	1	1	0	0	2
France	0	1	1	1	0	3
Germany	0	0	0	1	0	1
Ghana	1	0	1	3	0	5
Grenada	61	49	42	69	12	233
Guatemala	0	0	0	2	0	2
Guyana	115	98	102	150	25	490
Haiti	1	1	0	0	0	2
Honduras	0	0	1	0	0	1
India	5	9	5	10	2	31
Iran	0	0	0	1	0	1
Iraq	0	0	1	0	0	1
Ireland	5	4	1	2	1	13
Jamaica	6	7	7	8	4	32
Kenya	1	0	0	0	0	1
Lebanon	0	2	0	1	1	4
Malawi	0	1	0	0	0	1
Malaysia	0	0	1	1	0	2
Mexico	0	1	0	0	0	1
Montserrat	0	0	0	1	0	1

Country of Origin	YEAR					
	2002	2003	2004	2005	2006	TOTAL
New Zealand	0	0	2	0	0	2
Nigeria	4	8	8	13	1	34
Pakistan	0	3	0	2	1	6
Panama	0	1	0	0	0	1
Philippines	0	0	1	3	3	7
Portugal	0	0	1	0	0	1
St. Lucia	4	7	8	4	6	29
St. Vincent and the Grenadines	61	46	62	74	18	261
Singapore	2	0	0	0	0	2
South Africa	1	0	0	0	0	1
Sri Lanka	1	0	0	0	0	1
Syria	3	1	2	3	0	9
Switzerland	1	0	0	0	0	1
Uganda	0	0	1	0	0	1
United Kingdom	3	9	4	17	1	34
United States of America	0	1	3	23	0	27
Venezuela	6	4	7	17	2	36
<b>TOTAL</b>						1426