SENATE

Tuesday, December 02, 2008

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Senators The Hon. Mariano Browne, Hazel Manning and Jerry Narace, who are all out of the country; and to Sen. Dr. Adesh Nanan, who is ill.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards, T.C., C.M.T., Ph.D.:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. JOEL PRIMUS

WHEREAS Senator Mariano Browne is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOEL PRIMUS, to be temporarily a member of the Senate, with effect from 2nd December, 2008 and continuing during the absence from Trinidad and Tobago of the said Senator Mariano Browne.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 28th day of November, 2008."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. FOSTER CUMMINGS

WHEREAS Senator Hazel Ann Marie Manning is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, FOSTER CUMMINGS, to be temporarily a member of the Senate, with effect from 2nd December, 2008 and continuing during the absence from Trinidad and Tobago of the said Senator Hazel Ann Marie Manning.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 28th day of November, 2008."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MISS LYNDIRA OUDIT

WHEREAS Senator Dr. Adesh Nanan is incapable of performing his duties as a Senator by reason of illness:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by section 44 of the

Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, LYNDIRA OUDIT, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Dr. Adesh Nanan.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of December, 2008."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. NOEL GAYLE

WHEREAS Senator Jerry Narace is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NOEL GAYLE, to be temporarily a member of the Senate, with effect from 2nd December, 2008 and continuing during the absence from Trinidad and Tobago of the said Senator Jerry Narace.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 28th day of November, 2008."

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Joel Primus, Foster Cummings, Lyndira Oudit, Noel Gayle.

ELECTIONS AND BOUNDARIES COMMISSION (LOCAL GOVERNMENT) (AMENDMENT AND VALIDATION) BILL

Bill to amend the Elections and Boundaries Commission (Local Government) Act, Chap. 25:50 to provide for the review and definition of boundaries in the electoral area of Tobago for the purposes of elections in relation to the Tobago House of Assembly and to validate certain reports of the Elections and Boundaries Commission in respect of the electoral area of Tobago, brought from the House of Representatives [*The Minister of Local Government*]; read the first time.

Motion made, That the next stage of the Bill be taken at a sitting of the Senate to be held on Tuesday, December 09, 2008. [*Hon. C. Enill*]

Question put and agreed to.

PAPERS LAID

1. Thirtieth annual report of the Ombudsman for the period January 01, 2007 to December 31, 2007. [*The Vice-President* (*Sen. George Hadeed*)]

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the University Students Guarantee Loan Fund for the year ended December 31, 2005. [*The Minister of Finance* (*Hon. Karen Nunez-Tesheira*)]

3. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the University Students Guarantee Loan Fund for the year ended December 31, 2006. [*Hon. K. Nunez-Tesheira*]

4. Report of the Auditor General of the Republic of Trinidad and Tobago on the statement of receipts and payments of the Intellectual Property Office for the year ended December 31, 2007. [*Hon. K. Nunez-Tesheira*]

5. Certificate of Environmental Clearance (Designated Activities) (Amendment) Order, 2008. [*The Minister of Planning, Housing and the Environment* (*Sen. The Hon. Dr. Emily Dick-Forde*)]

Certificate of Environmental Clearance (Designated Activities) (Amendment) Order

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Mr. President, may I advise that the Statutory Instruments Committee considered the Certificate of Environmental Clearance

(Designated Activities) (Amendment) Order, 2008 and found that there was nothing to which the attention of the Senate should be specially drawn. The minutes of the committee were circulated to Senators.

ORAL ANSWERS TO QUESTIONS

Public Transport Service Corporation (Status of Local Agents for Volvo Buses)

46. Sen. Wade Mark asked the hon. Minister of Works and Transport:

(a) With respect to the Volvo manufactured articulated buses owned by the Public Transport Service Corporation, could the hon. Minister inform the Senate who are the local agents for these buses?

(b) Could the Minister also inform the Senate whether those agents have a workshop and spare parts facility in Trinidad?

(c) If the answer to (b) is in the affirmative, could the Minister state where this workshop and spare parts facility is located?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, regretfully—I know that we have deferred the answer to this question in the past—the answer to this question is not now available and I am not in a position to give any commitment as to when it would be ready. However, I would seek to get some indication from the Minister as to the specific problem.

Sen. Mark: Mr. President, I seek your guidance on when the question will be deferred to. With your leave, I suggest we defer the question to next week.

Question, by leave, deferred.

Breakfast Shed (Details of Repairs Undertaken)

87. Sen. Mohammed Faisal Rahman asked the hon. Minister of Planning, Housing and the Environment:

(a) Would the Minister indicate to this Senate whether the works being undertaken at the Prime Minister's residence are repairs, renovations or additions?

(b) If the works are repairs or renovations, would the Minister inform this Senate of their nature and cost?

(c) Would the Minister state whether there is one or more than one contractor?

(d) If the works are additions, would the Minister indicate whether these additions were in the original design?

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Mr. President, we do not have the answer to this question. It may be that it really should not be us because the Ministry of Finance answered a question like this.

We have been trying to get the information from the Office of the Prime Minister for quite a long time, so I cannot say two or three weeks. We cannot give a time because it is taking a while to get the information.

Sen. Mark: The Minister indicated that they could not give a time frame, therefore it is left open-ended. It is the Minister's responsibility to say that it cannot be answered now, but will be in two weeks' or three weeks' time. To say that they do not know when it will be answered is in violation of the spirit and letter of the Standing Orders. I seek your guidance.

Mr. President: I am inclined to agree with the Senator. While the Standing Orders cannot force a Minister to answer a question on any particular day, I think it is beholden on the Minister to at least try to put a time frame so that the Parliament can expect a reasonable time for the answer.

Question, by leave, deferred.

UDeCott
(Transaction of Loan)

107. Sen. Wade Mark asked the hon. Minister of Planning, Housing and the Environment:

With respect to the loan secured by UDeCott on the US Market for the Port of Spain Waterfront Project, could the Minister state:

(i) who were the agent(s) of the loan for both the borrower and lender(s); and

(ii) what was the commission and/or fees paid on the transaction to these agents?

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Thank you, Mr. President. With respect to the loan procured by UDeCott on the US market for the Port of Spain waterfront project,

the agents for the borrower, Port of Spain Waterfront Development Limited, and lender, Barclays Capital Incorporated, are as follows.

1.45 p.m.

The agent for the borrower is First Caribbean International Bank. They are the collateral agent and financial advisor. The other agent for the borrower is Wells Fargo Bank, North America who is the trustee. The agent for the lender is Fitzwilliams, Stone, Furness-Smith & Morgan, local counsel. The fees paid to the respective agents on the transactions are as follows:

Name of agent, Barclays Capital; type of fee, prepayment of interest. The fee is US $14,350,000. This sum constitutes moneys payable to Barclays Capital Incorporated for onward transmission to the various US counterparties involved in the financing transaction.

Name of Agent	Type of Fee	Fee (US$)
Chicago Title	Title Insurance	1,032,000
First Caribbean International Bank	Placement Fee	1,417,000
First Caribbean International Bank	Expenses	10,853
First Caribbean International Bank	Collateral Agent Fee	25,000
Wells Fargo Bank North America	Trustee Fees	8,100

Mr. President, thank you.

Confiscation of Cellphones (Nation's Prisons)

112. Sen. Gail Merhair asked the hon. Minister of National Security:

Would the Minister inform this Senate as to the number of cellphones confiscated in the nation's prisons for the years 2002—2007?

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. President, hon. Senators are advised that between the years 2002—2007, a total of 1,184 cellphones were confiscated in the nation's prisons.

In an effort to address this undesirable situation, the prison service has implemented a number of measures to prevent the entry of cellphones and their use by inmates. These are as follows: More robust search procedures: One of the major challenges faced by the prison service over the years is the practice of corrupt officers making cellphones available to inmates. To remedy this situation, the following actions have been taken:

- Conduct of more robust search procedures on officers. Currently, the Prison Service Regulations are being re-drafted to allow more classes/ranks the powers to execute searches upon junior officers.
- Outfitting of the gate lodge areas with cellphone holders, wherein officers are made to lodge their phones at the gate areas before they are allowed to proceed further on to the prison compound. Walk-through scanners, baggage scanners, and hand-held scanners have been purchased for use at prison entry points.
- In light of the fact that inmates receive cellphones, as well as other items from friends and family during court appearances or while undertaking out-gangs activities, inmates attending court are now required to undergo an intensive searching exercise upon their return to the prison. When necessary, the assistance of infirmary officers and prison medical officers are secured.
- Increased Patrols/Surveillance in the vicinity of prisons: Inmates also receive cellphones and other illegal items by having them thrown over prison walls or fences. In the case of Carrera Convict Prison, such packages are sometimes thrown from passing boats. To control the situation at the Carrera Convict Prison, in particular, prison patrols around the island have been increased and the assistance of the coast guard secured, with a view to more closely monitoring the movement of boats around the island. The purchase of CCTV systems to enhance security on and around the island is also being addressed.
- At the other prisons, perimeter checks by staff have been increased, both to detect suspicious packages as well as to identify unauthorized persons lurking around the outer prison compound.
- Disallowance of foodstuff from family and friends: Inmate visitors have also been found to conceal phones in meals brought for inmates as well as in visit bags and clothing. This practice has therefore been disallowed.

- General orders and staff circulars: These have been utilized to firmly discourage the use of cellphones by officers while on prison property.
- Disciplinary Action: Prison Officers suspected to be engaged in the illicit trafficking and use of cellphones within the prison compound face disciplinary charges which are overseen by the Public Service Commission. Further, in instances where officers are found with cellphones, in addition to illicit drugs, the Prison Service Regulations provide for the referral of such matters to the police.
- Additionally, relatives and friends who are caught attempting to or are determined to have given cellphones to inmates, are prohibited from future entry into the prisons and the police are called in, and where applicable, criminal charges are laid.

Mr. President, thank you.

Prison System
(Rehabilitation Programmes)

113. Sen. Gail Merhair asked the hon. Minister of National Security:

Would the Minister also inform this Senate of the number of prisoner rehabilitation programmes [with the exception of Vision on Mission] that currently exist within the prison system?

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. President, thank you once more. Hon. Senators are advised that in order to meet its strategic objectives of corrections, restoration and reintegration, the Trinidad and Tobago Prison Service has partnered with various ministries, non-governmental organizations, private service providers and faith-based organizations to expose inmates to programmes designed to encourage positive changes and personal development.

In total, there are 66 programmes in operation, the majority of which receive funding from the Government and cater to the moral/cognitive, educational, cultural, social, and spiritual/religious needs of inmates. It should be noted that in excess of 700 inmates benefit from these programmes on an annual basis. Some examples of the more successful programmes are:

- Fundamental Keys to a Better Life
- Defining Masculine Excellence
- Adult Literacy Programme
- Cosmetology

- Healing of the Masculine Soul
- Academic Education Programme
- Retraining and Certification Programme

Mr. President, thank you.

Medical Treatment Abroad (Funding of Children)

114. Sen. Gail Merhair asked the hon. Minister of Health:

Could the Minister indicate to this Senate whether there are institutional plans in place to assist with the funding of children who must seek medical treatment abroad?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I would like to defer this question for one week, pending the return of the Minister of Health.

Question, by leave, deferred.

FINANCIAL INSTITUTIONS BILL

Order for second reading read.

The Minister of Finance (Hon. Karen Nunez-Tesheira): Mr. President, I beg to move,

That a Bill to provide for the regulation of banks and other financial institutions which engage in the business of banking and business of a financial nature, for matters incidental and related thereto and for the repeal of the Financial Institutions Act, 1993, be now read a second time.

Mr. President, the Financial Institutions Bill, 2008 now before this honourable Senate, represents the reform of the 1993 Financial Institutions Act (FIA) and will effectively repeal and replace this 15-year-old legislation with an updated and more effective financial, regulatory and supervisory framework for Trinidad and Tobago.

In 1993, as part of a broader economic reform programme, this Government liberalized the financial system of Trinidad and Tobago. This move provided the impetus for the rapid development of the financial services sector to the current level, where banks and insurance sectors now have assets of close to $145 billion, about 95 per cent of GPD, and contribute approximately 11 per cent to GDP and provide employment for close to 20,000 persons.

Concomitant with its rapid growth, the sector has adapted to the forces of globalization through continuous financial innovation; a blurring of the boundaries between its various subsectors, banks, insurance companies and other institutions; and through the adoption of new structures, including the emergence of conglomerates and holding companies.

Another major change over the last few years has been the cross-border expansion of our financial sector. Currently, locally-owned financial institutions operate through the English and Dutch-speaking Caribbean.

While Trinidad and Tobago is the dominant player in the financial sector in the Caribbean, it is worth noting that our legislation lags behind some of our regional counterparts, most notably Barbados and Jamaica. With respect to Jamaica, the impetus for significant legislative reform lay in its financial crisis of the 1990s, which cost the country approximately 30 per cent of its GDP. Clearly, it is in our interest to strengthen our financial legislation and supervisory practices to avoid a financial crisis.

The present international financial crisis gives a new urgency to strengthening our regulatory system. There are many reasons for the crisis, but, clearly one of them is inadequate risk management and lack of regulation of commercial and investment banks. The financial institutions in Trinidad and Tobago are getting more involved in innovative instruments and that involvement heightens the importance for proper risk management policies and for ensuring that banks have good governance practices in place.

Initial work on the reform of the FIA began in 2001, under a project supported by the Inter-American Development Bank (IADB) and active consultation process with the banking industry and other stakeholders commenced in April 2005 and culminated with a public consultation in May 2008. The detailed and comprehensive consultation process provided the opportunity for various stakeholders to give comments and make suggestions which were very useful in helping the Central Bank ensure that the new legislation is well aligned to local circumstances.

At the public consultation held in May 2008, the Bankers Association confirmed they had brought support for the draft legislation and urged its rapid adoption. In developing the Bill, the Central Bank used as its guide, the core principles for effective banking supervision. These principles developed by the Basel Committee on Banking Supervision constitute the international minimum standards for bank supervision. The banking legislation of several other countries

was also examined. The recommendations of the International Monetary Fund and the World Bank, which assess the adequacy of the regulatory framework as part of their financial sector assessment programme in early 2005, were also taken into account.

In order to assist Senators in understanding the nature of the reform before them, I propose to approach this presentation of the Bill under the following five broad categories:

(i) provisions retained from the existing FIA;

(ii) provisions from the FIA that were further clarified or strengthened;

(iii) new provisions that formalized existing practices;

(iv) new definitions introduced under the Bill; and

(v) entirely new provisions.

Please note that there have been two deletions from the FIA. Firstly, licensees are no longer required to obtain the approval of the Central Bank for their excess credit facilities, as they will be required to remain within the newly established limits.

2.00 p.m.

Secondly, licensees will no longer be required to seek the approval of the Central Bank to establish local branches.

Provisions retained from the existing FIA. Mr. President, I will begin with this first category. Even though this is a new Bill, many provisions of the existing FIA have been retained and replicated in the Bill, because they are still relevant and still effective. In the interest of time I will simply list these:

The first is the revocation and restriction of a licensee. You will note that sections 14, 15 and 16 of the FIA have been carried forward into clauses 27, 28 and 29 of the Bill. The second area that has been retained: publication of a list of licensed institutions by the Central Bank. This is contained in section 17 of the FIA and has been carried forward in clause 30 of the Bill. Then false statements about licensed status: Section 19 of the FIA has been retained in clause 32 of the Bill.

Restrictions on dividends in certain stated circumstances: Section 22(3) of the FIA is carried forward into clause 47 of the Bill.

Restrictions on financial institutions acting as an insurance agent: Section 23 of the existing Act has been retained in clause 52 of the Bill and as a result section 70 of the FIA which provides for the proclamation of section 23 has been carried forward into clause 131 of the Bill.

Selective credit control, working capital and deposits: Sections 26, 27, 28 and 29 of the FIA are carried forward into clauses 58, 59, 60 and 61 of the Bill.

Restrictions of voting powers of directors in conflicts of interest: Section 21 of the FIA is replicated in clause 34 of the Bill.

Mergers and acquisitions: Sections 39A and 39B of the FIA as amended in 2006 are carried forward in clauses 73 and 74 of the Bill.

Facilitating transfers and undertakings: Sections 48, 49, 50 and 52 of the current FIA are identical to clauses 88, 89, 90 and 91 of the Bill.

Perpetration of fraud on depositors: Section 59 of the FIA has been retained in clause 118 of the Bill.

Obtaining information from exempted institutions at the request of the Minister: The requirements of sections 65 and 66 of the FIA appear in clauses 123 and 124 of the Bill.

Protection of persons' rights, notwithstanding illegality of transactions: Section 69 of the FIA is mirrored in clause 126 of the Bill.

So, that is the first section in which we have retained identical provisions and carried them over into the new Bill.

The second section which we will look at is provisions from the current FIA that were clarified or strengthened. The Bill contains the following provisions which were retained from the FIA but modified to reflect greater clarity or strengthening.

Firstly, appointment, resignation and termination of the Inspector of Financial Institutions: Section 30 of the FIA which governs the appointment, resignation and termination of the Inspector of Financial Institutions omits certain requirements. Clause 7 of the Bill incorporates these requirements. These include certain conditions such as establishing the term of office and the grounds for termination.

Secondly, disclosure of information by the Central Bank: Section 35 of the FIA as amended in 2006 provides for the Central Bank to share information obtained in the performance of its duties under specified circumstances.

Clause 8 of the Bill now allows for sharing information with the designated authority under the Proceeds of Crime Act and permits public disclosures in the best interest of the financial system, depositors or other stakeholders.

Amendment of Schedules: Section 63 of the FIA permits the Minister to amend the First and Second Schedules to the Act. This is now extended to include the Third, Fifth and Sixth Schedules under clause 13 of the Bill.

Delegation: The power of delegation under section 68 of the FIA has been extended to the Central Bank Governor and the Inspector in clauses 14 and 15 of the Bill.

Licensing of financial institutions: The definition of business of a financial nature and business of banking under sections 4 and 5 of the FIA have been made clearer in clauses 16 and 17 of the Bill.

Refusal of licence applications: Clause 21 of this Bill expands on sections 7 and 8 of the FIA by requiring the Central Bank to provide reasons for refusing applications for a licence—and I think it is within 14 days; there is a time frame.

Application fees and licence fees: Application fees are introduced in clause 22 of the Bill. So, it supplements section 9 of the FIA which only covered licence fees.

Procedure for revocation and restriction of a licensee: Sections 10, 11, 12 and 13 of the FIA outline the procedures for the revocation and restriction of a licence. These procedures are clarified in further detail in clauses 23, 24, 25 and 26 of the Bill.

Amendment to licensees incorporation documents: Clause 31 of the Bill substitutes the inspector for the Central Bank as appears in section 18 of the FIA.

Disqualification of directors and management: Clause 33 of the Bill strengthens section 20 of the FIA by prohibiting persons convicted of fraud or money laundering offences from becoming a director of a financial institution. The Bill now provides for a minimum waiting period for persons who were directors of a liquidated company to become a director of a financial institution.

Prohibited activities: Section 22 of the FIA lists the activities that a licensed financial institution is prohibited from doing, whether directly or indirectly. The Bill relaxes certain prohibitions related to the acquisition of land and the period for which it can be held. The Bill also introduces a new clause to restrict the ownership of unregulated entities unless approved by the Central Bank. These enhancements are contained in clause 41 of the Bill.

Limits on credit exposure: Section 22(2) of the FIA currently imposes limits on secured and unsecured lending which have been replaced by a single “large exposure limit”. This change is reflected in clause 42 of the Bill.

Sale of subsidiaries or assets: Section 6 of the FIA requires a licensee to seek the approval of the Central Bank to establish a subsidiary. Clause 46 of the Bill strengthens this section by extending the scope of transactions for approval.

Employee share ownership programmes: Clause 48 of the Bill strengthens section 22(10) of the FIA by reducing the limit to 20 per cent from 25 per cent in respect of a company purchasing its own shares.

Branches: Clause 50 of the Bill expands the definition of branch to include foreign branches which are referred to as licensed foreign institutions. Clause 50 also removes the approval requirement for a local branch.

Advertisements: Clauses 53 and 54 of the Bill seek to enhance section 24 of the FIA by giving the inspector the power to require objectionable advertisements to be corrected or withdrawn.

Customer confidentiality: Clause 55 seeks to strengthen section 36 of the FIA by introducing additional specified circumstances under which information may be disclosed such as compulsion of law.

Power to request information: Clauses 62 and 78 of the Bill extend the power to require information in sections 31 and 43 of the FIA to certain connected parties.

Suspension of business and appointment of manager or receiver: Section 32 of the FIA is enhanced in clause 63 of the Bill to provide for similar treatment for financial holding companies.

Controlling shareholder: Section 39 of the FIA which defines a controlling shareholder was amended by clarifying the definition and raising the limit for control to over 50 per cent shareholding. Additionally, instead of forfeiture by the State of the shares of controlling shareholders who are no longer fit and proper, clauses 71 and 72 of the Bill now allow for such shares to be disposed of and the proceeds kept for the benefit of the persons beneficially interested in those shares.

Reporting requirements: Clause 75 of the Bill extends section 40 of the FIA to apply to licensed foreign institutions and introduces the requirement for reporting to be done on a solo and consolidated basis for purposes of consolidated supervision.

Publication of inactive accounts: Clause 76 of the Bill reduces the period for publication of inactive accounts under section 41 of the FIA from 14 years to seven years.

Compliance directions: Clause 86 deals with the issuing of compliance directions which is an enhanced form of cease and desist orders under section 47 of the FIA. The grounds for issuing a direction have been expanded; a definition of unsafe and unsound practices provided, and the power to issue immediate directives was included to deal with matters of urgency.

Offences and limitation periods: Clauses 116 to 121 introduce minor improvements to sections 57 to 62 of the FIA.

Exempted institutions: The list of exempted institutions in the Third Schedule has been expanded to include the UTC and certain state enterprises engaged in financial activities that were established to achieve public policy objectives.

So, those are in the second section which really dealt with some clarification and strengthening of existing provisions.

The third section seeks to deal with new provisions that formalize existing practices. It is also important to note that there are other provisions in the Bill which simply formalize what currently exist in practice, these are briefly listed as follows:

Prior consultation for regulations: Clauses 9 to 12 of the Bill generally strengthen sections 38 and 64 of the FIA by explicitly providing for prior consultation on proposed regulations with persons who may be affected by them except in urgent circumstances.

Notice by directors of relevant developments: Clause 36 of the Bill requires a director of a licensee to notify the Central Bank of any material risk to a licensee of its resignation, departure or where he has opposed a proposed resolution.

Guidelines: Clauses 10 and 19 of the Bill establish a statutory basis for the Central Bank to issue guidelines to give effect to this Act.

Mandatory audit committees: Mr. President, clause 36 of the Bill makes it mandatory for the board of a licensee to establish audit committees which licensees already have in place. The Bill, however, prescribes the composition of the committee and gives a transition period of three years under clause 36(4).

Management and board sign-off on internal controls: Clause 37 of the Bill seeks to formalize the practice of directors and senior management signing off on the adequacy of the internal controls and other risk management systems of the organization.

Governance policies: Clause 38 of the Bill now provides boards of licensed financial institutions to establish and maintain policies and procedures to guide transactions between licensees, connected parties and employees. It is important to note that traditional employee benefits or compensation packages are exempted from these requirements.

Clauses 39 and 40 of the Bill also place in legislation the responsibilities of the board of directors to maintain proper information systems for monitoring credit exposures and adequate internal controls.

Statutory reserves: Clauses 56 and 57 of the Bill are generally the same as section 25 of the FIA, save that, local banks and non-banks can be asked to hold a secondary reserve account for monetary policy purposes.

2.15 p.m.

And finally on this third section, membership in Financial Services Ombudsman Scheme: Clause 125 of the Bill provides for the enrolment of licenses in an alternate dispute resolution scheme approved by the Central Bank.

So, I go now to the fourth section where we look at new definitions introduced under the Bill.

Clauses 2 and 3 of the Bill provide the definition of certain key words in the Bill. At this point, I wish to draw attention to certain important words and how they are used in the Bill.

The first phrase "assigned capital": The first is the definition of "assigned capital" which is a new concept. It is used in clause 18 of the Bill and it is a requirement that foreign branches maintain assigned capital in the form of cash or approved securities on deposit with the Central Bank.

Secondly, “control”: Under the current FIA, the definition of control refers to the power of a person, whether alone or with others to ensure that the business of a licensee is conducted in accordance with the wishes of that person. The Bill seeks to be more specific with the aim of clarifying the concept of control, and now expressly refers to a person who exercises more than 50 per cent voting power, a person with power to elect a majority of directors, and a person who exercises dominant control. As a consequence, the threshold for controlling shareholder now refers to a person who owns over 50 per cent of the shareholding.

“Significant shareholder”: As a result of the new 50 per cent threshold in the definition of control, the concept of "significant shareholder" was introduced using the threshold of 20 per cent or more voting power, as applied to the old "controlling shareholder" definition.

“Crediting exposure”: Another significant definition is credit exposure, referred to as credit facilities under the FIA, albeit with a more limited scope. This definition has been expanded to include the amount at risk arising from extension of funds by a financial institution, and seeks to address all the ways a licensee can encounter losses should a counterparty fail.

“Electronic money”: Another definition introduced by the Bill in clause 17(2) is that of "electronic money". This refers to stored value cards that are accepted as a means of payment by persons other than the issuer. This definition therefore, does

not cover gift certificate cards or proprietary cards, issued and used by an institution for transactions with that institution.

“Financial group”: I will also draw hon. Senators attention to the definition of "financial group", which means a related group of companies engaged in financial services and includes holding companies. This term is used throughout the Bill and in particular in clause 62 which deals with the power of the inspector.

Finally, under this section, the last definition, "connected party" and "connected party group". Clause 3 of the Bill provides for the definition of "connected party" and "connected party group". These definitions are particularly important in the determination of credit exposure limits in clause 43, which seeks to capture all persons who may have a sufficiently close relationship with a licensee.

Mr. President, I come now to the last section and these are entirely new provisions. This section as I indicated, introduces a number of new and much needed reforms and for ease of reference, I have classified them into two: the major changes and secondary changes.

The major changes, consolidated supervision: The requirements for consolidated supervision of a conglomerate can be found in the legislation of most jurisdictions, including the United States, Canada, Australia, United Kingdom and Jamaica. This level of supervision is now essential in a globalized economy for two main reasons:

1. it helps to reduce opportunity for regulatory arbitraries and the shifting of risk as its focus is now on the entire group; and

2. because the group is being assessed as a whole, it arbitrage the regulator to take corrective action to prevent deterioration of one entity from negatively affecting the operations of related entities.

Accordingly, clauses 62 to 66 enhance sections 30, 31, 32 and 33 of the FIA, by widening the scope of those sections to include examination and enquiry of the affairs of financial holding companies and members of a financial group, where in the case of the latter, that is the members of a financial group, it is necessary to assess any risk to a licensee posed by a member of the financial group. The relevant clauses are 9(4), 42(12), 43(10), 75(2) and 77(1).

The second major change introduced by this new Bill apart from the consolidated supervision, is also the establishment of a Financial Holding Company or FHC.

Mr. President, I am sure that Senators are aware of the mixed group structures in Trinidad and Tobago, whereby regulated entities and unregulated entities comprise one group. Such group structures make it difficult to assess the risk to which the regulated entities are exposed on a solo and consolidated basis.

In order to deal with this challenge, jurisdictions such as Canada, United States, United Kingdom and Jamaica, either do not allow commercial and financial entities to exist in the same group or require separation of the regulated entities under a regulated holding company.

Specifically, clauses 67, 68, 69 and 70 of the Bill are new and provide for the restructuring of business groups that engage in financial and non-financial activities to form a financial holding company, to hold exclusively the regulated financial entities in the group. This measure is primarily for protecting the regulated entities from contagion and other group risks.

Additional duties of directors; that is another main change. The Bill proposes to impose important reporting obligations by directors. Under clause 35, the board must notify the inspector of any developments that pose material risk to the licensee or financial holding company. This allows the licensee and the regulator to address risks as early as possible before they become critical. Clause 35 also requires directors to notify the Central Bank of their resignation or departure from the board and the reasons for such departure.

New requirements for auditors: Since the Enron and WorldCom debacles, most jurisdictions internationally and to some extent regionally, have sought to strengthen the corporate governance of their financial institutions by introducing additional requirements and duties for auditors on whom regulatory reliance is placed. As a result, the Bill introduces new duties and responsibilities for auditors in clauses 81 to 85. In view of these new reporting responsibilities of auditors, an appropriate indemnity is provided in clause 85 of the Bill.

Another major change is the prudential criteria, credit exposure limits: Currently financial institutions are exposed to substantial counterparty credit risk in their investment, as well as loan portfolios. However, the current Act only considers credit risk originating from the latter, that is, from loan portfolios. The Bill corrects its shortcoming by widening credit exposure limits to apply to all investments. Credit exposures that are fully guaranteed by the Government of Trinidad and Tobago or by any other government, or credit exposures extended to the central government of Trinidad and Tobago are exempted from the large exposure limit.

I come now to the violation of the Act and a number of provisions: A modern regulatory framework must have a broad range of tools to treat with noncompliance in an effective manner. The FIA as it currently exists provides the Central Bank with some intermediate enforcement powers through the issue of cease and desist orders. These orders however, can only be enforced through criminal proceedings before the Magistrates' Court, and therefore, do not allow for prompt and timely action. It is against this background that the Bill seeks to enhance the enforcement powers of the Central Bank by providing for administrative fines.

The imposition of administrative fines is not new to our jurisdiction, as a similar power was given to the Comptroller of Customs by Trinidad and Tobago Customs Act, No. 25 of 1980 to impose fines where persons consented and admitted guilt.

Clause 122 of the Bill provides for administrative fines as an alternative to criminal penalties. The fines and the relevant clauses of the Bill to which they apply are listed in the Fourth Schedule to the Bill.

Clause 86(8) allows for the enforcement of directions by court order. This is important as the court can compel corrective action directed by the Central Bank as opposed to punishing after the fact as is done in the criminal courts.

Clause 87 also represents an additional regulatory tool as it makes provisions for a restraining order or other injunctive or equitable relief.

Clause 65 facilitates the Central Bank making a direct petition to the court to wind up a licensee and such action will only be granted after a prima facie case has been made out and established to the satisfaction of the court.

Clause 66 provides for voluntary winding up by a licensee or permitted institution with the approval of the Central Bank.

Addressing unlicensed activities: Clauses 16(7) and 17(11) strengthen the Central Bank's ability to deal with unauthorized activities by persons not licensed under the FIA. The Central Bank is now given investigative powers to enquire into and examine the affairs of an unlicensed entity, that it has reasonable ground to suspect is carrying on banking business or business of a financial nature.

Regulation of payment systems: For the first time our financial legislation would provide a framework for the regulation of payment systems and electronic money. Although in Trinidad and Tobago the provision of payment systems is usually considered to be part of the business of banking, the FIA contains no

substantive provision for its regulation. The nature of this activity and the potential systemic risk that could result if it fails, support the need to regulate payment services especially with the introduction of the real time growth settlement and automated clearing house facilities. Accordingly, the Bill provides for the Central Bank to oversee all payment systems that it designates as systemically important to financial stability.

The final major introduction into the new Bill is the licensing of branches of foreign financial institutions. Clause 18 of the Bill now allows foreign financial institutions to carry on business through licensed branches in Trinidad and Tobago. Since a branch does not have the same legal, financial and governance characteristics as a separate company, it is common for jurisdictions that permit such branches to operate, to impose some additional conditions on them. Accordingly, the Bill imposes a number of requirements on foreign branches. These can be found in clauses 18(4), 56(1)(b), 47(2) and 60.

Finally under this section, we are looking at secondary changes introduced. The first is the statement of objectives of the Central Bank under the Financial Institutions Act. Clause 5 of the Bill, for the first time, states the objectives and mandate of the Central Bank in respect of its supervisory function, and in so doing provides greater transparency of the bank's function. These objectives and mandate were not adequately captured in the Central Bank Act and are not covered in the FIA, for example, the promotion of the soundness and stability of the financial system. That was not there before. It is now included in this clause 5.

Clause 6 of the Bill provides for any inconsistency or conflict between this Act and other written laws and states that with the exception of the Central Bank, this Act shall prevail and take precedence over such other law unless expressly provided to the contrary in this Act or such other written law—this may arise for example under the Companies Act.

Approval of new products by process of no objection: Clause 51 of the Bill provides for licensees to give to the inspector, prior notification and a detailed description when they wish to offer a new product or service to the public.

2.30 p.m.

Regulation of interlocking directorship outside of a financial group—clauses 33(3) and 33(4) seek to minimize the potential for conflicts of interest and inappropriate decision making by limiting directors' involvement to a particular institution or group of related institutions.

There are no restrictions in the current FIA with regard to directors serving on the boards of unrelated financial institutions. From a regulatory perspective however, there is concern of individuals serving as directors of more than one financial institution unless such institutions are within the same group. This scenario can indeed create conflicts of interests causing boards perhaps to make inappropriate decisions thereby putting depositors' funds at risk.

Regulation of electronic money: Mr. President, another growing business activity in many jurisdictions is the issuance of electronic money. So that there is no mistake with regard to the subject matter, electronic money is defined as monetary value represented by a claim on the issuer which is stored on an electronic device issued on receipt of funds of an amount not less in value than the monetary value issued and accepted as a means of payment by persons other than the issuer.

Accordingly, given its importance, clause 17 of the Bill includes the issuance of electronic money as part of the definition of the business of a financial nature.

Appeals: Mr. President, another major change from the FIA is the shifting of the jurisdiction for hearing appeals from the Tax Appeal Board to a Judge in Chambers. This shift is necessary to facilitate proceedings where there is an appeal and enforcement action arising out of the same matter, as the Bill gives the Central Bank the power to enforce compliance directions through the High Court. Clauses 112, 113, 114 and 115 of the Bill provide for the jurisdiction to hear and determine appeals of persons aggrieved by decisions of the Central Bank, Inspector, or Minister of Finance with regard to various matters covered in the Bill.

Updating of criminal penalties: Additionally, Mr. President, the Bill seeks to update the criminal penalties which have been in existence since 1993 and which therefore, no longer serve as an effective deterrent. It should be noted however, that the dollar amounts of the highest penalties in the Bill are based on the penalties for like offences in the Proceeds of Crime Act.

Furthermore, the quantum of the penalties is set at a maximum and subject to the discretion of the magistrate. Secondly, it is only applicable on summary conviction and thirdly, intended to be a greater deterrent and reflect the severity of the offence in current value terms.

Consequential amendments to the Central Bank Act: Clause 130 of the Bill provides for consequential amendments to the Central Bank Act. These amendments are specified in the Second Schedule under "Regulation of Money Remitters" and additional fees and charges where necessary.

This clause was introduced to provide the flexibility for the Minister. Regulations required that additional fees and charges for the administration of all Acts under the purview of the Central Bank are borne by the relevant sector.

Finally, Mr. President, I must point out that the Bill in its preamble declares that this Act is one which has to be passed by no less than three-fifths of all the Members of both Houses. The reason for this being a constitutional Bill is the provision in clause 67 whereby conglomerates may be required to establish financial holding companies to mitigate contagion risks inherent in a mixed group.

This restructuring can be construed as contravening the constitutional right to the enjoyment of property, and the right not to be deprived thereof except by due process of law. In light of the foregoing, the Bill would require passage by way of a special majority to obviate the risk of the court overturning these provisions.

Mr. President, I have highlighted the provisions that have been saved from the FIA, those that have been clarified or enhanced, provisions which seek to formalize practices in the industry, new definitions and entirely new provisions introduced by the Bill. This, I trust, would demonstrate the extent of the reform which is being proposed to address current gaps in the law and to strengthen and modernize the existing 1993 Act.

In summary therefore, the severity of the global financial crisis can be ascribed to inadequate internal governance and external oversight of financial institutions. Nevertheless, had they been more stringent it would be naive to presume that the financial crisis would have been prevented given the inherent "boom and bust" cycle of excessive credit growth followed by decline in asset prices. The aim of regulation therefore, should neither be to prevent institutions from failing nor to eliminate the cycle of "boom and bust", but rather to reduce the frequency and severity of crises.

In conclusion, the primary purpose of the Bill is to promote a sound and stable financial system that can withstand undue risks. Clearly, our existing legislation is efficient in many respects and it would be remiss of the Government not to act as expeditiously as possible to close the many gaps in our regulatory and supervisory framework. I therefore ask the hon. Senators to consider the provisions of the Bill in the context of our domestic and international realities.

This Bill represents a move towards the Government's vision of Trinidad and Tobago as the PanCaribbean Financial Sector. I want to say the Trinidad and Tobago International Financial Sector, because I want to go a little further, and

we intend to return to both Houses with the amendments to the Insurance Act, the Security Industries Act, and I think we are coming with the Insurance Industries Act early in the new parliamentary term and other related legislation as we move further towards the realization of this goal.

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

Question proposed.

Sen. Wade Mark: Thank you very much. Mr. President, let me also from the outset welcome the hon. Minister to the Senate, it is the first time she is piloting a measure. I am very saddened however, that my colleague is not here because I had so many issues of a fiduciary nature of him when he was in an earlier incarnation, but I would reserve my rights to raise them on another occasion. I do not think the hon. Minister who is here can drink "bush tea" for his fever, so I would not saddle her with those serious matters.

Mr. President, according to the Bill before us, the Financial Institutions Bill, 2008 is aimed at regulating banks and other financial institutions which engage in the business of banking and business of a financial nature and we are told that it repeals the Financial Institutions Act of 1993.

Owing to the draconian nature of the legislation and the subsequent infringement and violation of property rights, a constitutional majority as the Minister indicated earlier is therefore required. Owing to the haste in treating with this matter in another place, my colleagues did not have the time and space to fully, properly and comprehensively analyze and evaluate this most important and far-reaching piece of financial legislation which as you know, Mr. President, contains over 125 clauses I believe, and ought to have been properly referred to a joint select committee of the Parliament.

Indeed, it took the Government and its team over five years to prepare, hold discussions, draft, redraft and finalize this piece of legislation and, of course, we are given a mere few days to analyze its contents. The consultation to which the Minister referred only involved a clique and a small group. It appears that finance is the business of certain elements in this country and other people do not matter.

Hon. Nunez-Tesheira: I do not know if the hon. Sen. Wade Mark had heard the comment we made with regard to May 2008. When we went back in May 2008, it was not a clique, it was a public consultation and every member of the community, like your good self was invited to attend. I just want to clarify, it was not a clique; it was for the public including yourself.

Sen. W. Mark: That does not answer my question. We are a political party representing close to 200,000 people and we were not involved, we were not given an official invitation. Not only this, Mr. President, the workers in the banking sector have a trade union called the Bankers and Insurance General Workers Union but they were not involved, they were never issued with an invitation. And I want to say even the National Trade Union Centre and FITUN were never invited so this seems to be a sort of contrived consultation.

Who will speak on behalf of the hundreds of thousands of depositors? Who would look after their interest? It falls on us in the Opposition UNC to speak on behalf of them and advance their interest this afternoon. And, therefore, the question must be put: Who will really benefit from this particular measure we are dealing with today? Who really stands to benefit from this measure? Is it the man-in-the-street, the small man? Is it the working class, the middle class, or the big shots, powerful and mighty? It does not appear that the working people have been considered in this measure whatsoever because their representatives were not involved, the workers were not involved, the trade unions were not involved in any consultation, none, and I have researched it.

2.45 p.m.

Mr. President, this Bill in its current form suffers from a host of deficiencies which we intend to expose and we are prepared and we serve notice that a slew of amendments will flow from this side in order to strengthen and give balance to this piece of legislation this afternoon.

One of the areas I intend to address during my contribution is the lack of accountability in this piece of legislation, particularly as it concerns the Central Bank. Who does the Central Bank account to in this country? It is no longer under the Freedom of Information Act so we cannot access information from the Central Bank. Who is the Governor accountable to? The Minister of Finance? The Prime Minister? The Minister in the Ministry of Finance? Or should he be accountable to the Parliament?

In fact, there is no mechanism to hold the Minister of Finance accountable in this particular legislation where the Minister of Finance is given a lot of power and authority. As I said, who will look after the interest of the depositors? Seventy-five thousand dollars in the event that a bank goes bust? Is that not inadequate? Should the minimum not be half a million dollars to start with, if you are serious about protecting depositors? Without depositors there will be no banks; there will be no Unit Trust. But there is nothing about depositors in this

legislation, even though they constitute the base of any financial institution. So who is protecting the depositors in this country? We cannot depend on the Minister of Finance to do that at all.

There are huge regulatory gaps which leave out important segments of the financial system which are currently under-regulated. Reference is made to the credit union movement, to the Unit Trust and its mutual fund regime and I am asking the question: where is the Home Mortgage Bank in this whole situation? This is a bank, you know—Home Mortgage Bank! I have the 25 core principles that the Basel Committee located in Switzerland advanced and one of those principles says, we must avoid using the word "bank" in a loose manner. How come the Government has not taken that particular principle on board? Who is going to protect the consumers and the depositors? The Government has failed to deal with the issue of the Financial Services Ombudsman, which is a phantom, no power to investigate, no power to grant awards when you have misdemeanors being committed by the financial agents. So we have to speak on behalf of the consumers and the depositors this afternoon.

Then there is another area that we are concerned about which we are going to deal with; the attempt in this Bill to protect and safeguard the interest of certain elements and using public policy as a way out in order to allow those institutions to escape the financial rigours of these regulations that we are dealing with today. This is where the politics of finance comes in and I will go into detail on this matter.

I would like to ask the hon. Minister of Finance when she is winding up: Why have you exempted the Trinidad and Tobago Mortgage Finance Company Limited? You must tell this country why. Why have you left out the NIB? You must tell us. Why have you left out the Home Mortgage Bank? Why have you left out the Unit Trust of Trinidad and Tobago? And there are several miscellaneous matters of critical national importance which we on this side will address during our submissions here this evening.

I have not heard from the hon. Minister, what is the rationale for reducing the number of years, from 14 to seven as it relates to inactive accounts in section 76. What is the basis for it? Do you have a report to submit to us as to why you are tampering with that? No, I am saying leave the status quo; leave it so.

Mr. President, you know before 1993, $360,000 was the benchmark for someone to open a bank in this country. When the Financial Institutions Act was passed in 1993, that was increased to $15 million. You are telling me in a

situation of a financial meltdown where banks are crashing in the United States of America, where contagion is real and has begun to impact on us here, you are leaving the status quo at $15 million? What is the explanation for that? Why do you want to leave it at $15 million? I am saying let us debate that, because in this legislation the status quo remains, according to the legislation before us.

I have looked at some of those definitions and I want you to pay attention to page 6 of this Bill. Look at the definition of a financial entity. I want you to pay attention to what the definition of a financial entity is. Could the hon. Minister indicate to us what and where is the Home Mortgage Bank in this whole matter? Has the Home Mortgage Bank been left out of these regulations? I would like the Minister to tell this country and this Parliament if that is so. And if that is so, why has the Home Mortgage Bank been left out when you have given a definition of what a financial entity is and the Home Mortgage Bank is a financial entity? [*Interruption*]

No, take a note. I cannot give way. I need a lot of time today. [*Interruption*] Well, I am just asking questions. You take a note, otherwise if you agree that I will get back my time I will give way. I have a lot of things to speak about here and every time you eat into my time, I lose it.

Mr. President, financial services, look at that definition again. It talks about the business of credit unions. But are the credit unions going to be controlled under this particular Bill? I think not. The point is, I have not seen this Government hasten to amend the Cooperative Societies Act and one credit union has crashed and many more are on the brink of crashing and you bring a Bill today and you have left out the credit unions, but you tell us this is what a financial service is, so I would have imagined that you would want to pay attention to addressing this particular issue as well.

Then we go to clause 5 of this Bill and we come to the giant; the green giant; the real giant, the Central Bank. The Central Bank's functions are outlined in clause 5(1) (2) and (3). And it continues on page 14, clause 6, and you realize that in clauses 5 and 6, under clause 5(5) it states:

> "The Governor shall provide a written report to the Minister on an annual basis with respect to the performance of the Central Bank in meeting its objective under this Act."

What is the role of Parliament in all this? Therefore, we are proposing an amendment. We are saying that this report shall be laid in both Houses of Parliament within one month of the receipt of that report. We want to know the performance of these banks; and you bring it to the Parliament.

The Central Bank—I feel sorry for the Governor of the Central Bank, quite frankly. The Central Bank, if it is to carry out its functions and duties in accordance with this piece of legislation, must be given real independence, along with its Governor, and both its directors and Governor should be answerable to the Parliament of Trinidad and Tobago, as it is done in the US Congress.

The Governor of the Central Bank should be an independent person and he should not be subject to the political influences that we have seen taking place recently, which forced him to hold a press conference last Friday, as far as I am concerned. Indeed, the appointment of this Governor should be subject to parliamentary scrutiny and approval and so should be its directors, and this would avoid the appointment of questionable characters to that particular board, and you know there are a lot of suspicious characters sitting on the board as we speak today.

It is an established fact that the executive arm of the State has completely ignored and disregarded the advice and policy guidelines proffered by the Governor of the Central Bank over the past few years, because he owes his appointment to the Government, and hence the contempt they have shown towards the Governor of the Central Bank.

So here it is you are giving the Governor more power to supervise and to regulate these institutions but we are seeing on the other hand that the Governor does not have the independence to carry out his task. If the Governor of the Central Bank had independence, we would have never been in the situation that we are in today, because for three years he has been telling this Government: "You are engaging in excessive spending through the non-energy fiscal deficit which increased from about 7 per cent to 16 per cent, and reduce it." And the Government ignored the Central Bank Governor up to this day, as we speak.

I am therefore saying, if this Bill is to work, we need to have an independent Governor of the Central Bank and his appointment should be subject to a two-thirds majority vote from both Houses, so he can be released from the clutches of the political directorate from which he is currently under serious control at the moment.

The Central Bank in its current incarnation is widely viewed by the people as an instrument of the Ministry of Finance and its Governor has now become an extension of the Ministry of Finance, which he ought not to be. Therefore, without genuine and true independence, the Central Bank would be unable to achieve its ultimate objectives as outlined in the legislation that is currently before us.

Mr. President, had we an independent Central Bank, as I said, the advice proffered by him would have been implemented and we would not have been experiencing the obscene and excessive high inflationary levels in this country today, more so the extraordinary rates of increases that have taken place in interest rates for small, medium and large businesses, as well as homeowners through increased mortgage rates.

3.00 p.m.

Just a couple days ago, people were called upon to pay $600 increase to various banks in this country because of the floating mortgage rate of interest. They are now paying $600 in addition because of the reckless and irresponsible behaviour and conduct of this Government that simply ignored all the advice proffered by the Governor of the Central Bank. The poor Governor of the Central Bank has to increase the repo rate which has been increased, I think on nine occasions in the shortest period of time in this country's history. He is not independent. You have him as a puppet.

We have to address this issue of making the Governor of the Central Bank independent of the political directorate, whether it is the UNC, the PNM or what have you. Make that person independent and when he or she offers advice, take it. They are professionals not politicians.

We are being told by this Government that there is no recession in the country and there will be none to come. In today's papers, the economy of the United States of America is formally in recession and it has been so since December 2007. When you feel that this country is not heading toward a recession, it will be a year later you would find out that we are in a deep hole. The big United States of America did not know that they were in a recession until one year after.

We have the Prime Minister, Ministers of Finance and the Minister of Energy and Energy Industries, four of them—We are heading for disaster if we continue to fool ourselves and tinker with the system in a political way because they want to get political advantages from the system. We are in very, very serious trouble. My information is that Petrotrin alone lost close to $900 million because they got caught up in the futures market. Now the price of oil is trading under $49 they probably got locked in the futures market and we have lost almost $800 million to $900 million as a result of that lock-in.

I will indicate to the honourable Senate that under clause 7, you see how an inspector is appointed, a fit and proper person and there is provision in this piece of legislation to define a fit and proper person, I believe that persons who are

taking up appointments in the Ministry of Finance should be appointed in a similar fashion. Before you put a person in the Ministry of Finance to deal with our money, determine if that person is fit and proper. I have evidence in my file today that tells me that you have ministers in that ministry who are not suitable and proper to be in charge of our country. I cast no aspersions.

Sen. Annisette-George: Mr. President, on a point of order. I refer to Standing Order 35(5), the Senator is imputing improper motive.

Mr. President: I do not think that that is the right Standing Order. There is one further on which talks about the conduct of Ministers being called into the debate. It is more relevant to that one. You should avoid statements like that.

Sen. W. Mark: I cast no aspersions, Sir.

I refer you to clause 8 of the Bill. In 1993, you could have used one daily newspaper and the *Gazette* to communicate to this population. Today, we have three daily newspapers. Then, we had two, I believe. I would like the hon. Minister to consider at least two daily newspapers. Wherever we have one daily newspaper occurring, we are making an amendment and suggesting that we have two daily newspapers.

If we go to clause 13 of this Bill, we are proposing that it should be affirmative and not negative. We are making an amendment to have an affirmative resolution in this regard.

We object strongly to clause 14. I will read it for you. We think that it is highly dangerous and open-ended. We believe that we need to revisit it. It states:

> "In the exercise of their functions, powers and duties under this Act, the Central Bank, the Governor and Inspector may delegate any such function to, and exercise any of their powers and duties through, any officer, employee or agent of the Central Bank."

This is unacceptable and we serve notice to the Government that we do not support this particular provision. Not in this form. You have extended it. Go back and see what exists now.

We go to clause 16(6) to where regulations are referred to in the last line. I have seen no regulations before us. For them to give effect to these provisions, we would need regulations. We are going to propose an amendment to have regulations included and they would be subject to an affirmative resolution of Parliament.

You must pay attention to clause 17(2), "Business of a financial nature" and you would see where the National Insurance Board, Unit Trust, the Trinidad and Tobago Mortgage Finance Company and the Home Mortgage Bank conduct business of a financial nature. I cannot see the justification for the exclusion of these institutions under the legislation, except it is purely political. We cannot mix politics with finance. That is a dangerous brew. We have to look at these things very carefully. As I have indicated, wherever the Government speaks to the issue of one daily newspaper, we are advising the Government not to look at one but at least two.

If you go to clauses 34, 35 and 36, they deal with interlocking directorship, where you need a permit from the Governor of the Central Bank, if you are to be on one or more than one financial institution. I am wondering if herein lies the problem. You have a "fella" called Calder Hart who is the Chairman of the Trinidad and Tobago Mortgage Finance Company. Mr. Calder Hart is the Chairman of the National Insurance Board and Mr. Calder Hart is the Chairman of the Home Mortgage Bank. Are these institutions not of a financial nature? Does the Home Mortgage Bank not receive deposits? I know people who save with the Home Mortgage Bank. They make deposits there. I know that for a fact.

What about the Trinidad and Tobago Unit Trust Corporation? Why are we leaving out the Trinidad and Tobago Unit Trust Corporation from here? I am not dealing with the Trinidad and Tobago Unit Trust Corporation here. I am dealing with a gentleman who is into interlocking directorships. He is into the Home Mortgage Bank, the Trinidad and Tobago Mortgage Finance Company Limited and the National Insurance Board. Yet still, this Government believes that we are a bunch of fools. If you go to the Financial Institutions Act, 1993, the Third Schedule, seven institutions have been exempted.

Do you know what this irresponsible and reckless Government that appears to be playing politics with the country's finances has done in 2008, after the financial crash in the United States? It has increased the number of exemptions from seven to nine. What is the justification for it? If in 1993, it was important to put the Small Business Development Company Leasing Corporation under this exemption clause, why have you left it out today? Why did you include the Trinidad and Tobago Mortgage Finance Company Limited? This is what this Government has done. You must offer this country an explanation. Why have you left out the Trinidad and Tobago Home Mortgage Bank and the Trinidad and Tobago Mortgage Finance Company Limited when in the Act of 1993, it was regulated by the Central Bank of the country? This is a time when we need to be

more rigid in protecting the depositors' interests. Is it because Calder Hart is the real Prime Minister of this country and because he is the Chairman of the Trinidad and Tobago Mortgage Finance Company you left it out?

The Trinidad and Tobago Unit Trust Corporation is a multi billion dollar unregulated company. I have my savings in that institution and I will keep them there. I am not withdrawing any money from there. Why in 2008, are we leaving out the Trinidad and Tobago Unit Trust Corporation from regulations when that company is driving billions of our money? In the Act of 1993, this company was not exempted. If it was not exempted I am asking the Government through the Minister of Finance to return to the status quo in the Third Schedule and remove what you have now included in this particular piece of legislation. I am asking the reason you have done that. You must tell the country why you have done that. Clauses 34, 35 and 36 are relevant to the issue of interlocking directors.

There are certain provisions in this Bill like in clause 42(2) which says:

"A licensee that contravenes subsection (1) commits an offence."

It leaves it open. We do not know the sanction or punishment. We do not have a clue. I am seeing some deficiencies in the legislation. I would like the Government to address those deficiencies. They repeat themselves in subclause (9). Wherever there are deficiencies we are calling on the Government to correct them.

We go to clause 48(1) of the Bill. I thought that this Government was promoting employees stock ownership plans, so that employees would have an interest and ownership where they work. I noticed that they have now reduced it from 25 per cent to 20 per cent, in terms of an employee stock ownership plan, under clause 48(1). Could you offer me some explanation for that decision? I would like to know what has caused that

3.15 p.m.

Clause 54 talks about objectionable and misleading advertisements and the role of the inspector, but we did not get the sanction that will be imposed on the offending party in this instance and whether it will be published in the newspapers so that the country would know that the advertisement was offensive. [*Interruption*]

It is withdrawn but the question is: Is the population informed of its withdrawal? I suggest that a paid advertisement be taken out by the Central Bank or the offending agency so that people can read it. We do not want a private in-

house withdrawal or a gentleman's agreement. It must be in the open and the public must know what is at stake in the situation.

With respect to clause 76(1), what is the rationale for reducing the period of time for inactive accounts from 14 years to seven years? Not only that, when people go abroad to stay for a number of years and their accounts remain in the banks, they expect them to be there. You are saying to us that you are now going to reduce the number of years from 14 to seven. Please offer the rationale for this development. What has happened to allow the Government to go that route? We suggest that the status quo be retained and further that every time they issue a statement on these matters, it should be published in at least two daily newspapers and not merely one as is suggested.

In clause 118 of the Bill, you see some very interesting matters dealing with people who perpetrate fraud on the depositors. Again, if my friend were here, I would have asked him about this; but he is not here.

We propose the insertion of the following amendment. After clause 122(1), we would change that and we are advancing the following:

> The Minister may, after receiving the recommendations of the Central Bank, make regulations subject to an affirmative resolution of Parliament for any matter required to be prescribed under this Act, the transfer of funds by electronic means and generally for giving effect for the provisions of this Act.

We believe that that provision is very important and ought to be included.

I do not know why, in the First Schedule, the Government did not follow the pattern we had in 1993 where, instead of saying "First Schedule section 17" and you are none the wiser, we include "business of a financial nature including the following types of business".

That should be the heading here. We are talking about business of a financial nature. Is this not a contradiction? Here we are being told in this Bill that its purpose is to deal with matters to regulate the banks and other financial institutions which engage in the business of banking and business of a financial nature on the one hand and, when we go to the First Schedule, we see the types of businesses that are covered by the legislation. Mr. President, if you go to page 33 of the First Schedule, you will see, at No. 5, "mortgage institutions" and it says, "for mortgage lending". You will also see Trinidad and Tobago Unit Trust.

So here we are talking about business of a financial nature and we identify in the First Schedule what they include, yet in the legislation, you leave out the

Trinidad and Tobago Unit Trust. Is this not a conundrum? Is this not confusion? What are you really regulating, just the banks?

The other businesses of a financial nature have been left out and here in the First Schedule you refer to mortgage institutions like the Trinidad and Tobago Mortgage Finance Company. Home Mortgage Bank is also engaged in lending money to buy homes. That is a mortgage institution as well. Why have you left it out in the First Schedule? Because Calder Hart is the chairman? Because Andre Monteil was the former treasurer and chairman of the bank? What is the Government covering up? They are dealing with people's lives, Mr. President; people's savings, and they cannot play politics with people's deposits because they have friends that they want to protect.

I am happy to see that they have repeated what a fit and proper person is. That is very good. I come back to the Third Schedule and I would like the Minister to explain to us where Home Mortgage Bank is in this legislation. We would like the Government to tell us.

This matter that the hon. Minister referred to earlier as it relates to the global financial crisis, do you know what, Mr. President—

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

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

Question put and agreed to.

Sen. W. Mark: Thank you very much, Mr. President and colleagues. Mr. President, do you know what triggered the financial global turbulence? We know the subprime mortgage lending crisis and much of it took place outside of the regulated banking sector. Here it is that they are leaving out the Trinidad and Tobago Unit Trust, the Trinidad and Tobago Mortgage Finance Company, the National Insurance Board and the Home Mortgage Bank. A large part of this lending was based on weak underwriting standards.

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

Weak underwriting has long been the bane of banks and banking systems. The difference in this case was the rapid and global transmission of risk through the use of securitization. The failure to adhere to basic risk management principles, especially when new products and markets came into play, partly explains the problems at the bank. However, innovation should never mask poor underwriting, Mr. Vice-President.

What we are required to do in this period is to protect depositors' interest through sound regulation, supervision and transparency and through timely disclosures. What is required is the full application, implementation and enforcement of the Basel II Framework. What is needed is the strengthening of risk management regulations, supervision and market transparency for banking institutions and related financial organizations.

Therefore, we need for the authorities to make sure that the infrastructure of supervision, regulation and transparency keeps pace with innovation and promotes appropriate incentives for sound risk management. If we do not have sound and strong regulations and supervision, we will end up in trouble in Trinidad and Tobago.

Do you know what happened? In the report of Standard and Poor's, 2006/2007, they made reference to exposure of the banks in respect of risks as they relate to credit rating. Do you know what they estimate it at in their report? That the Trinidad and Tobago banking system would have a gross non-performance loan of 25 to 40 per cent in a deep recession scenario. They are saying that if we go into deep recession, the banks in this land will have an exposure of non-performing loans in the vicinity of 25 to 40 per cent. That tells us that we have to have serious and sound regulations and not play politics with finance.

There is another area with which I would like to deal. It is what I would like to call the symbiotic relationship between financial and economic development. You will recognize, Mr. Vice-President, that there exists a link between this Financial Institutions Bill and the process of economic development in our country. Financial development aids the process of capital accumulation and, by extension, economic growth as it directs financial resources from one area starved to another area that requires it. Financial development should be viewed as a facilitator of the process of economic growth and sustainable development.

I raise these points to emphasize that the commercial banks in our country need to reorient their thinking on the promotion of industrial development and move away, as far as possible, from just import trade and consumption spending. There should be a greater emphasis on socioeconomic and industrial development in our country.

3.30 p.m.

[MR. PRESIDENT *in the Chair*]

Mr. President, if you go to pages 99 and 100 of the 2007 Annual Economic Survey, produced by the Central Bank of Trinidad and Tobago, you would observe how commercial banks distribute their loans and advances by sectors. If

you look at agriculture, as an example, in 2003, for the entire agricultural sector, 0.9 per cent of the bank loans and advances were given. By 2005, it went down to 0.3 per cent; in 2006, it went down to 0.2 per cent and at the end of 2007, it is down to 0.2 per cent.

When one goes go to the manufacturing sector where there ought to be much emphasis, it was 10.5 per cent in 2003 and at the end of 2007 it was down by 6.0 per cent.

In the distributative trades, it was 7.2 per cent in 2003 and 6.8 per cent at the end of 2007. Do you know what? The bulk of the loans and the bulk of the advances went to consumers. So, in 2003, 35.1 per cent of all the loans advanced by the banks went to consumers. At the end of 2007, it went down to 30.3 per cent.

Mr. President, I raised these points to emphasize the symbiotic relationship between the finance, economic and development growth in our economy and the important role that commercial banks and other financial institutions have to play in economic development, growth and transformation in this economy and society. We realize from the statistics that there is still much work to be done.

Mr. President, there are several provisions in this piece of legislation that are offensive and there are several deficiencies. We need to get explanations from the Government; not wishy-washy explanations. We want serious explanations on these matters. This is finance and this is about the people's interest and, therefore, I want to reiterate that there is need for us to revisit the amount of money that is needed to start a bank in this country, particularly in these difficult and challenging times.

Secondly, we should be advancing a larger amount of money to protect the interest of the depositors. Do not come and tell me that in the year 2008, all you are offering to depositors is $75,000! No! No! Mr. President, you know the exposure that people are subjected to because of how banks operate in this country.

I know of instances where people have gone to a bank and got money without any security, but when ordinary working class people go for a loan they cannot obtain a loan. So, there are a lot of credit exposures out there, and you are telling me that in today's world you are going to give a bank or some banker or some big shot $15 million to start a business! We must rethink that number. I have suggested $30 million, and that might be too much, but I am saying let us rethink that number.

Most importantly, the Government has a duty to protect depositors' interest and, today, we represent the interest of depositors. We are advancing their interest because they were never part of any consultation. Their interest was never taken on board and, therefore, the meagre $75,000 in the event of a crash is too small. We are saying $500,000 must be the minimum deposit insurance that we must start with to help to protect the interest of depositors in this country.

If this Government is serious about tightening financial regulations in this country, it cannot come with these kinds of measures that appear to be contradictory with one another. I believe that the Government needs to revisit this piece of legislation. I would even want to suggest that they refer this matter to a special select committee for consideration and deliberation where we can invite workers, because they were left out. You should bring the workers, trade unions and depositors in and let us hear what they have to say on this piece of legislation.

So, as far as we are concerned, this is not a free ride. The Government was able to get away in the other place, because my colleagues did not have the time, because of the rush that took place with this piece of legislation. We have had the opportunity to study it in a more detailed way, and that is why we are able to outline and define the deficiencies in the legislation that we have observed. We are calling on the Government to correct them. I intend very shortly to circulate a series of amendments for the consideration of this honourable Senate in order to strengthen the legislation. By no stretch of the imagination are we opposed to the regulations for banks or financial institutions.

We want tighter control and we want tighter regulation for banks, financial institutions or those institutions that carry out business of a financial nature. We are saying that there are deficiencies in the legislation, and let us put our heads together so that we can strengthen the legislation and protect the interest and welfare of the depositors, consumers and the national community of Trinidad and Tobago, particularly when we take into account the uncertainties and the turbulence that is now wreaking havoc in Europe, North America and Asia.

Mr. President, for any citizen and for any Minister to get on television and tell this nation that Trinidad and Tobago will not go into a recession is a pipe dream and they are daydreaming. The evidence is revealing that Trinidad and Tobago—if this Government is not careful of its reckless policies, squandermania and corrupt ways, they are going to make sure that this country goes into a recession.

We do not want a recession here, but the Government's reckless and irresponsible approach to expenditure and development—its squandermania, waste and mismanagement and total corruption in operations of our system of governance—is going to be responsible for Trinidad and Tobago heading into that direction.

Mr. President, thank you very much. [*Desk thumping*]

Sen. Subhas Ramkhelawan: Mr. President, thank you for giving me the opportunity to speak on this particular Bill. Certainly, it is quite a lengthy, and I would say, sometimes a tiresome Bill to read in its entirety, but I would give it my best shot.

Let me start by painting a backdrop for getting to this position of the Financial Institutions Bill, 2008. I want to paint this backdrop, because I think it is necessary for this Senate and the citizens at large to understand how we have gotten to this stage and why we are pursuing the actions that are contemplated under the Financial Institutions Bill, 2008 and the implications, therefore, for the various stakeholders who would be governed by the Financial Institutions Act—the protection of the depositor; the shareholders, whether individually or collectively as a financial holding group; and the employees and the directors of those institutions.

As I go along, I would like to address what I consider to be the unfettered powers of the inspector operating in many instances outside of and not under the direction of the Governor and Board of the Central Bank. I wonder where he derives his authority under the Constitution. Those are some questions that I would like to put and then seek to raise some answers and make some suggestions to this honourable Senate and to the citizens at large.

I would start by painting this backdrop, and it reminds me of myself as a young man. When I went back to this I remembered where I started at the Ministry of Finance. A little before that, just post the period of Independence, in 1964, we set up the Central Bank under the Central Bank Act, 1964. This was to create a framework in the economy which would have been more under our control as an independent nation. We then set up the Banking Act, 1964, under which banks would be licensed in Trinidad and Tobago, and not just the foreign branches of international and foreign institutions. So, the decade of the 1960s set up the framework for banking and set the platform for a local financial system in the main.

In the 1970s, we set up the National Insurance Scheme. Just to put some things into perspective, today deposits in the banking system amount to $57 billion. I think the hon. Minister spoke to what proportion that would be in

terms of the GDP. That would be—just deposits alone and not other liabilities—about more than one-third of the nominal GDP. In the 1970s, the National Insurance Scheme was also set up for the insuring of workers and so forth.

In 1971, the Co-operative Societies Act was set up which governs credit unions. As we know, credit unions and co-operative societies today control something like $6 billion of assets in this country.

In the 1980s, we set up the first Securities Industry Act. That Securities Industry Act was set up, essentially, to deal with trading of securities, stocks and shares and it was improved and expanded by a subsequent Act in the 1990s which I am going to come to. Also, in the 1980s, the Unit Trust Act, 1981 was set up. The Home Mortgage Bank Act, 1985 and the Central Bank and Financial Institutions (Amdt.) Act in 1986. In the early 1980s, the Insurance Act, 1980.

So, one of the objectives of the Central Bank was to pursue stability in the financial system and the financial system itself was developing into the various parts, but the Central Bank did not necessarily have command and control of all the various institutions that would have been set up over that period of time.

In the 1990s, a number of changes would have been made. In the 1990s, we saw the first Financial Institutions Act, 1993. The reason that Act was set up was because in the 1980s, for the first time since Independence, we had major failures of non-banking financial institutions; institutions that were engaged in raising deposits or raising financing and lending.

There was a deficiency in the definition of what a banking institution was. The deficiency was that a banking institution was defined as taking demand deposits and dealing in current accounts and so forth. Companies that were set up did not take demand deposits, but they took time deposits and they did not have current accounts. They lent for a period of one year and above.

3.45 p.m.

The reason I mentioned this is because those institutions fell outside of the control of the Central Bank and because of improper—I should say—lending policies they ended up getting into trouble and because of poor credit policies that were not governed by the Central Bank they ended up getting into trouble and they eventually had to be bailed out. That led to certain amendments in the Central Bank Act which brought in 1986, I believe, the Deposit Insurance Corporation which sought to insure deposits to certain limits for depositors in the financial system. So we are here today—post 1993—after the Financial Institutions Act, there was a revision and there was a new Securities Industry

Act and the Securities Industry Act was intended to expand the operations of the securities market, not just limit to trading but to do many more things which would have included lending persons through a process called margining to buy additional securities, and which would have included something that has come into the jargon of our financial system, and which is significant, which would include a financial product called "repurchase agreements" which has to do with the buying of securities, the lending of securities and the financing of the securities. Sounds complex but it is very simple. It is really borrowing money on the basis of financial securities.

Now I say this to paint the picture and the backdrop of some of the issues that we have to address as we deal with this Financial Institutions Bill, 2008. It has to be addressed also in the context of what we as a nation have articulated that we wish to set out to do with our financial system. And this is clearly enunciated in a Green Paper on Financial Sector Reform 2002 which morphed into a White Paper 2004, which included among its various initiatives the adjustments to and the upgrading of legislation, inclusive of securities legislation, inclusive of credit union legislation, inclusive of insurance legislation, inclusive of pension legislation and of course including the financial institutions.

So, against this backdrop I want to start my contribution on the basis that there can be no argument with a system that seeks to protect and sets as a paramount concern the protection of depositors in any financial system. After all, in our financial system they make up the bulk of the largest proportion of savers in the system. Because deposits at $57 billion; the national insurance scheme at $18 billion; the Unit Trust at $18 billion; the credit union movement at $6 billion, it sets the stage and it tells the story of how important this component of the financial system is.

Whatever is done to protect the investor is critical, especially in the context of the international developments that have taken place over the past year or shorter period. What we have seen is the debacle of very poor credit decisions impacting and endangering the deposits of the entire financial system. Why the deposit would have been endangered is because the capital of those institutions had been significantly eroded by poor credit decisions or in some cases wiped out, leading to the collapse of international institutions which are well known, Lehman Brothers and Bear Stearns; leading to the sale of itself by Merril Lynch into Bank of America; leading to the sale of Wachovia into Wells Fargo.

It does not need repetition because I believe that our learned Senators look and keep abreast of these developments, if not on a daily basis, much more frequently. And so, while we wish to protect the interest of the depositors, this

cannot be done in a vacuum, because, while we wish to protect the interest of the depositors we must seek to stimulate and motivate and incentivize the development of the financial and capital market which is, in essence, the lifeblood of the development of any economy. I think most people are much more acutely aware of how important credit is to any system today, much more aware they would be now than anyone since 1933 or the 1940s. Because it is the credits freeze or the lack of credit availability that is choking the economy and choking off economic growth, and in fact pushing the world—if it has not already done so—into a global recession.

Therefore, as we seek to protect the interest of the depositors we must balance that with ensuring that the financial system is not ground to a halt where we throw out the baby with the bath water. That is the elemental basis on which we must move forward. And therefore if you choke out other stakeholders, shareholders in the system, then if you scare employees from working in the financial system or directors from taking up positions, then you are going to find yourself in a high imbalanced situation where we satisfy all the requirements of the Central Bank that no depositor will ever lose one cent but on the other hand we kill off the development of the financial system and the financial markets.

Therefore, there must be a clear and well-thought-out balance between the need to protect the depositor and the need to encourage the shareholders and potential shareholders to invest in financial institutions of this kind. And sometimes we get lost as to what our motives and intentions are supposed to be. We get lost, because I am sure the hon. Minister is often prevailed upon by one sector saying you must do this because this is going to achieve these results and then the other sector says, no, we must do this because this is going to achieve these results. At the end of the day we are concerned with the development of our nation, and to do that we have to be concerned with the development of our financial system inclusive of financial institutions, but not limited to financial institutions.

So, as we examine this Bill my one concern that stood out from the context of its legislative content was that the inspector—if I had another space on the altar in my puja room, I would put a picture of the inspector there. He now stands next to God! [*Laughter*] The powers that have been given to the inspector are unfettered. If you read through the entire legislation, the powers are extensive, they are onerous and they should not be allowed unless there is a check and balance to ensure that the inspector's work is—in a sense—properly supervised as he chooses to supervise the financial institutions. And there are a number of clauses

in this Bill which allow the inspector to act on his own without reference to the Central Bank Governor or its board, and of course I am concerned about that, in a small society as ours.

Now, I am not impugning any improper motives to the inspector. Not at all! He might be a fine gentleman, but I am concerned about the power given to the position and another inspector on another day with an axe to grind might do something without having to refer to anybody else. No! Our Constitution does not even provide for that. It does not recognize an inspector, only through this Bill, and I have that great concern. And I would like to suggest that in many of the areas during the currency or the existence of the financial institution, the inspector is king. No, he is indeed, God. I would like to suggest that some checks and balances be placed on the inspector during that period. At least, it must be put into this legislation that he would have consulted with the Governor of the Central Bank. At least consulted!

I say that because—let us take a comparison—if some inspector, let us say customs officer or something like that decided to freeze the assets of another kind of company, that company could operate 10 days later when the goods and service are available to the public. But this is humpty-dumpty territory; it is humpty-dumpty territory because we know under the legislation that in order to effect a suspension of a financial institution one would have to go to the board of the Central Bank. But a financial institution is a very fragile organism, very fragile.

If I were to go to that institution and I found out, well, we cannot do anything with credit cards any more because there is some little block, do you know what you are going to do? Take your money and go, "something wrong here boy". If we cannot take your deposit today, the organization does not have to be suspended. No! Just word. There is no secret in Trinidad and Tobago. [*Interruption*] There is no secret in Trinidad and Tobago that I am aware of. I wonder if the hon. Attorney General knows anything that we do not know. [*Laughter*] But the point is that we could lead to the destruction by giving additional powers unfettered. We could, not deliberately, but disingenuously cause more problems in our financial system and amongst our financial institutions than we first thought.

So let me reiterate that I want to see the powers of the inspector remain, but I do not want those powers to go unfettered or unchecked without some check and balance from the Governor. There must be some check and balance from the Governor in respect of the large number of powers that the inspector has and can do; short of suspending the financial institution, he can take so many measures in

the legislation, almost innumerable because of the length of this piece of legislation. There should be a requirement before he takes any action for him to consult, at least, the Governor of the Central Bank. But a most important point—and I would certainly like to suggest that that be given extreme consideration by the Government—I have no difficulty with some of the financial strictures that have been put in the legislation, whether it be a tightening of the credit exposures, whether it be that there must be a consolidation of the exposures to groups and not just the individual companies; I am entirely in support of strictures and the limits in terms of credit exposures to holding groups. I am entirely in support.

4.00 p.m.

But I want to bring to the attention of the hon. Minister, I do not recall whether it is in the existing legislation, the Financial Institutions Act, 1993 or otherwise, but in the legislation there is a clear establishment of what should be secured credit limits and unsecured credit limits. I believe in the case of any individual borrower, it should be unsecured credit limit up to 5 per cent of the capital base of one borrower, but in the case of a group, it could go as high as 25 per cent, but it must be secured, anything beyond 5 per cent. I went through the draft legislation in detail and while I saw that there is a limitation in terms of the credit exposure to the extent of 25 per cent of the capital base, there was no clear distinction that this exposure should be secured. It said we can provide up to 25 per cent of the capital base. That is dangerous. It is most dangerous. It must be secured even above 10 per cent. It is inconsistent with good financial discipline and credit discipline.

So, I am saying that I have not seen it and I would like to be pointed to that aspect in the legislation which says, that when we give credit to a group or whatever entity we choose to call it and it gets up beyond 10 per cent, it must be secured; it cannot be 25 per cent unsecured. And this piece of legislation unless I have missed something because of the voluminousness of this document which I have had to read in three days—and I understand it has taken seven years to be built by all the institutions of the country; they may have missed it or it is more likely that I might have missed it. But please correct me and if I am wrong, please do so. Please check and point me to the section where it says 25 per cent secured because you are going to make a greater mistake by lending on an unsecured basis and creating exposures on an unsecured basis, even if you go with the holding group concept and so on. That is a very important consideration that I would like to bring to the attention.

I support the notion of consolidated exposures, as I said before and I want to speak to the question of capital. My learned friend, Sen. Mark spoke to the minimum capital of $15 million and whether it should be $15 million, or whether

it should be $30 million or $50 million. I thought when I read the document that it was actually surreptitiously included in there that the hon. Minister, by order, might change what the minimum capital requirement is. I believe that is actually a more dangerous proposition than actually stating in the Bill, that the new minimum capital is $15 million or $60 million because I believe that under clause 16(4), page 22 of my document, there is provision for the Minister—and it may not be this Minister, it may not be as balanced a Minister as we have now, it might be some other Minister; it might be even Sen. Mariano Browne—and by order they can increase the minimum capital. To me it is dangerous because what we are trying to do is to find the balance between encouraging the development of financial institutions and the financial system; balance with ensuring that we might not get certain fly-by-night operators. But capital is only one component.

I think what we have done in this piece of legislation, ensures to a greater degree that we are not going to have fly-by night operators. We are putting here a definition for an acquirer and the limits of permits of an acquirer. We are putting here a significant shareholder, 20 per cent or more—and an acquirer is 10 per cent or more of the shares of a company—and a permit has to be given for him to own shares in a financial institution. We are putting here tighter definitions for a controlling shareholder and he has to be issued a permit to ownership. That is why I would ask for a select committee of this Senate to review this legislation because it speaks to property. It speaks to whether somebody can own property or not, because if the shares of a bank are willed to you and you are considered to be unfit and improper, you have to sell those shares. If you have to sell those shares, well this is a small country, everybody knows you have to sell those shares and the value of the property that was passed on to you could be wiped out. Therefore, we have to look very carefully and make sure that the legislation is properly balanced so that we can achieve the goal that we want, which is one, the stability of the financial system, the protection of the depositor, but not squeezing the shareholder, so that nobody wants to become a shareholder.

I want to speak a little bit about the penalties to the shareholder. This piece of legislation must be the most expensive piece of legislation in Trinidad and Tobago. There are more than 40 offences, all of them starting at $600,000—which for Sen. Dr. Saith will be peanuts—but it then goes up to $1 million; then to $2 million and two years for any offence; then it goes up to $5 million and five years for certain offences; then it goes up to $6 million; then it goes up to $6 million and 20 years or $10 million and 20 years for certain offences. I think the question is, if situations where the property rights of someone could or may be

infringed, it is very important that we as hon. Members of this Senate, study this legislation in detail to determine whether the penalties are commensurate with the offence, and whether those offences in other pieces of legislation or similar offences are as harsh or less harsh or should be as harsh.

That is one of my major concerns for the shareholder, but it is also a major concern for the directors and officers of the company—some of the penalties. I do not know how they have been derived and I am sure after seven years of hard work they must have been thought out very carefully, but we in this Senate, before we pass legislation must ensure that we are comfortable that we are giving the right deal to all our citizens, whether they be shareholders, depositors, directors, employees, customers, that we are giving the right deal to all our citizens and not giving the Central Bank a carte blanche range of penalties that it can apply indirectly, not directly. I am concerned. I am concerned as an ordinary citizen that we can seek to foist these penalties on our citizens without a clear understanding and balance in terms of what these penalties are and for what offences and is the penalty commensurate with the offence. I do not know. I am asking and I am suggesting that a select committee of this Senate oversee and give credence to these penalties and offences.

Mr. President, I want to turn to some of the core definitions in this piece of legislation and what does it mean as we go forward and seek to develop and expand the financial system? And I go back to the history and the context in which I first started. You will recall that the Financial Institutions Act, the first and existing 1993 Act was brought into effect to deal with, in part, certain failures of financial companies in the late '80s and expanded the definition or added certain definitions to the business of banking, added a definition to business of a financial nature. This was to ensure that any kinds of lending, borrowing and so on, raising moneys and providing funds, covered the playing field as best as it could. But this was in 1993.

In 1995, we brought legislation, the Securities Industry Act, 1995, which was intended, if not necessarily explicitly stated in all areas, to widen the activities of securities companies, not from just trading as an agent, but security companies could act as principals in buying bonds and doing what is now called "repurchase agreement" or ordinarily called "repos". The repo business is not a minor business because fresh off the press, the Trinidad and Tobago Securities and Exchange Commission issued guidelines on sale and repurchase agreements dated November 19, 2008—two weeks ago—and it was suggested in the guidelines that the repo market is of a size of approximately $8 billion; that cannot be small.

It is about maybe 14 or 15 per cent or thereabouts of the deposits in the commercial market sectors. But I want to suggest to the drafters that there is a deficiency that exists now and the deficiency is in the definition of business of a financial nature.

4.15 p.m.

Under section 17(2) there is the definition of business as follows:

"(2) 'Business of a financial nature' means the solicitation and collection of funds in the form of deposits, shares, loans and premiums and the investment of such funds in loans, shares and other securities…"

And it says if you conduct business of a financial nature and you are not licensed, then you will be subject to some of these rather hefty fines including all the directors and the company. I believe it is five million dollars and five years in prison and so forth.

The point is that in the definition of a repo business, a repurchase agreement may be viewed as a secured loan where the seller of the repo is the borrower, and the buyer of the repo is a lender. I want to suggest that if this repo business is not properly cleared up, it falls under the business of a financial nature, but because of financial history—I am a student of financial history because I believe beyond common sense is competence and common sense is actually a subset of competence and includes experience and expertise at times. But the financial institutions that were passed before the Securities Industry Act did not envisage—and because the Central Bank and the SEC have permitted these transactions, there has not been a proper harmonization of business of a financial nature, and the business of securities.

I want to suggest that that needs to be properly reconciled because it is not, and it is an $8 billion business much of which is undertaken outside the ambit of licensed financial institutions. I would venture to suggest that at least six of that $8 billion is being undertaken by securities companies and some of them, if this legislation is passed and the definitions are not properly harmonized they would be in breach of the law and would be subject to very harsh fines and incarceration upon conviction.

I would like to declare my interest, Mr. President, because I do have relationship with a securities company and I would not like to join the company of those incarcerated because of a definition or deficiency in the definition. So I bring it to the attention of the hon. Minister that it is something that has to be properly cleared up and addressed.

Repurchases would be one area where this question of business of a financial nature may not be in sync with what is happening in the securities industry. Another area is one that is well known in international practice just like the repurchase agreement is and that is the notion of margining.

By margining, securities companies licensed under the Securities Industry Act should be permitted to lend persons and provide financing to persons against the collateral of a financial asset. It could be a bond, a stock, a mutual fund, all of which are defined as securities under the Securities Industry legislation. But that is business of a financial nature and you would be in breach and you would be subject to a fine of $5 million and for every day you continue, it may be $500,000 and five years in jail. So it merits deep evaluation and consideration.

I want to address the question of a financial institution as a trust and the implications attached thereto. I want to raise the question of unit trust. The Unit Trust Corporation is the only unit trust entity that is exempt under the Financial Institutions Act. When the Unit Trust Corporation was first conceived and the legislation passed, there was need at the embryonic stages to give some support to the unit trust. There is no such need now. It is the largest unit trust institution in the country, there is no need for any exemptions to the Unit Trust Corporation and I would suggest that it is time that this exemption be removed and if there are any activities under the Financial Institutions Act that an institution like that wishes to pursue, go and get a licence just like anybody else.

The Unit Trust Corporation is not an instrument of public policy anymore; it is not like the Trinidad and Tobago Mortgage Finance. In fact, there is dispute as to who actually owns the Unit Trust Corporation. There are no owners. I think the dispute will mesh into the whole question of who are the beneficiaries of the management fees that have accrued in the Unit Trust Corporation over time, but it is not an element of public policy.

The Governor of the Central Bank, its nominees, a number of directors in the Unit Trust Corporation, I think it is time that they cut the umbilical cord because it is an organization that is strong, well developed and it can stand on its own and withstand market process. The point I wanted to make with regard to the financial institutions as a trustee, is that it is only licensed financial institutions that can act as trustees for the Unit Trust Corporation. Is it that in their role they have not discharged that role properly that they are trying to in a sense reinvent the area of unit trust? Because if you look at all the financial institutions that have trustee licences—

Mr. President: The speaking time of the hon. Senator has expired.

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

Sen. S. Ramkhelawan: Thank you, Mr. President, and thanks to my hon. colleagues.

The question I had with regard to trust is: Are our large financial institutions engaged in ring-fencing and delimiting the number of players that can come into the market? I say this because if you look at the large institutions, none of them, save the First Citizens Bank Trustee Services Limited, has acted as a trustee for a unit trust that is other than one of its sponsor funds. Why is that? We want to promote, expand and build the financial system, but we have put the guard to guard the guard and, therefore, when you look down that listing, all these financial institutions that have trust licence have not sponsored or acted as trustee for other unit trusts in this country, otherwise known as mutual funds because there is no such thing as a mutual fund under law in this country. We do not have the legislation for it even though the legislation was first mooted in the 1994 budget.

There is no legislation because legislation for mutual funds requires that these companies can redeem and issue shares at will and they are companies. So the point is, do we need to do more to ensure that these institutions play their role and if they cannot, then we need to widen those persons who can act as trustees where there is a levelling of the tax playing field so as to ensure that we motivate, incite, encourage and expand that unit trust business to a wider section of activity.

In the old Banking Act of 1964 and the Financial Institutions Act, 1993, currency trading had been limited to financial institutions licensed under the now FIA. Why should that be? That is a business that could be regulated easily under the Securities Industry Act as well. In other jurisdictions in the Caribbean and in the US and otherwise, currency trading is allowed for a wider berth of players. Is it that we want to limit or delimit the extent to which we can grow the financial system? Is it that with a small number of players, do we have sufficient competition in terms of pricing of what the US dollar or any other hard currency would be?

I want to make the call to the Minister as we look at this Financial Institutions Bill that we pay consideration to those areas that have been limited, whether deliberately or in a manner that was unconsciously. I make the call to the hon.

Minister to have a look at this particular area to see whether in fact we are engaging vicariously in some restrain of trade to regulated institutions that operate in the financial and security sector.

Mr. President, I want to recommend to this honourable Senate that because of the wide berth of matters that need to be considered in more detail, that we take this Bill to a select committee of the Senate and the reasoning is that more thought and balance need to be dealt with in terms of the penalties. Some thought and balance in terms of the checks and balances to the Inspector need to be addressed, some greater balance between the requirements of the shareholders, the depositors and the customers need to be addressed.

I cannot say that I have any objection in principle to the protection of the depositor, that is sacrosanct and, therefore, I do not have an objection in principle to the Bill. I am simply asking for consideration for greater balance and more checks in the Bill to ensure that we achieve the effectiveness that we all wish for, not only among financial institutions but in the wider financial system and in the promotion of the wider financial system as we all aspire to, and certainly the Government of the day aspires to in its Vision 2020 in the White Paper 2004.

Thank you, Mr. President.

Mr. President: Hon. Senators, we will take the tea break. The sitting is now suspended until 5 o'clock.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

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

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Mr. Vice-President, I rise to support the Financial Institutions Bill, 2008 and in my contribution I want to show that the Bill before us incorporates all of the innovations in accountability and sound financial institution governance that emerged since the turn of this century and I will give some history, especially as it relates to some of the new governance issues that have been included in this Financial Institutions Bill.

In my contribution I would also seek to address some of the issues raised by persons who have spoken thus far, on the other side. I want to commend the Minister of Finance for a really well-presented introduction to the Bill and also for the work that she would have done—extensive work—in getting this Bill to the Parliament.

One of the overarching points made thus far, particularly from Sen. Mark, was with respect to the accountability aspects of the Bill and, in particular, the concern about who was looking after the interest of depositors and consumers. So I want to begin there, which addresses accountability. One of the contexts to this Financial Institutions Bill and its introduction in Trinidad and Tobago is that we have had in this nation a fairly stable financial system.

While we have seen over the years a few institutions going into trouble or having to be closed down, it has never been to the extent that we have seen in other locations. For example, in the 1970s and I think in the early 1980s in the US and in the UK, we have seen significant financial crises which emerged, and we are not going to talk about the current one as yet. So that is in the US and the UK, especially in the savings and loans area. Similarly Japan and Jamaica in the 1990s had, what they themselves would have described as a major banking crisis. Japan talks about its banking crisis of the 1990s and early 2000s which really had put the Japanese economy into a tailspin. So in the more recent crisis we have seen Japan talking about the lessons that they would have learnt during the 1990s and early 2000s from their banking crisis and what needed to be done now.

But in Trinidad and Tobago we have not experienced a banking crisis. In fact, our financial system is a very stable system and that has a lot to do with the quality of the central banking that we have had and, as well, the quality of commercial banking. The governance at commercial banks in Trinidad and Tobago has been sound and it has been well supported by the Central Bank.

In addition, with respect to the recent financial economic crisis, I should say, that is actually centred in the financial services system in the developed world mainly, what we have seen coming out of an assessment of our own financial system here, is that our banking system has been given a clean bill of health. They have been seen to have been prudent; they have very small external exposures that do not link them into the spiralling cycle of decline that we are seeing around the world, because when the US declined, the UK went into the same economic crises, and of course, Europe as well. We see some institutions in Asia and then we see Japan actually having declared a recession as well.

But what we are seeing in Trinidad and Tobago is a very vibrant and stable financial system. In fact, our institutions provide not just sound financial services to Trinidad and Tobago but also across the region in those areas where they have expanded.

So I start off with that context to say that what we are looking at is an economy that knows how to sustain sound financial system stability and I see this Financial Institutions Bill as continuing that trend of soundness in our financial system. We are not saying that there have not been hiccups in the past, but we have never descended into a banking crisis as other countries have experienced.

I want to spend some time talking about the accountability initiatives in here and where they would have come from. One of the first things I have seen—what I would like to note—is the role of the auditor and how that has been expanded. I have noted here that innovations, such as the role of the auditors, who have been always over the years as the ones responsible for the interest of shareholders and the public, despite the fact that auditors have protested over the years; they have said that they are only seeking the interest of the shareholders; that is who they are going in for. The general public has the expectation that auditors are actually in there as the eyes of the public, not just as the eyes of the shareholders only.

What we are seeing now is that the auditors over the centuries—and I will have to say from my own research, over 200 years of auditors being called to account for the level of independence that they did not display for the fact that auditors were actually, after a while, in league with managers and that actually left shareholders and the general public to the mercies of the institutions that the auditors were supposed to be overseeing.

What we saw, especially coming with the Sarbanes-Oxley Act in the US, we saw a reversal of that privilege that auditors had, where they claimed that they were looking after only the interest of shareholders and there were no real structures around them, what we are seeing in this Bill. This Bill is actually making very broad and deep changes to what auditors are supposed to do. Requiring auditors to report even hints of problems in a financial institution, gives the Central Bank the early warning that had it had that kind of warning in the past, we would not have seen some of the bank failures that we saw in the mid to late 1980s. They were not outright failures because the Central Bank did, in fact, step in, in time to assist.

But the auditors are usually the ones who can see—and even though auditors talk about doing samples, we recognize that auditors are, in fact, exposed to enough information in an institution to be able to make a judgment call. So this Financial Institutions Bill is actually introducing something that benefits depositors, shareholders and the general public.

One of the points Sen. Ramkhelawan made with respect to the problems of property rights and that there should be a balance—I believe that was the point. It seems as if he was thinking that the shareholders were not being encouraged in an environment like this, which, I think, is quite the opposite.

What we are seeing is that there is a new wisdom with respect to how we govern institutions and, in particular, financial institutions and the general market itself. I want to just read a few things here from a news report where Alan Greenspan was interviewed following the economic crisis. I think they tried to accuse him of being the person who was responsible for the crisis and the report says:

> "Badgered by lawmakers, former Federal Reserve Chairman, Alan Greenspan denied the nation's economic crisis was his fault but conceded the meltdown had revealed a flaw in a lifetime of economic thinking and left him in a 'state of shocked disbelief'. Greenspan, who stepped down in 2006, called the banking and housing chaos a 'once-in-a-century credit tsunami' that led to a breakdown in how the free market system functions."

While Mr. Greenspan would call it a breakdown in how the free market system functions, there are many of us who have always felt that the free market system could not do what it was being asked to do. The free market system has been asked to distribute funds and wealth equitably and no system can do that. So Greenspan is from the school that believes that government intervention and regulation needed to be at a minimal if not zero and he is here now recognizing that that was not the right way to go. He warned that things would get worse before they got better.

I want to also say that Greenspan, who is now 82:

> "…acknowledged under questioning that he had made a 'mistake' in believing that banks, operating in their own self-interest, would do what was necessary to protect their shareholders and institutions."

Greenspan referred to this whole thing as a flaw in the model that defined how the world works.

So he really believed that the world works in such a way that the market can distribute equitably, the wealth of economies, and we reject that out of hand and this Financial Institutions Bill continues the push for sound regulation over

institutions, especially financial institutions and I believe that some of the points raised by Sen. Ramkhelawan really do not recognize the severity of a financial system breakdown. Because we need to look and see what has happened.

The financial system broke down in the US and it caused a domino effect all around the world and to put these measures in place now in an economy where we have very sound financial systems, I think it is ground-breaking and applaudable. I believe that the focus on the rights of shareholders is a bit misplaced. I think that problem that you are penalizing—I did not get the extent of the point properly, but the interest of shareholders not being properly covered by the Bill, I do not agree with that particular aspect of it.

I believe that when we establish even sounder governance systems, we are actually protecting everybody: shareholders, individuals, the depositors in particular; the same small depositors that Sen. Mark claims he is speaking for, they are well covered in here.

One of the things I learnt when I was doing some research on auditors was that in 1895 and 1896 in the US, there was a discourse about auditors and their independence from the people who hired them, which would be the managers. Because we have managers on the one hand, who run institutions on behalf of shareholders and the auditor is supposed to step in at certain points to investigate the stewardship of managers and then report to shareholders, what had been happening was that auditors were in collusion. And we have seen it all around the world, not just in the US in the 1890s. Auditors were in collusion with the managers who eventually end up in the defrauding of shareholders and the general public.

That came home in early 2000 when we had the failure of Enron and WorldCom and the connection between auditors and managers was revealed even more vividly to the rest of the world. Auditors have, over the centuries that I am talking about, from the 1890s to the early 2000s, protested any regulation of that function; they have protested that they should not go beyond the whole attest function and looking only after the interest of shareholders, and that was debunked by Sarbanes-Oxley and a lot of what we see in the Bill as it relates to that section on auditors and the need for a stronger audit committee, all comes out of the innovation and the painful experience with corporate failures around the world.

Someone said to me years ago that experience can kill you. We do not need to experience a crisis in order to bring legislation of this nature. Others have experienced it; we are seeing the measures that they have had to put in place to

correct the misconception that the market will regulate itself and that when people seek their own interest, the interest of everyone else will be subsumed. We have seen that that does not work and there is need for legislation of this nature.

5.15 p.m.

I want to discuss briefly the employee share option aspect that Sen. Mark raised. I will try to be very generous to him and say that he did not read it properly. Clause 48 which deals with that is not limiting the number of shares you can allocate to an employee share option plan. A quick reading of it tells you that the clause is seeking to limit the amount of financing that a financial institution provides for the purchase of its shares in any share option plan. If a financial institution has an employee share option plan and in that plan it has agreed to help with the accessing of those shares, this clause is saying that the financing should be limited to 20 per cent of the financial institution's shareholding.

Like all the other clauses this is seeking to protect the financial stability of the institution. If we think about our country, one of the things we have in place that was not in the United States of America when Enron failed, is that a company cannot buy its shares. A company's pension fund cannot purchase shares in that company. That was one of the main problems that caused the fall of Enron. The pension fund of Enron had a large percentage, I am sure that it was over 70 per cent of the shares. Over 70 per cent of the pension fund securities were held in the shares of Enron. We do not have that in Trinidad and Tobago. A pension fund of company "A" cannot hold shares in company "A". That is a protective measure.

In clause 48, we are seeing a similar thing where we are seeking to limit the exposure of the financial institution to financing in its shares. I made a note that the issue is that the financial institution's equity capital should not be matched by an asset of more than 20 per cent of its capital. You have its share capital and the amount of money it has given out to finance the purchase of its shares. That matching would be a problem. This is a governance measure and it is not a measure to limit employees share options, as Sen. Mark sought to discuss.

With respect to the length of time that this Bill has been available to the country and the Senate, I will address that. I felt that it was difficult to understand why Sen. Ramkhelawan, a person with significant personal and business interest in the financial services sector would not have been exposed to this, except for three days ago. Your history was very enlightening. I learnt a lot from your discourse. In your discourse you give us a history of about six years. You said that

there was a Green Paper and whatever colour, white. Then, you talked about how long the Bill was out there. You came to a conclusion which had me a little surprised when you said that you had only three days to read it.

The hon. Minister of Finance did not satisfy herself with six years of history of the draft being out in the public domain. She held another consultation in May 2008 which was published as I remember seeing it. A public notice was given for anybody with—[*Interruption*] He got a special invitation? In my mind this Bill and different colours of the draft would have been in the public domain. There was wide consultation including the final consultation in May 2008 to which Sen. Ramkhelawan, as all other citizens, would have been invited by public notice. The Minister reminds me that the Bill was on the Internet. I saw it there as well. We are not saying that it was on the Internet or out there all this time. I am speaking specifically to the point that Sen. Ramkhelawan raised because he used that as an argument for it to go to a select committee.

The size of the Bill reflects the extent of seriousness of the need for systems stability and how important these aspects are. Sen. Mark called out over 100 clauses. That reflects the extent of seriousness of the financial system. The Bill was not prepared in a year or two years. We are talking about five to six years and much consultation including one in May 2008. People would have had the opportunity.

I believe that a Bill of this nature coming at a time where we are seeing crisis around the world that has not touched us, despite the fact that many people keep trying to prophesy it. It will not happen. We are a country with a very sound financial services sector. We have very experienced bankers—I have worked in Central Bank and a commercial bank in my lifetime. We do have very sound governance systems in our banks. This Bill seeks to address issues that you will find in situations where some directors and managers are seeking their own interest. Sometimes they do not realize that in seeking their interest in an illegal way, they destroy themselves. This Bill gives us a set of measures and practices that certainly addresses what a modern day financial services sector should conceptualize in the practice of financial institutions.

The Minister of Finance will address the issues that were raised with respect to the Trinidad and Tobago Unit Trust Corporation. I will stick to what I like to talk about which is accountability. There is a point I want to address with respect to comments from Sen. Mark. Unfortunately, he said so many things that I have to seek to address some of them.

Independence. I think there is a problem with the understanding of independence. If our Governor is declaring a position, the fact that someone does not listen does not mean that he is not independent. I could not understand that point.

The Governor has shown himself to be independent in the way that he carries out his duty. He has a particular mandate as the Governor of the Central Bank and does an excellent job in analyzing the situation from the perspective of a governor of a central bank and the wider economic situation. The fact that I do not take the advice of somebody does not mean that the person's view was not independent. It means that there are other considerations which I have taken into account in making my decision in the end. Counsel is just that. It is to counsel and not to dictate. I am not sure if Sen. Mark was saying that the Central Bank should be able to dictate to us. It does not establish a case of lack of independence on the part of the Governor of the Central Bank. It is a flawed argument. The evidence that he gave supported the fact that the Governor was independent.

One thing I found about the Bill is that it focused on seeking to manage even tighter the whole issue of credit and credit exposures. This Bill recognizes the important role of credit management for financial system stability. One thing that the current crisis in the United States of America and the United Kingdom is revealing to us, especially for those of us who have never lived through a crisis that you see on CNN every day, is that credit is fundamental to economic activity and growth. I do not like to borrow. Sometimes you do it gradually.

Some people actually live on credit. When people are shying away from credit and the system is not going to borrow or is not lending, you can have such a terrible slow-down that a system might come to a halt. We have seen in the United States of America that because of poor credit decisions, what has resulted is a crash that has left the system so shocked, that nobody is lending. Even though some people want to borrow, the majority of people are trying not to borrow. People are holding on to their purses. They are not spending as they used to and they do not have to borrow as much.

The injection of over US $500 billion into the system to try to kick start it has not made much of a difference. Yesterday we saw Bernanke saying that he still cannot judge how long it will take for the system to revive. It is not like CPR or defibrillator. It is not an instant jolt. Hundreds of billions of dollars have been pumped into the US system and nothing has been manifested. It is taking quite a while to manifest. The system is not releasing credit and people are not spending

as they used to. Apparently, most people were spending with credit cards. In this Bill, we have a recognition of the importance of protecting the integrity of our credit management and credit in the financial system.

In the past when we saw financial crisis it was usually connected to the credit function, sometimes poor assumptions. It is not always mismanagement but poor assumptions that inform a particular kind of product. The Bill covers two very critical areas. One is governance which looks at the role of directors; the strengthening of audit committees; the internal controls, especially the role of the external auditor to inform the Central Bank at an early date whenever they observe anything that is not in keeping with sound governance. An early warning to the Central Bank gives it the opportunity to step in and make adjustments, rather than wait until after.

We have seen a major increase in the size of our financial institutions to the point that they have been able to go outside Trinidad and Tobago and take over banking institutions in other countries. The significance of that point is that another part of the discourse in the international arena is this notion of too big to fail. The bigger institutions get, especially financial institutions, the more strict governance, regimes and regulations you need to put around them. Greenspan said that he was shocked that this happened. There is the basic philosophy that guides the way the economy works. There is this notion that the market will fix things. That has been debunked.

A very interesting thing that I have seen is by an economic historian. His intervention in this crisis is that the present crisis is certainly the end of the era in the development of the global capitalist economy. Even though in the article he was criticized as being a Marxist, at the end of the day he has been recognized as having had something to say. He is older than Greenspan. It is good to reference old people who have had the experience of the recessions over the 20th Century. He is 92 years old, 10 years older than Greenspan. He has 10 years more wisdom in terms of experience and seeing things. I want to get another point that he made. This is important to support the Bill before us. I cannot find the point that I want. One of the points he made throughout the article is that this global financial crisis is the end of an era for capitalism.

We are not talking about communism. You have to be very careful. People twist what you say into something different. The Greenspan mindset and philosophy is that you do not need many regulations, just bare minimum regulations. We are seeing before us a proper organized document. It has been properly researched. It has had the benefit of years and years input including the

most recent in May 2008, at a time when people would have understood the Enron and WorldCom failures. We would have seen the beginning of problems in the financial services sector in the US as well. All that wisdom is included in here. From my experience and knowledge of governance, the Bill covers those issues comprehensively.

5.30 p.m.

In fact, some of the things I heard make the whole issue of penalties too onerous. We can look at this in committee stage, but when we look at it, we have to think about the kinds of cost we incur when a financial system fails.

When we look at the US and the financial system failure in an economy that would have been described for a long time as the largest economy in the world, that economy is struggling to get back on its feet because of poor financial institutions governance and regulation. Simple regulation of those financial institutions could have prevented what we are seeing now.

We see now that it is affecting every country in the world and it was not expected to be as deep as it turned out. Even Greenspan, with all his decades of experience said that he is in a state of shocked disbelief. I support this Bill because it provides us in Trinidad and Tobago with another level of regulation to continue the sound financial institutions management that we have experienced over the years.

There were some points raised about the Central Bank. I believe that one of the things we need to understand about the bank inspector—because I worked in the Central Bank—is that there was a point when the inspection function did not have enough teeth because, in the early 1980s, the commercial banks were more powerful, in a way, if you think about it from a political point of view, than the Central Bank inspectors.

Strengthening that function is critical to continued stability because we have a very sophisticated financial institutions sector. We have astute and experienced financial institution managers in the commercial banking sector and to oversight people like that, especially people who are into mergers and acquisitions across the region, some of them even in Latin American—there is at least one institution in Central America—we need to have a more modern and up-to-date Financial Institutions Act to govern and to oversight. We need to have more power and strength in the inspector. I believe some dialogue can happen along the line of the extent of powers that the inspector has been given. We can discuss that a bit more, but, in my view, we are aiming to balance what was out of balance over the years.

I was beginning to make a point about the extent of penalties. I believe that the extent of damage that happens when a financial system fails should inform the extent of penalties we may want to see in legislation like this.

The interlocking directorships are all coming out of the experience of the failures we have seen, especially after 2000, first with the corporations and then with the financial institutions. This is actually an innovation and for us in the Caribbean, interlocking directorships is a problematic issue and for us to bring it to the table like this is courageous. Because the financial institutions were consulted, it means that they are on board with this particular issue.

In the Caribbean, as small economies, we do not have the large pool of persons to have different directors for different institutions and so allowing only interlocking directorships within a group is comprehensive, but it still goes a long way by prohibiting interlocking directorships across different groups in order to deal with conflict of interest and so on.

The notion of conflict of interest is really where we have the problem. If you look at some of the institutions that have failed, they were at the cutting edge, coming up with new financial instruments almost every morning, and this latest one, which dealt with the subprime, where they were packaging mortgages, some very risky, using economic and finance theories that high risk equals high returns and selling to their friends across the globe at the expense of who I would consider vulnerable individuals seeking homes, resulted from the interconnectedness of institutions across the globe.

In Trinidad and Tobago, where we provide what I consider a sound social intervention in the housing market, we can see that our vulnerable people are protected from the vagaries of a market philosophy which would say that Government should not be in housing. To say that would be to ignore the fact that the vulnerable in the US had to go for very high interest rate mortgages. The interest rate was so high that the financial institutions felt them to be very attractive to now move from a mortgage and package into something fancy as security to sell to their friends all around the world, and that has caused the collapse. That breakdown reflects the need for government intervention in the provision of certain basic needs to society and that is what this Government is committed to.

I want to speak especially to Part VI of the Bill as well which looks at the protection from international exposure, continuing what already exists, but strengthening it. In her presentation of the Bill, the Minister of Finance rightly

compartmentalized her presentation into what was kept from the original Bill, how things might have been modified and what was new. One of the things we know is that we already have some provision under the current Act to limit international exposure and that area has been strengthened.

It is very important to recognize different aspects of this Bill and the broader issues that it seeks to address—the management of credit, the governance of financial institutions and, in particular, this aspect of limiting international exposure. That comes in clause 61 that talks about preference to Trinidad and Tobago securities and the fixing of ratios, where the Central Bank may fix the percentage which the liquid assets of a licensee should bear to its respective total prescribed liabilities and the percentage which its respective liquid assets originating in Trinidad and Tobago should bear to the total of its liquid assets. That is important for protecting financial systems stability.

We are looking at a Bill that is not just seeking to address the proper governance of financial institutions, but it is seeking to protect the financial systems stability as well, which is the bigger financial system, as well as individual institutions. All of that goes towards protecting the wider society and not just depositors, shareholders, creditors or even debtors. They need to be protected as well.

When an institution goes into liquidation, you may be required to give up your house because they come to do liquidation. Anything can happen when a system shuts down. What the Bill is doing is covering a wide range of issues and doing a good job of it.

I conclude by saying that we have a Central Bank that has shown itself to be a solid institution over its years of existence. By this Bill, we are giving the Central Bank more capacity to continue to provide the kind of financial systems to continue to ensure the kind of financial system stability that we need; not just in these times of economic crisis, but also going into the future as the Government pursues Vision 2020, which is not a slogan, but a national plan that we are pursuing.

We have realized a number of achievements under that plan and so I commend this Bill to the Senate for support. Any changes can be discussed at committee stage where we can address some of the issues.

The Bill is a strong Bill to do what it intends and it is doing so in a number of ways, recognizing and incorporating all of the experiences of the international community over the centuries, especially as they relate to auditor functions and

over the years as they relate to financial institutions governance, the failure of financial institutions and the most recent financial system crash that we have seen in developed countries. The Bill addresses all of those.

The Bill deals both with past issues, that the 1993 Act would not have covered and things going into the future, to strengthen an already strong financial system in Trinidad and Tobago.

I thank you.

Sen. Lyndira Oudit: Mr. Vice-President, at first this document seems thorough and comprehensive and, while there are many similarities that exist with the 1993 version, what really stands out for me and those of us on this side, are those areas in which they differ. It is on one of those differences that I would like to address the honourable Senate today.

I quote the Oxford Dictionary 2002. It defines "exempt" as free from an obligation or liability, et cetera imposed on others. "Liable", meaning legally bound, and "obligation" refers to constraining power of a law, duty, contract, et cetera.

My question, having these definitions, springs from the area that deals with exceptions. Where exactly is the accountability to the public when these institutions as outlined in the Third Schedule are given?

The Third Schedule, Part I, clause 121, seeks to provide for institutions that are exempt from the provisions of this Bill. This would widen the scope of section 63 of the Financial Institutions Act, 1993; but by exempting from the forefront of these institutions, how then do these institutions account for its management of public moneys? The answer supposedly comes from clauses 123 and 125 which seek to provide for the Central Bank to obtain information from exempted institutions at the request of the Minister.

It does not state which Minister, so I assume it is the Minister of Finance. Thus the Minister is now solely authorized to request information on these institutions. Hopefully, it is requested so as to provide accountability.

Our understanding of this critical Bill, Mr. Vice-President, comes directly and is clearly defined in the explanatory note of this Bill.

[MR. PRESIDENT *in the Chair*]

If these clauses seek to accomplish key elements of an effective and sound financial system in this country, how then are those who control these institutions going to account to the people? Clauses 33, 34 and 35, for example, state that the

Bill will focus on the fitness and propriety of directors and officers of licensed financial institutions and set the standards for persons operating in such capacities. Do these clauses not relate directly to the exempt institutions? Have these clauses not related to the exempt institutions as well? Are they not for the public interest?

5.45 p.m.

In May this year the Central Bank Governor exposed the paucity of the regulatory control of the financial sector when he revealed that:

> "With this proposed legislation, we are only playing 'catch-up.' New legislation is needed for the Central Bank to protect the interests of depositors and to reduce the risk of financial crisis."

This was taken from the *Newsday* dated May 01, 2008.

Mr. President, in the *Newsday* on Tuesday, November 25, 2008, it was reported, and I quote:

> "The Trinidad and Tobago Stock Exchange (TTSE) wants directors to disclose their trading transactions and make mandatory for companies, the reporting of quarterly financial results..."

This call came from the CEO and general manager, Mr. Wain Iton. This is certainly a signal to legislators and policy formulators that more extensive measures are required to ensure the security of depositors and the public interests.

This Financial Institutions Bill which seeks to widen those institutions exempted from the provisions of the Bill is, therefore, to my mind, a regressive step in light of calls for the more stringent accountability of financial institutions that represent the lion share of both public and private investments in any country.

In 2005, the IMF conducted a financial systems stability assessment and coming out of that in 2005, I quote:

> "Critical gaps remain in the overall legal, regulatory and supervisory structure. Despite considerable strengthening of banking supervision, the current framework is not yet fully aligned with the evolution of the financial system.
>
> Moreover, a significant part of the financial system, including statutory corporations, credit unions, and mutual and pension funds, is beyond the purview of ongoing risk-based supervisory oversight. Improvements in financial supervisory..."

Mr. President, according to the explanatory definition on page 7 of the Bill, the term "financial services" refers to:

> "…the business of banking, any business of a financial nature, the business of a credit union, insurance business or insurance brokerage, the business of securities and any business relating to pension funds;"

Further, in outlining the objectives of the supervision of the Central Bank, clause 5 (1) states:

> "The Central Bank shall be responsible for the general administration of this Act…
>
> The primary objective of the Central Bank…shall be to maintain confidence in, and promote the soundness and stability of, the financial system in Trinidad and Tobago."

Certainly, part of this must involve depositor protection. Are the citizens of this country not depositors and, by extension, shareholders in all public bodies and institutions? Is the business of these institutions not the business of the people? How then could the National Insurance Board, Caribbean Leasing Company Limited, the Trinidad and Tobago Mortgage Finance Company Limited and the Unit Trust Corporation be placed as exempt from financial guidance and scrutiny? This aspect of the Bill closely resembles the unhealthy bail out of the financial corporations in the United States of America when according to Jeffrey Sachs of Bruce Gilbert/Earth Institute:

> "The origin of the US financial crisis is that commercial banks and investment banks lent vast sums—trillions of dollars—for housing purchases and consumer loans to borrowers ill-equipped to repay."

This led to a fall in bank capital. This fall in bank capital, Mr. Sachs concludes, is already forcing banks to cut back their outstanding loans, while many homeowners will lose homes and possibly face bankruptcy. This US $700 billion bail out of the financial institutions is merely a small plaster on a festering wound.

On the other hand, responding to questions about the failing auto industry in the United States of America, President-elect Obama on November 24, 2008 stated that industry could not be allowed simply to vanish, but companies should not get a blank cheque from taxpayers. He further went on to indicate his surprise that these companies were not better prepared with recovery proposals.

Mr. President, by exempting these public institutions from the provisions of this Bill, we are condemning investors, depositors, shareholders and the general public to a gross lack of accountability, to a wanton disregard to prudent policy and, above all, there is no means to measure just how fit and proper any director, CEO or any other significant officer is in any of these institutions. How can we determine the competence and soundness of judgment? Even more important, but frightening, is how do we seek recourse if actions by these persons bring about financial loss to members of the public?

If these institutions are exempt, then how would we measure the proper or improper methods of conducting business? What happens if, as outlined in clause (3)(f) in the Second Schedule "whether the company has suspended, is about to suspend payment in respect of, or, is unable to meet its obligations as they fall due."? To whom are these institutions obligated? These institutions are obligated to us—citizens of this country, members of the public, to you and to me. Can we then endorse such exemptions? I think not.

Mr. President, Prime Minister Patrick Manning reported in the *Guardian* on November 25, 2008 and gave his assurance that the Government will do all that is necessary to strengthen the small and medium enterprises sector of Trinidad and Tobago. He further claimed that over the last five years they have developed more than 10,000 small and medium-sized enterprises in Trinidad and Tobago. How is this Financial Institutions Bill going to impact on these small and medium-sized enterprises (SMEs)? Look at the exemptions! When placed side by side, those institutions that are exempt with the SMEs—these 10,000 new entrepreneurs—is it possible that we can see a pattern emerging?

According to the First Schedule, Class 2, Finance Company Credit—hire purchase and instalment; Class 3, Leasing Corporation—lease financing; Class 4, Merchant Bank—project financing and consultation; Class 5, Mortgage Institutions—mortgage lending; and Class 6, Trust Company—pension funds, when we look at the requirements of small and medium-sized enterprises, we note how many of those areas are covered by these institutions; lease facilities, mortgage, consultancy and hire purchase, and we then hear from the Prime Minister that in government businesses today, over 10 per cent of all contracts are for the small man. Four of our special purpose state enterprises are also providing opportunities to small businesses. Is there a relationship with over 10 per cent of all contracts in government business and the exemptions and lack of scrutiny of these institutions whose beneficiaries are likely to include the SMEs in Trinidad and Tobago?

Mr. President, in the words of the Prime Minister, he indicated that the Government intends to continue the intensification of our efforts in other key areas including agriculture, and yet this Bill places the Agricultural Development Bank of Trinidad and Tobago outside the purview of central jurisdiction. How would the public be able to reconcile this fight against economic contraction and the proposed strategies outlined by the Prime Minister?

Mr. President, we are at a very critical juncture in our world economics. We are witnessing the sum total of numerous bad decisions by people who should have known better. There are too many imbalances in our global economies as well as in our own. The goal of this administration, as it is mandated to do so, is to avoid an outright collapse.

Trinidad and Tobago is strategically positioned that it may very well hold off a major recession, but only with prudent and sound monetary and fiscal policies, but not gross mismanagement and rampant squandermania.

The worst part of this crisis is that the Government knew of the impending financial crunch and continued along the path of looting the Treasury. This is why the Prime Minister renamed pensions as grants; a grant can be taken away.

The Government has bypassed the Central Tenders Board and rushed into several mega projects without the benefit of a cost-benefit analysis which is a basic project feasibility tool. Let honest and true intention guide our policy decisions.

The world is now standing by and watching as financial sectors of the world are driving the economy as well as all other sections of every part of the country; mass confusion, panic, as well as chaotic decisions are about to continue. Let us in Trinidad and Tobago be guided, not by personal or political agenda, but we are in a position to withstand this growing avalanche if we do put our country first. If we put a face to this crisis—your face, my face, a child's face, mother or father, let it be a face, a human face—then we will deal with this issue differently.

Our history has shown a colonial "massa" who saw a personal economic profit at the expense of generations of people. Let us not now create new massa while the Financial Institutions Bill has far-reaching significance in this country's need for public accountability and financial wisdom.

As I conclude, I would like to quote a formidable intellectual in the Caribbean area. This is taken from Dr. Eric Williams book entitled *Inward Hunger*. He is referring to Massa as England. He says:

> "Massa's economic programme was to grow sugar and nothing but sugar…Massa's economic programme represented the artificial stunting of West Indian society…Massa's economy was distinguished by perhaps the most scandalous waste of labour the history of the world has ever known.
>
> Massa was able to do all this because he controlled political power in the West Indies and could use state funds for his private gain…He had no sense of loyalty to the community which he dominated or even to the community from which he had originally sprung…at the same time not all Massas were white."

So, as I leave you, it is my hope that we are not now seeing the emergence of a new massa.

I thank you. [*Desk thumping*]

6.00 p.m.

Sen. Helen Drayton: Thank you, Mr. President. I open my contribution by commending the Central Bank for the widespread and comprehensive consultation in the process of updating this legislation governing—I would have to say—banking institutions. It is long overdue and it is an urgent requirement. It will be noted that I said "banking", I referred to the Act in relation to banking notwithstanding the title of a Financial Institutions Act. This is because by and large its contents deal with the business of banking. Banking is already one of the most heavily regulated sectors of the industry. In fact, it is the most heavily regulated sector; and therefore, apart from a few concerns I had with respect to inspection and investigation which I will deal with a little later, if I have any concern with this instrument, it has to do with the fact that really, I should say, what is not included given the specific objectives and those objectives basically state:

(a) To maintain confidence in and promote soundness of the financial system in Trinidad and Tobago;

(b) To promote the existence of efficient and fair banking and financial services market; and

(c) To supervise the licensees to determine that they are financially sound and therefore set appropriate legislation for the protection of depositors.

So that the objectives speak to the broader financial institutions but the contents of this legislation by and large deal with the business of banking.

The Bill, I think, is certainly welcomed when you take into consideration that it has been in the making for the past seven to eight years and I could only urge the Central Bank and the Ministry of Finance to treat urgently with the legislation

with respect to non-banks and that would be the finance houses, insurance companies, credit unions and investment banks. Now, given the uncertainties in the world today; given the temperature of the world financial markets and the events which precipitated the distress in those market, it should be evident that for Trinidad and Tobago, the push should be for the financial legislation that in effect, speaks to the implementation of legislation under the White Paper on sectoral reform.

Now since 1964 banks have been comprehensively legislated and no one can argue with that given the fact that they account for approximately $82.4 billion in assets. That represents something like 61 per cent of the industry and over 54 per cent of our GDP. So, no one can really argue with respect to very rigorous and comprehensive legislation governing that sector. That is not only what it influences because indirectly, every single individual who is working and who is covered with a pension plan would have a vested interest in the stability, the growth and the profitability of banks. Their reach is encompassing, it is pervasive and the need for the updated regulation is urgent. So, therefore, I can say overall, I support this legislation.

Now with respect to insurance companies, a sector that needs urgent update in terms of its regulation, the supervision for the insurance industry once fell under the Ministry of Finance and was shifted to the Central Bank. Rightfully so, given the fact that the Ministry of Finance is a political environment and certainly not the place for robust monitoring of a sector that accounts for well over $35 billion of the nation's financial assets and in any event, I do not think that the resources were there to deal with that type of supervision.

The current legislative profile for insurance companies certainly is more suitable to an era when insurance companies restricted themselves to life, health and general insurance. But with the rapid growth and development over the past 15 years and that speaks to the great gap with respect to legislation, they are now involved with asset management, investment banking; they are involved with mortgages; securities and an array of financial products which will not fall under the ambit of this particular legislation.

With respect to credit unions which fall under the auspices of the Minister of Labour and Small and Micro Enterprise Development who administers the Cooperative Societies Act of 1970, credit unions are woefully under-regulated and under-supervised. They facilitate the needs of thousands of small investors and account for $6 billion of the nation's assets. That is a very large sum of

money. They are intermediaries in the saving and loans market just as banks, and quite frankly, the functions are basically the same and there is absolutely no reason why the supervision should not be as robust.

I believe that credit unions should be rated; rated in terms of their credit worthiness; rated in terms of their corporate governance, their transparency which should be published the same way we do with banks. I also believe that the features of legislation should be similar in terms of deposit insurance, the reporting requirements, the management of liquidity and of course the fit and proper criteria as established for banks. Quality management is essential to the stability and the growth of any institution, far more so, an institution in the financial sector and I personally believe that nothing less is acceptable if the very objectives stated in this piece of legislation are to be fulfiled. That is, if you speak to promoting confidence and soundness of the financial system, then no less legislation with respect to credit unions should be acceptable.

Of course, it is appreciated that credit unions by their very cooperative nature, require unique understanding and that could pose some different challenges for the supervision—say vis-à-vis, the banks—which traditionally had been so regulated that they have grown and they have evolved under stringent corporate governance and management practices. So that the special nature of the credit union is certainly recognized.

Then of course, you have the security firms and the investment houses which account for something like $17 billion in assets or 13 per cent of the industry. Again, that is another huge amount and whilst there is oversight with respect to their marketing operations, with respect to information disclosure and the investigatory function under the securities exchange commission, there are huge gaps. We speak of a very high risk sector where you are dealing with designer type securities and which pose some real issues, and urgency with respect to legislation in that sector, cannot be overemphasized.

So, Mr. President, this Financial Institutions Bill as I have said is very comprehensive as it pertains to banks, and when as I understand you have an expanded requirement under the purview of the Central Bank and the fact that they are already supervising the insurance companies, and I understand credit unions may very well fall under the Central Bank, this certainly will pose additional challenges with respect to the Central Bank and its risk management with respect to its operations. Of course, any deficiencies in this regard would have severe consequences for the entire system, again trying to tie that back to the stated objectives.

Sometimes, there are things and those things may appear very small in the context of the wider spectrum that raises a lot of curiosity or generate curiosity, if not necessarily alarm. And I wonder, the very fact that this piece of legislation took nearly eight years to get here, and I recognize the thoroughness of the consultation, and I recognize that all the delays may not be at the door of the Central Bank, I believe that there is some measure of resource constraints at the regulator. So that whilst I am not alarmed and have a great deal of confidence in the Central Bank, given this expanded banking legislation, insurance companies, credit unions and of course so many other financial institutions that conduct bank like functions in terms of taking in fixed income deposits, we need to be mindful of the issues there. I would say that my curiosity to some extent was assuaged but the concern was not assuaged, although I am aware that the Central Bank is trying to ramp up its capacity.

The regulation and supervision of financial institutions is a function with three important elements. We are dealing with the appropriate supervisory methodology, an up-to-date and relevant total legislative framework, and of course a highly trained and experienced staff. As we know, we have a dearth of those resources in Trinidad and Tobago at this point in time and this is why I waved a red flag. But the Central Bank in keeping with the international core principles of supervision is applying a risk-based supervisory methodology; that is good. That is a great move from the checklist that went on in the not too distant past. A standardized actuarial valuation methodology and risk-based capital adequacy rules are being developed, which will allow the bank to better deploy resources to deal with the riskier financial institutions and pension plans. And of course, an important consideration is its ability to conduct the consolidated supervision which will address the contingent and other group risk where Trinidad is the home regulator for banks and insurance companies that operate regionally.

So, I understand that it is strengthening its human resource capability and that it has access to strong international resources, but I think it is prudent for the Central Bank and our financial institutions to take careful note of the lessons in the global financial crisis that has shown up the weakness in terms of governance, the weakness in terms of operational deficiencies among many reputable institutions, or I should say, "so-called reputable institutions". So, the time has come, I think, for us as a nation to begin to rely more on our own innovation, our own instincts, our own initiatives and it is in this context that the Government needs to look very closely with respect to how it deploys its scarce funds in the context of its scholarship and its training and where it needs to place the emphasis.

Now the objectives of this legislation can be broken down in two broad categories; safety of deposit funds and the soundness regulation and compliance. Let me say it is recognized with respect to regulation and compliance that the Central Bank, or the Government, or any agency—and I think the Minister of Finance alluded to it—cannot, as a matter of course prevent all insolvencies. In the blink of an eye and as we have witnessed very recently, whether it is a natural disaster, can send insurance claims through the roof and the value of loan collateral south, and that can happen overnight.

This is why I would urge that the Minister needs to address the legislative reform for the financial sector to embrace all those institutions, especially those that focus on the business of general insurance because there are real realities. There are many realities with respect to property as collateral and the potential for serious distress among very large players.

6.15 p.m.

These are situations, which as I said, are still not captured under this legislation. I understand in the New Year, we would be having those tabled and that is excellent, but what are some of the concerns. Well, I too initially had a concern with respect to the role of the inspector, since some of the subsections under clause 62 appeared to be in conflict with the overarching clause 62(1). An example is that 62(3) says that:

> "The Inspector shall make or cause to make such examination and inquiry into the affairs or business of a member of a financial group… "

Which seems to imply that he can operate on his own. However, when you go back to the overarching clause, I think it says quite clearly that the inspector must make recommendations to the Central Bank, and by virtue of that it means he must make recommendations to the Governor.

If you look at clauses 2, 3 and 4, these also make it quite clear that the inspector shall report to the Governor at the conclusion of each examination. So, I feel confident and having done my own research, that he is acting under the auspicies of the Governor of the Central Bank, but the Minister may very well need to look at that and give some clarification.

Regarding the inspector, there is one thing that I would like to see and that is under the code of ethics which the legislation refers to under clause 7, is that a clause be inserted, that the inspector is prohibited from consulting or employment with a licensee under two years after leaving the Central Bank. I think that if we look at the objectives when you are speaking about privacy and confidentiality, it

is not a question of the integrity of any individual; it is a question of the integrity of the system that we are dealing with.

Now, what are some of the strengths of this legislation? First, it allows for financial holding companies to be better monitored by the Central Bank and provides a degree of scrutiny of their operations than hitherto existed, and the new structure also allows the bank to have jurisdiction over holding entities and to delve into the operations of all subsidiaries whether they are here or across the border. I think that is a strength, and the expansion of the definition of related parties creates the opportunity to determine the level of exposure of these groups to the wider institutions.

The consolidated supervision also means that the bank will be the lead regulator for a holding company that is registered here, but it still has jurisdiction over members of the group elsewhere.

With respect to the penalties, the penalties have been expanded considerably, including jail time for breaches of the financial law. I listened to my learned colleague with respect to the penalties and I examined this in the context of the industry, we are speaking about $145 billion with a GDP of roughly $152 billion. We are speaking about financial stability.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the completion of the debate on this Bill.

Question put and agreed to.

FINANCIAL INSTITUTIONS BILL

Sen. H. Drayton: I was speaking about the penalties. So that we are dealing with the life savings of every single citizen who saves, we are dealing with the pensions of our citizens, so that in the context of the industry, I feel that penalties are in order for any Member of the financial services industry who chooses to jeopardize the integrity of the entire system.

The Act limits the credit exposure considerably in the amount any individual group or related group can borrow, which is 25 per cent of its capital base unless it is under specific circumstances in this Bill, and also it has removed the temporary waiver to cover large amounts in excess of that limit borrowed for very short periods such as overnight. So I think that the legislation has been considerably strengthened and for the greater good of the entire industry.

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

Sen. Mohammed Faisal Rahman: Thank you very much, Mr. President, for this opportunity to make my contribution to the Financial Institutions Bill, 2008.

The first thing I would like to do is to endorse the observations and points which my colleague, Sen. Wade Mark made in this regard and I would like to dilate on one or two aspects of what he had said. First of all, the Bill generally, we will all agree is well deserved, well intended and very necessary, but there are aspects of it which have given me pause. And in the wider context, some of the intent of the Bill, I believe, is going to lead us into much difficult waters, especially following the tsunami that has swept the world and it is almost as if in some cases we are setting out to sea in the middle of a tidal wave.

One of the things I found very interesting as Sen. Mark pointed out, is that discussions with the Bankers' Association seem to be a very prominent aspect of the Bill's preparation. Yes, it was put out for public comment. I must confess although I have a very great interest in banking matters, for several years now, I personally never saw the public ads because I am one of those people who reads his newspapers online and I do not see ads. I must say that it went right past me and as a consequence, I was unable to comment on the matter even though it would have been in the public domain for so very long. I am sure that there are many others like me who are semi-retired, who may not be looking at the papers with the hawk's eye that we normally would when we were young and these things would slip by us. But I would say this, to hold serious discussions with a party that has an interest in the matter, is like discussing with the wolves how you are going to build the sheepfold. Because I do not believe that the banking industry is populated by selfless individuals.

In that regard, I want to make reference to one of the points, which the Minister of Finance had made in her presentation. She pointed out that in 1993 the Government liberalized the financial system of Trinidad and Tobago. This move provided the impetus for the rapid development of the financial services sector to the current level, where the banking and insurance sectors now have assets of close to $145 billion, about 95 per cent of GDP and contribute approximately 11 per cent of GDP and provide employment for close to 20,000 people. I will say on the face of it, very admirable. Very admirable indeed.

I have expressed my thoughts in this Chamber on this matter, but it bears repetition. In 1993, when the Government liberalized the financial system, what occurred at that time—and this is something that continues to bedevil us—there was an overnight devaluation of the TT dollar. I think it was from $4.25 to $5.75 and the people in the know and the banking industry which itself held substantial

foreign exchange holdings and funds, benefited tremendously from this overnight devaluation. Now, I am on record as not being happy with that devaluation and I am on record as not being happy with the fact that we are pegged to the US dollar, but that apart, what took place after 1993 was not merely a staying at the point of $4.75, but a gradual, continuous, calculated and determined programme of devaluation of our currency until it has reached to the point of $6.30 where it is today.

There was a magic point of $6.00 at one point where we were all hoping it would not be passed, and then the Prime Minister of the day went out of the country and overnight it crossed the $6.00 barrier. That was a very, very tragic thing. But the point here is this, that because of the holdings of US currency which the banks have always had in their possession, every one cent that the currency was devalued—and bear in mind it went from $4.75 to eventually $6.30—created wealth for the banks to the tune of $5 million to share among themselves. The only bank that did not benefit—and I got this from a laughing manager of one of the bigger banks—and did not know how to make money with the devaluation was at the time, I think it is Workers Bank or one of those other banks.

But the point being here is that this $145 billion that the banks and the insurance companies can claim as their total assets today, comes courtesy of a policy that virtually pauperized the citizenry and has continued to cause an escalation in the cost of living and an eroding of the buying power of the TT dollar. When we understand the nature of banks that will have no sense of conscience in raping—I am very serious about this word—the wealth of the citizen in this continuous programme of devaluation, you have to know the creature that you are dealing with.

So if you are going to consult with people to decide what is in the best welfare of the nation to preserve the banking industry, do not consult with the banks alone. Because there are many, many other areas where the banks benefit continuously—well, we do not have a continuing devaluation at this point, but there is a fluctuation of currency values in what we know as a managed float and that managed float is really a gift to the banking industry and the people who are investing in foreign exchange from time to time; they know how to do it. They know how to manipulate it.

6.30 p.m.

All the bank has to do is sell to the public and buy from the Central Bank at the point where the value is low but, you see, Mr. President, the area that we need to have supervision by the Financial Institutions Act through the Central Bank's

Inspector of Banks is in the day-to-day operations of the banking industry where the banks display absolutely no consideration for their clientele in terms of physical amenities.

It is a crying shame that the smallest fast food place has to have toilet facilities, but you have a banking industry and I do not think there is a single bank in Trinidad and Tobago where elderly people—and it is a monthly thing—have to go to the bank at the end of the month and there are long queues, and it seems as though the banks are unwilling to put out extra tellers at that time. There is an attempt by one or two banks to give to geriatric persons, fortunately I qualify by my age, if not by my demeanour to stand in that line and even that line takes a long time. But there are no facilities whatsoever provided by the banks.

We talk about providing facilities for handicapped and disadvantaged people but we do not have common facilities for elderly people. Quite apart from the fact that the banks have been able to use people's money—and this is a prime crisis that occurred in the United States of America. It is a very interesting thing; the people who can least afford it are always charged the highest rates of interest. This is a very peculiar thing; you cannot afford and cannot pay, but you have to pay a premium price for your loans. It is a very strange thing, but the point here is that the banks enjoy a preferential modus of business operation—and this has to be looked into—where they have untrammeled margins. When you examine from 1993 to today, when 1994 was the first year that a bank made $100 million, that was Republic Bank. At that time it started to go on and on because of the devaluation and because of the items the bank offered to the public by way of credit cards and other services, they have been able—with greater efficiency and in their very beautiful architecturally designed buildings and their aloofness—to make tremendous margins of profit, expand their businesses with foreign exchange from the public when they need to do foreign investments.

I am talking about a number of areas where the banks actually violate morals and ethics in terms of what is really in the best interest of the general public and this is where I believe we have to look because you see, the Prime Minister is very upset that the doubles vendor should charge a few cents more when the cost goes up. Now the cost of certain items is going to go down and there is a declaration already, Minister Taylor is already assigned to make sure that there is no profiteering and we are talking about people who scrimp and save, who have to get up at 4 o'clock in the morning. We are talking about grocers who make a 5 per cent and 10 per cent margin with a voluminous turnover to be able to make the profits that they make. People who operate on the basis of small margins and

quick turnover and run the risk and they deal in perishables. We are talking about market vendors who are dealing with perishable stocks and they have to sell fast, their margins are always low, but you are looking at them with a hawk eye for profiteering, and here we have obscene profits being enjoyed by the banking industry without any sort of conscionable restraint.

I am not saying that the banks do not have a right to make a profit, but I am saying that it is an inequitable field, an unlevel playing field and we are focusing on very disadvantaged people who are being charged with profiteering and turning a totally blind eye on the bank. It is not as if we have not had our own share of debacles and fiascos. We have had the BCCI coming to Trinidad and we know what went on there, and we now have a situation where banks in America—I just pulled off the Internet some figures where 22 banks went down in America in 2008. And they are talking about big banks, not to mention those that the US government has bailed out.

We are talking about banks that have to actually fold up with billions of dollars of assets and deposits. We are looking at "triple A" rated banks and in this scenario, we are establishing a context to embark upon an international financial centre which seems to be a goal of great dazzling beauty because I have heard it mentioned that Ireland is the shining light in terms of financial centres. And now we are trying to copy Dubai and Luxemburg, and we are trying to follow the people who have been in this business who do not have the flooding problems that we have to make a mess of the people who want to go to the IFCs; who do not have the murder rates that we have in Trinidad to scare them away from coming here in the first place. We are looking to spin top in mud with all this financial institutions development.

Would you like me to give way? I have been hearing your voice constantly.

Sen. Gronlund-Nunez: Stick to the Bill.

Sen. M. F. Rahman: I am talking about the Bill; I am talking about this Financial Institutions Bill. I would be glad if your colleague would pay some regard.

Mr. President, we are developing a beautiful piece of legislation to give greater leeway and strength to organizations that can take care of themselves and we are exposing our country to serious jeopardy when we go in the way of international financial centres because you have a situation here where a foreign bank comes into Trinidad, and I am aghast to see that the requirement was only

that they should own $15 million. I thought like BCCI they had to pay $10 million to get a licence, but they borrow $15 million and make up their own balance sheet and tell you they own $15 million and coming here to do skullduggery.

When you have an international financial centre, you do not have one bank operating, but dozens of international banks coming in and the sharks come together with the dolphins. There is a situation here where we are developing a beautiful scenario that is going to lead us into serious jeopardy along the way.

I recognize that the Bill is dealing with the banking industry and there are going to be other Bills to deal with the insurance, security exchange and the credit union aspects of finance. These are areas we must really do very quickly because as Sen. Mark pointed out, we just had a collapse in the Hindu Credit Union and that is an area of urgency and priority, and we are giving priority to a section here which is well taken care of and the only urgency is in the mind of the Government which wants to set up this international financial centre.

I want to say that we have to give some regard to the credit union Bill and all the other areas we know we need to get around to, and for God's sake I hope we do not wait for another five or six years before those other pieces of legislation are brought to the House.

The phrase "internationally recognized certification and accreditation requirements of persons providing financial services in an advisory investment consultancy related field" is one of the nice descriptions we have been told about, because when we are talking about these things, we are talking in idyllic terms. But notwithstanding such people being in the forefront of the banking industry in the United States of America, we had this thing develop as the Prime Minister so elegantly explained it on television.

It is very interesting, I have been hearing the Minister of Finance—such a very nice lady—saying consistently that this is only a recent matter that developed after the budget but I want to read where she said in *Hansard* that she had indicated in some detail "the indications of a global recession—if there were one—because at that time we were still talking about the mortgage crisis and we had not reached to that point."

Mr. President, if you are in the cinema and you hear fire, you are getting out. You are in finance and you are planning a budget and you know there is a subprime crisis in the United States of America; America has now awakened to the fact that there has been a recession since 2007. But you mean to say at this distance where we could have seen things with almost hindsight vision with the

distance from where we were benefiting, that we could not understand that with a subprime crisis developing in America and the derivatives, the bundling and reselling of mortgage packages, we could not have understood as people with so many years of experience in finance and banking that something was going to hit the fan?

Mr. President, we are very naïve and innocent that we would sit in this country, plan for grandiose expenditure and avoid the Heritage and Stabilisation Fund contribution by going for a high figure in the oil prices. I think that is one of the first things the Prime Minister should have said to the nation when he was addressing us; that we are very sorry but we did not bargain for this—use the word sorry once—and we goofed because we did not expect this. We were hoping against hope.

Mr. President, this Financial Institutions Bill is prepared for ideal circumstances. This is a piece of legislation that we would need in the fullness of time, but let us make haste slowly, let us not put up an FIA and then find we are rushing headlong into other areas. Do you know what it takes to have an international financial centre? Dubai International Financial Centre has a description of how it functions, and there are pages of the Luxemburg Financial Centre and I will read out some of the qualities that qualify it so eminently to be an international financial centre. It has international services; we have international services because we refuel international airplanes here, but I do not know what other international service we have. It has world-class financial institutions incorporating both local and foreign expertise. We do not even believe in the expertise of the Central Bank Governor.

What is going to happen is, if we ever go in the direction of this international financial centre, we will be bringing in cadres of foreign experts and those institutions operate in an atmosphere of zero taxation and they are allowed to repatriate 100 per cent of their foreign exchange and they are coming to work preferentially as Sen. Mark has said and as one of my colleagues in the Lower House asked: How does this benefit the small man? How does this cut out the flooding and reduce the murders and inflation rate?

6.45 p.m.

You know, all over again we are heading in a direction that is not priority and not urgent. There is a beautiful expression that we are copying from the President-elect Barack Obama, a wonderful young man; it is the first time I am calling his name here and I really want to say that I am one of those who are so very pleased

that he will be ascending to office. But this phrase: "Yes we can", which I have heard our Finance Minister giving in the Lower House and seeing her in action on the television: "Yes we can". The good book says with regard to food, all things are permitted, but not all things are beneficial.

Yes, we can, but should we? It is not because you can jump off a building on a bungee rope that you are going to do it. The rope might burst. You are playing with a lot of lives and you do not really want to say that we want to have a blazing financial light—today's blazing comet is next year's burnt out asteroid. Let me say, this whole concept of moving the Financial Institutions Act with the intent fundamentally, not only to strengthen the financial institutions here, but to pave the way for the IFC, in my view, we are really staring a sleeping tiger in the face; we are not moving in a very wise direction.

There is a saying: Beware of Greeks bearing gifts. We are opening our doors to Greeks who we believe will be bringing gifts into our nation. The entire Bill is framed for a scenario where people are going to be behaving themselves and doing the things they are supposed to be doing. We are going to get an Inspector of Banks who will not be able to cope. He will not be able to cope with the local banks existing already, far more for the hundred other foreign banks that are going to come in if the IFC ever gets off the ground.

I want to touch on the matter of the fines which my colleague, Sen. Ramkhelwan complained about. Those very exorbitant fines are for operating a financial institution without the licence. For the love of God, why do you want to go out and do that? If you want to pay a million dollar fine and so many hundreds of thousand dollars a day, go out and form a company without licence. But if you have a grain of sense in your head, you are not going to do that. I say leave that fine right there. But the problem that I have is the other fines—I think it is the Fourth Schedule and the Sixth. Those other fines and those other charges, like for example, applying for a licence and renewing your licence, those are far too small, because you are dealing with people who, in our local arena, are worth today $145 billion. Do you know what? Make sure they obey the law; make sure that the Inspector of Banks does not have to go fighting them and asking them again every Monday morning, "when are you going to send in your returns?" Drop it on them!

Increase those fines. We had a million dollar Bill here recently with the tobacco thing, where Sen. Prof. Deosaran pointed out it is a very expensive Bill. You want to charge me because a "fella" light a cigarette in a party at my home?—$1 million. Would you believe it? It is ridiculous. I mean, we are going

in a direction, but let me tell you something, with this Financial Institutions Act, that is where people are going in this thing—it is only money people who go into that field, you know, and it is only money people who are looking to make billions.

There is a fellow called George Soros and his Quntum finance company and his associates, they make it a habit—well, I think George Soros has kind of retired; he is feeling a little bad now, but they make it a habit to go into nations and manipulate their currencies and move out with all the foreign exchange that they could get, and dropping the value of their currency so badly and practically crippling nations.

You want to open your doors to wolves and carnivores; that is what we are doing with the IFC. This is a little country; a sleepy little town; we want to make it look good. We are doing some work, but do not bring in wolves and tigers. We are bringing in foreign labour to do overnight what we are supposed to take one year, two years and three years to do in normal course. We are in a rush. Make haste slowly. Speed kills. It is not good to rush into things so precipitately.

This Government has to learn. Again, we want to support the Financial Institutions Act because we want to have the banks under control. I certainly want to have more control over the banks with regard to their margins and their tremendous profits. As a matter of fact, I believe taxation on banks should be increased because I mean they make—you know, a little labourer working on the road, "bussing" the road; a mason laying bricks and plastering walls, those are people who work. When you are sitting in an office and you are pushing a pen or a computer and you are whistling in the night and you are going down the road and you are partying, that is lifestyle of the financial institution personnel and that is the area where I believe a greater contribution should come to the nation; out of those people who live at that level and that style.

The financial institution must always secure the public good with reasonable returns for itself. If they were conscionable and they were doing things for the public in the way they ought to have been doing, it would be one thing, but if the Government were to even indicate for one minute that it did not mind—and you know something, this is concerning exactly what I am saying; I will not be jumping from point to point here, Mr. President. When the Governor of the Central Bank can publicly say—and I heard him say this twice—that the currency of the country will not be revalued—he did not say devalued, you know; he said it would not be revalued—[*Interruption*] I do not know if he meant devalued. No, no, he said it twice. It will not be revalued; it "ain't" going anywhere stronger. So

if this Government only close its eyes for a minute, the banks have carte blanche to run down the road again and devalue further. Because one of the crazy ideas of some economists is that if you want to fight inflation, devalue your currency.

Now, I will tell you something. You devalue your currency, you put more burdens upon the people; you are going to get rioting in the streets. Trust me.

Sen. Enill: That is a theory that is very correct.

Sen. M. F. Rahman: Of course, it is correct, but you tell that to some of these economists. The other guy who broke away from the UNC is promoting devaluation. [*Laughter*] I do not know what kind of mad economics he wants to practise. I have been fighting to get us to upgrade our currency, to strengthen the currency, to get the currency to buy a little better, even on a little piecemeal basis, but these people want to devalue the currency and put calumny upon the people in the country. But of course the banks would not have a problem with that; they would like that too bad.

That is what I want the Inspector of Banks to look after and make sure it does not happen. I want us to pay some serious regard to some of the amendments which Sen. Mark is putting here. I am not going to make amendments; I am saying that perhaps you want to take in things, you put in what you want, because in any case, you guys do not take us on very often.

Hon. Nunez-Tesheira: I am listening to you.

Sen. M. F. Rahman: Thank you, Madam Minister. I want to say this, that, yes, the Financial Institutions Act, let us bring it on, but properly. Let us seal up the crevices. You know when you are going to air condition a room, you seal up all the little cracks and crevices. You do not want your unit to run inefficiently. You do not want an inefficient Financial Institutions Act that is going to wreak mayhem on the people at the end of the day. Eternal vigilance is what we—if we were more vigilant, we would not have reached 502 murders in Trinidad and Tobago for the year so far. We have been negligent in a lot of areas, let us not be negligent in the financial areas as well.

I am just flicking through very quickly; I am going to leave out a lot of stuff, because sometimes you get tired of saying these things. I want to just ask the Government to bear some other things in mind. A few years ago—I think it was

1994 or 1995—when Clico bought over the majority of shares in Republic Bank, we had a terrible confrontation. The employees won and Clico as the majority shareholder had to keep quiet and let them win. Is the Government looking at that in the FIA?

Sen. Enill: Yes

Sen. M. F. Rahaman: The proprietor must be able to do with his property what he wishes. [*Interruption*] Conglomerate aspects, but, you see, employees could still stymie and overthrow the will of the owners and I think that Clico has—I should not be speaking about any company like this, but as an owner and a competent owner in the financial sphere, they had a right to be able to get their hands on their business and I do not want to see that sort of thing being possible—Oh God, imagine foreign banks coming into Trinidad and they decide to turn on the sprinkler system and shut down the lights when they are going to have a meeting because the employees do not like what the owners are doing, do you know what would happen to us? Bye Bye IFC; everybody go laugh at we; globally. You understand? [*Laughter*]

Do not take this lightly, you know. This is a serious matter. I am taking lessons from Gypsy; not to worry. I was talking to Sen. Prof. Deosaran in the tea room. The common factor in every human endeavour is the human nature—ego—and greed, and do not doubt it; while the employees have greed, the corporations have greed because they are run by human beings. You have got to be on the alert.

That brings me now to talk about the aspect that my brother Sen. Mark mentioned. This is a critical issue. You are making sure that conglomerates do not have one guy managing everything and the Government is arranging for one guy to run all the big financial institutions of the country. You know one of the things I would like to see, I would really like to see this financial institution—and I say this now because the Government itself is the biggest financial institution in any country. I would have liked to see—[*Interruption*] No, no. Everybody has to be accountable to somebody and if I am Prime Minister I have to listen to my advisers and I cannot go and decide to squander money without understanding. There has to be some sort of human response here. So you do not just go and say, "Because I am in this position, I will do as I want." So we do not want to cause ourselves undue grief and open the way for disgrace and embarrassment on the world front.

There are a couple of little things that worry me a bit. The FIA does not deal with these at all. But there are some companies in Trinidad and Tobago—good for them; I mean they do well, but they do more hire purchase business than trading. I

know one jewellery company—I should not call the name here—where their credit sales were 95 per cent of their total sales. And all of the big companies—I can call a few names; I am not picking and choosing anyone—like the American Stores and Courts and all these different people who give out $2 million and $3 million in prize money in the year, those credit sales carry big margins of interest. There is some aspect of financial operation there.

Another aspect I want to draw to your attention is the aspect of pawnbroking. Pawnbrokers make 48 per cent per annum on their money—4 per cent per month. And they are so totally secured, because you have to pawn your jewellery and they give you about a quarter of the value and if you do not come and pay they sell it at five times the price that it was pawned for. So I am saying that we have many areas where finance is a factor and abuse of the public takes place. These are areas that we have to look at.

7.00 p.m.

These are areas at which we have to look. After all, we are in government for the people, government of the people and by the people, not government for the institutions. The institutions are to serve the interest of the people. I believe if we keep our focus on this, we would come to the more human aspects of governance. Even the economists are realizing that human beings are at the centre of economics. Were it not for human beings there would not be a world.

There is one other question. I do not know if this is now illegal. If I sell a house to somebody on terms, I am the mortgagee and he is the mortgagor, is that illegal now, or can you do some quiet financing on the side without being charged one million dollars for operating a company dealing with finance? I want you to reassure us that people who do little individual financing—I sell my house to my son; I give him credit and he pays me, I have become a mortgagee and a financier. I do not know how that will impact on the rules and laws that you are making. I will like some reassurance on that.

I did not see cambios mentioned. I do not know how cambios operate. Cambios used to operate with banks? Cambios used to operate as cambios. I did not see any cambio reference in the Bill.

I think that I have contributed enough to the Senate in this deliberation. Although I have more pages to go to, I am tired. The general message is here. If we take cognizance of some of the amendments that are being recommended, we would get somewhere. All of us on this side wish the Government—because of love of the nation, not because of love of the Government—well, that you should govern well.

Thank you.

Sen. Prof. Ramesh Deosaran: Mr. President, this is a very important Bill for the country at this stage of its development and more precisely, what is happening around the world. After reading this Bill, I get the feeling that it should bring some peace of mind, if only temporarily to the country that is naturally ill at ease, especially those who have deposits in banks and other investments that are subject to some kind of speculation. The Bill removes some of that uncertainty in the financial sector and tries to put some certainty, direction, supervision and quality control, with some consequences to flow from those who violate the provisions.

All in all, I think that the Minister and the Ministry of Finance ought to be congratulated for the voluminous amount of work which naturally went into this Bill. The fact that it has taken so long is also a testament of the work requirements of such a piece of legislation. Banks and financial institutions are very fragile institutions. They are subject, sometimes unjustifiably, to rumours. Excessive speculation could cause sudden collapse or loss of confidence in institutions. You would then have the contagion effect, some of what we are having.

If you will allow me a minute of digression, my view is that much of the calamity that we are witnessing around the world is not due so much to substantive issues but to the spread of fear, speculation and media exaggeration. This is the world in which we live and it is therefore very timely and relevant that the Minister can bring this Bill forward, even if it requires some adjustments here and there, which depending on how the Minister responds we would know how to go forward.

Banks are very selfish creatures. The last Senator was quite correct. That is by design, even from the days of Shylock. They always want their pound of flesh and guaranteed collateral. They feel that they owe a debt to their shareholders. We keep reading year after year of these vast amounts of profits these banks have been making. It is therefore an irony that has shocked the world to hear a government having to bail out banks. That shocks the world. It shocks me for different reasons because you are applying a socialist solution to a capitalist problem. [*Desk thumping*] That is another irony that perhaps the scholars would have to deal with in the years to come. Meaning all in all, that the world is a vastly different place now. It is not following orthodox economics and traditional financial planning. That is why some aspects of the Bill might need to be broadened and deepened. There is only so much that a government can do even as an interventionist because you cannot reach too far into the private sector, more precisely the financial sector. You cannot over-regulate.

The reference to the former chairman of the Federal Reserve Bank of the United States of America, apart from saying that this was a tsunami he never expected, he also made reference to the overwhelming amount of greed that captured the altruistic elements of the bankers. That also surprised him. He thought that a little more altruism in the banking sector would have helped salvage some of the problems. He remained shocked that that did not exist. It means therefore, that this Bill has some prophylactic elements to protect the country and provide some certainty as I said to the financial sector. With those sentiments, I welcome the Bill at this time, but there are some areas to which I will like to draw the Senate's attention.

Clause 5(4), page 14 where it deals with the Governor shall keep the Minister informed, that is correct. I agree with the suggestion that that report should also be brought to Parliament. Financial institutions are too important and intrinsic to socioeconomic development. Their spread is too vast. The question of transparency, accountability and an exchange of ideas will help to provide the kind of vigilance required for that particular sector. In other words, bringing it to Parliament will help the Government. There are not all things a government can do and see.

Sen. Enill: I thank the distinguished Senator for giving way. I want to be clear that I understand what you are saying. The report that the Governor of the Central Bank will make available to the Minister of Finance, are you suggesting that that report be made available to Parliament? If you are, how do you deal with the effect that it will have in circumstances where the report says that an institution needs to have corrective action taken and an intervention is required? How does one deal with the public issues as a result of that information?

Sen. Prof. R. Deosaran: You mean a matter of some sensitivity that would lead to speculation and loss of confidence? I take that point. Maybe we could reflect further on it. It is a good point. I was on the other side of transparency. I think you made a practical point that I would say quite quickly, we need some further reflection.

The other important element is the role of the Inspector of Financial Institutions. I draw from experience. When the Ombudsman was introduced in this country there were great expectations about the public service inefficiencies and delivery of services being improved. That has not happened. Then you had a Banking Ombudsman with thousands of complaints about banks which are not properly looked after. You have all these functionaries coming with great expectation and nothing happened effectively.

I want to help ensure that on this occasion, given the important function of the Inspector of Financial Institutions, that that office be provided with a high level of expertise; proper staffing; the technology that goes with such monitoring and all such capabilities.

In clause 7(5) there is a requirement for that inspector to declare to the Governor of the Central Bank any shareholding he or she might have in an agency for which the inspector is responsible. According to the provision, "the Governor may, if he thinks fit, require such person to dispose of any such shareholding or interest." I will like to be ultra cautious and put a full stop that either the Inspector of Banks put his shareholdings and connected assets in a blind trust or such shareholding be removed from any agency over which he has jurisdiction. That is another step that will help build confidence in the functionary and can be broadcast live so that the public would know that the Government and the institutions created mean business.

The President of the country is asked to appoint a fit and proper person to be that inspector. What I have suggested will enhance the criteria of fitness and propriety. Alongside that you will want to ensure that that inspector is paid adequately so that he or she may not feel deprived or suffer any loss of regular income.

Another point on page 141 has to do with exemption. I am not happy with exemptions numbers 6, 8 and 9 which include the Trinidad and Tobago Unit Trust Corporation. I do not think that exemptions build public confidence. I agree with Sen. Mark on this point, assuming that he is correct in his explanation. It is in the Third Schedule.

As I have said several times in the Senate, experience in addition to example, is the greatest teacher. In the '80s we had a collapse of certain financial institutions. We seem to have forgotten the chaos and suffering that that collapse brought to many poor citizens, many of whom have never recovered. In the midst of that collapse there were two important features which would teach us. One is that there was a divergence of citizens' funds and investment in these finance houses into other projects without any kind of proper control over such undue divergence, thereby draining the capital from the finance houses, until they faced collapse and the government had to intervene and assist to some extent. That is not fair and right. Such persons, managers and trustees should be punished.

That is why I have some understanding for Sen. Drayton's view about the penalties. Managing people's hard earned money for which they take years to accumulate, you must have the experience to understand the suffering. Putting it

in a bank where somebody promises you substantive interest and protection and such managers abuse their trusteeship, not merely squander, but through vainglory and ambition, they want to expand themselves into grand empires on other people's expense, when the calamity and collapse come should be punished, not only for themselves but for others to know that this is a serious country and government that need to be a guardian of the people.

7.15 p.m.

The Government, in such instances, has to protect the sardines from the sharks as it were. That is to put it as dramatically as I can because that is what banks are. If you read the fine print of your credit card agreement, you will understand why I say banks are like sharks and they have the Shylockian Syndrome—their pound of flesh must be guaranteed.

If you read the fine print of your mortgage agreement, you will see what I mean. If you read the fine print of your insurance policy—assuming you can read it; it is so fine—you will see what I mean about how these agencies look after themselves. If these agencies look after themselves, as they are entitled to, who will look after the population at large? It is the Government.

That is the new thinking to which I referred when I said that we are finding socialist solutions for capitalist problems. If Marx were alive, he would be laughing all the way away from the bank. He did predict the collapse of capitalism. Of course, capitalism has shown itself very resilient, always bouncing back. We had the Great Depression and other such scenarios time and again. I know capitalism will bounce back because people's self-interest will once again come into play at a certain optimal point, then they would realize that to go further would be to their disadvantage. That point is soon.

So capitalism will bounce back. The world economy will be restored, but not for economic reasons; more for psychological reasons. Greed will once again play its role. That is why the movie, *Wall Street*, is a good movie to see, where the main actor tells you that greed is good and he becomes a celebrated investor amongst his peers.

The advertisements that come from the banking sector and the financial institutions sector can sometimes be exaggerated. It is those advertisements in the 1980s that led to people rushing to put their money in banks or financial houses which eventually collapsed. Therefore, the section dealing with advertisements I think is quite commendable. Clause 53(6)—a fine of six hundred thousand dollars for misleading, deceptive advertisement—is a very good signal.

The Bill is headed in the right direction in many respects. There are some concerns expressed by my colleagues, Sen. Ramkhelawan, Sen. Drayton and, on this occasion, by Sen. Mark, which I am sure the Government and the Minister of Finance will take into account. Perhaps, we may not after all, depending on what the Minister says, have to go to any select committee.

An important aspect of this Bill as well is the punishment section to which many references have been made. That is clause 122, almost at the end. By the way, this is a very heavy Bill—154 pages, 132 clauses, 10 pages of preamble and about six or seven schedules.

Sen. Rahman, when you talk about a Bill, this is more than a Bill. This is a voluminous entity. That is why I say that the staff of the Ministry of Finance really ought to be congratulated for this exercise. Why refer to the sentencing provision? People have expressed concerns about the amount of money charged, but I am not, at this point, interested in the sums charged as part of the sentencing scenario. What you would see is the process used to arrive at that punishment. To me that is more important than the punishment itself. It is a process given to these financial managers that is scarcely given to any other offender.

Look at clause 122(1). It says that before the punishment arises the Central Bank may issue to any person who there is reasonable cause to believe has committed an offence referred to in the Fourth Schedule, a notice. So the Central Bank sends a notice, even though it feels that on a prima facie basis an offence has been committed, offering the person the opportunity to discharge any liability to conviction in respect of that offence by payment of the fixed penalties specified. You are given a chance as an alleged offender, to pay before any further proceeding takes place.

It goes on in clause 122(2):

> "Where a person is given a Notice under this section, criminal proceedings shall not be taken against him for the offence specified in the Notice until the expiration of twenty-one days commencing the day after which the Notice was served."

So every step it is: correct the problem, "nah". Do not let it go too far. It is on a forgiveness pathway. It is like conflict resolution at the highest level and that is before any punishment is applied. So it is not just looking at the punishment, it is looking at the process of implied forgiveness, reconciliation in that financial sector and then the other things flow.

When I look at it, there is an ideology here. We seem to deal with white-collar crime very differently from other kinds of crime. It is an ideological position that we take. For example, with street crime, if you are caught with marijuana, that is the end of it. You can get up to five years imprisonment. There is nothing like: do not smoke again; put it away; you have 21 days to stop smoking. If you are caught stealing or interfering with the mail in a postbox, it is the same thing—five years.

So the whole question of sentencing is a long story. It cannot be corrected here. There always seems to be a bias towards forgiveness, even though the penalty is heavy. We invoke a process that implies forgiveness and a second and third chance. That bias has contributed to the crime statistic where we feel that most crimes are committed by poor people, merely because of the process of data collection and the application of punishment and sanctions.

But the world is broader than just having poor people allegedly committing crime. There are many crimes being committed at the top. In criminology, as you would know, not because you are my neighbor—the distinguished Minister has lived close to me for many years—the way the punishment is applied has produced a bias in the criminological literature and that also has led to serious consequences.

Government puts all its energies, manpower and resources on hunting down street crimes; not that they should not be hunted and prosecuted, but the bias is implied. That is why this is a very important Bill. You are attempting to correct the bias. White-collar crime, by definition, is difficult to define. There are many wrong things done in the financial sector that are legal, but not ethical, and the challenge for any agency, be it the Central Bank or Government, is how far can you reach within the financial sector without disrupting the free change of commodity and undermining public confidence. That is why Sen. Conrad Enill's point is an important point. I did not think about it, but he has a plausible point about the disclosure of information that could rock public confidence.

It is not to bring forward an assault on the Government, but I would like once again to sound a note of caution in establishing the financial sector. You have to deal with four Cs. The first is that you have to increase your competitiveness index. It has dropped. I would not belabour you by telling you by how much. We cannot drop in our competitiveness index when our economic fundamentals are so good. It is contradictory. You have to deal with that and find out why.

The second C is the corruption index. There are some problems with the measurement and its perception. I myself have some problems with the way it is measured and with the way it is broadcast all over the world as if the

methodology is so reliable, whereas it comes from the perception of a group of businessmen and some other panels. There is also a lag between when the incident happened and the reporting of the corruption. That is something you have to look at too and I do not think the MORI poll will help you with that one. There are other things you have to do to lend structure.

The other one is crime. I will stop there. I have spoken a lot about crime; so I will just say crime and you will know what I mean.

The last one is perhaps the most important because it is a derivative, as Sen. Subhas Ramkhelawan would say, from the rest. It has to do with confidence in your system. That is what is leading to the collapse from South East Asia right across to America. People are afraid. They are reluctant to put their money because of that. Once that fear could be removed—that is why I believe that the restoration of the global economic sector is not so much the bailing out because the bailing out is aimed at restoring confidence. That is why we must be careful in our utterings about the financial sector in this country. Do not engage in too much speculation and reckless statements because we ourselves will be bitten. [*Interruption*] I have to tell you. We have learned a lot from Sen. Mark's contribution this afternoon, but you have to understand, as I always say, this is the Westminster system and you will know what to give credibility to and what not to give credibility to.

The question of the competitive index and the index of productivity is relevant because the people who are establishing the Rapid Rail System will have to borrow money and the financial sector will have to be involved in this. One of the issues with that arrangement between the financial sector and the Rapid Rail System is transparency. I believe that the Government should quicken the pace of establishing that Rapid Rail System. I am surprised, I must say with respect to my colleague, Sen. Annisette, that the labour union seems to be against the establishment of the monorail or maybe their view is that it should be delayed.

7.30 p.m.

This would really enhance productivity and ease up the traffic jams and a number of other advantages will accrue from the rapid rail. The Government is a bit at fault. It has not really explained to the public, in specific terms, the advantages of the rapid rail and they remain perhaps paralyzed by the debate over the financing and the procurement issue. You can deal with that, that is your responsibility, but I think you ought to go over the fence now and explain to the public how important and useful the rapid rail is for the country as a whole, if

only as a start on the East-West Corridor. So, you would use the moneys wisely that you are going to get from these financial sectors—I am trying to be relevant here—to establish the rapid rail; 72 miles of it.

I urge the Government to move with rapidity with the rapid rail. The country is going to bless you and you are going to leave a legacy among the others you might leave with establishing the rapid rail. The PNM should do it, because it is the PNM that uprooted the train system in the 1960s in this country. This is something that I would never forgive the PNM for. They should have never removed that train from the bowels of this country like Rio Claro, Tabaquite, Sangre Grande and so forth. You have denied the children an opportunity to acquire discipline and to be trained in punctuality come rain, sun or shine. The trains were punctual. When a train was leaving at 4.05 p.m. every school child or worker in Port of Spain—wherever he or she was—had to be there. You learned that and it became engrained in your character. Now, if you go to City Gate, you are going to see the mess that we have put ourselves in. The PNM will do well to compensate for its past sins of commission.

Mr. President, as I said, the inspector's office should be properly equipped with adequate salary and no semblance of a conflict of interest.

As I close, I recall the words of the Chairman of Republic Bank, Mr. Ronald Harford. The headline to a recent article in a newspaper was "Greed". As I said before, it was greed that helped the collapse of the financial sector in certain places. That is all the more reason why the Government should be vigilant, courageous and very comprehensive in the legislation that it brings. I know that there are other pieces of legislation coming with respect to insurance and so forth and that will help complete the picture.

You see, this matter of white collar crime like insider trading and so on is well known across the country. People would tell you which businessman invested where and what he knew and how he turned the shares over quickly—he sold here and bought over there and so on. Those things are well known on the streets, but as we all know, knowledge is not proof. What it does to the public is to cause it to lose confidence in the system, and that is what we are trying to avoid. That is why the American capitalist system, supported by the judiciary, where anytime you bring a white collar criminal before the court or an alleged criminal, the sentence is very severe. Those "jacket and tie" that go before the courts in America get pelted into jail for six, seven or 12 years, and that scares the daylight out of other potential scamps. So, you dampen the ambition and the greed. That is how the system ought to work.

We would like to see not only the Bill with its provisions passed in whatever way, but the penalties be swiftly applied in the proper way, coming through the officers of the inspector in terms of evidence collection and detection.

There are many things wrong with the banking sector. The credit card industry needs to be shaken up and monitored. There is an agreement in a credit card that when you use it, even though you have a limit of X dollars you cannot use all but you have to use part of it, and then you stand before the cashier embarrassed. If for example, Republic Bank gives you a card with a guarantee of so much money for which you have paid in terms of registration and application, and suddenly you purchase your goods and you get to the cashier and the bank is not releasing the money, that kind of embarrassment, I think, is a job for the Bank Ombudsman. Such things should be avoided.

All in all, I welcome the Bill and I hope the adjustments mentioned and described would go a long way in encouraging the Minister to be accommodating. So, perhaps, we may not want to go to a special select committee.

Mr. President, thank you very much. [*Desk thumping*]

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, thank you. I join the debate, first of all, to support the Bill. During the course of the debate there were some contributions made, and I just want to spend a little time explaining what I consider to be some contradictions.

You would recall that some time in October 2003, this Government appointed, through the then Minister of Finance, a committee made up of quite a number of very important people in the financial services sector to do one thing and one thing only; to examine the financial system of Trinidad and Tobago and to make recommendations for its improvement. In the context of that particular exercise, a number of things occurred.

In addition to looking at the existing landscape at the time and, of course, dealing with some issues such as the role of the Government, the vision for the new financial landscape and the vision for the economy, one of the things that they did was to look at the existing financial landscape of Trinidad and Tobago. In that exercise, the committee did a diagnostic of the financial system of Trinidad and Tobago, and this is where I wish to make the point.

The financial system of Trinidad and Tobago is made up of a number of different sectors, and those sectors are regulated differently. For example, we have the banking sector that is regulated by the FIA. We have the capital market sector and the Government proposes very shortly to bring securities legislation

with respect to the Securities Industry Act to deal specifically with that industry. We have the insurance sector which is dealt with by the Insurance Act and which is now under the jurisdiction of the Central Bank through their legislation. We have the pension industry which is also being formulated as part of that particular activity—mutual funds, credit union sector, venture capital and so on.

These specific sectors have specific characteristics and require different legislative treatment and, therefore, when the Government talks in this section about exemptions, it is not intended that there would be no regulation. It is intended that there would be no regulation under the FIA, because the FIA is not the appropriate tool for the management of these specific institutions. For example, one could not regulate credit unions under the FIA. It is a different institution and a different risk profile. It has different characteristics and it is a different business. That institution is regulated by the Co-operative Societies Act. It is currently being reviewed.

Just by way of information, so that those who have a different view can change it, when one looks at the Co-operative Societies Act, it consists of—similar to what this legislation seeks to do—rules that deal with the administration, registration and membership, duties, privileges and business of the societies; property and funds of societies; reconstruction of societies; winding up, disputes, offences and something that is considered miscellaneous that deals with appeals, delegation of powers and no stamp duty and so on.

The point is that all the institutions that we have exempted have similar types of legislation which were passed in the Parliament. So, to give the impression, in some of the contributions that because it is exempted, it does not have regulations, is really not correct. I just wish to deal with that matter at the very onset.

Mr. President, the report that started in 2003 had as one of its objectives, at page 48, policy recommendations for the banking sector. I just wish to read the first recommendation. The first recommendation says to accelerate efforts to bring to Parliament the proposals to amend the Financial Institutions Act, 1993 that seek to enhance supervision and strengthen the Central Bank's enforcement powers. The major provisions relate to supervising a financial institution that is part of a group or conglomerate, and the amendment should give the Central Bank authority to do a number of things—cross-border supervision, reporting of large exposures—and it goes on to set out a number of very specific recommendations which today, I am happy to announce are contained by and large in the Financial Institutions Bill, which the Minister of Finance piloted some time ago.

As far back as 2003, some of the people who were involved in this particular exercise came from the legal fraternity, the insurance sector—there is one Subhas Ramkhelawan, Ronald Ramkissoon, Claude Mustapha Ali, John Jones; all individuals who are considered to be experts in the business. It goes on with people from the Central Bank, the Ministry of Finance Research, legal, development finance, university, the former Minister of Finance; all bringing their particular experience together to provide policy prescriptions so that we can have a stronger financial system. From where we stand and from where I sit, the Bill before us this evening does exactly what we had intended when we began the exercise in 2003.

In the Minister's presentation, the Minister talked about the manner in which the Bill was developed in that one looked at the experience that one had in a practical sense in dealing with the financial services sector or financial system that has evolved and continues to evolve on the basis of the flexibility, maturity, and the coming of age of the sector, based on the demand by customers for more sophisticated products and services within the system that we operate in.

7.45 p.m.

In that regard, if you looked at the new provisions that were in fact included, I think this is where you would see that the Bill as it is currently being presented seeks to protect the small man from some of the excesses and it also gives the Central Bank the ability to intervene in circumstances where in the past it used moral suasion, but in these circumstances it now has the force of law.

We saw this when we were doing the amendments to the Insurance Act, because you would recall that the Insurance Act was formerly managed or regulated by the Ministry of Finance or directly by the Minister of Finance and we found ourselves in a situation in which there was never the ability of the Ministry of Finance to enforce a provision to stop someone from writing new business. There was a very long convoluting process and when we shifted the regulation from there to the Central Bank two things occurred.

One, the administration improved, because the Central Bank, not confined to public service rules for recruitment and employment, was able to employ the level of expertise to do the job that was required, which is a function of these types of institutions. So that in changing the model and moving it—and we propose to do similarly something with the credit union legislation—in seeking to do that, just on the basis of changing the institution there was a significant number of benefits.

So I commend the Bill. I believe the Bill does take us in a direction that allows us to manage more effectively some of the things that we need to deal with in the financial services sector and I want to address in the next few minutes a couple of issues raised by a number of Senators that I think require some response by the Government.

Sen. Mark raised the question of consultation and from where we sat I think that consultation in the context of the sector as we see it needs to take into account those who are going to be affected by the regulations. And at the end of it all the only reason that this Bill is here is to protect those who are involved in transactions with banks and financial institutions. While there is a role for individuals within the construct of what we have done, we have created an officer and a set of rules by which those who are affected can get redress.

You would notice that somewhere in the legislation it mandates that the institutions that are licensed—because remember these are institutions that have to be licensed—must participate in that programme and must hold themselves to the decisions of that particular officer. So that there is built into the system something that protects the small man. I have some experience in the matter and in looking at the work of that particular institution—it was headed sometime ago by Judy Chang who was a former chairman of Unit Trust—we have developed it to the stage where compliance is—the last time I looked—98 per cent. One or two institutions were not there and there were reasons for that.

I think the question about who stands to benefit from the Bill and the question of consultation has been adequately dealt with in the context of the Bill.

The other issue that has arisen is the lack of accountability by the Central Bank. Now, I am aware that the Parliament receives from the Central Bank a report annually, as do many other institutions of Government, and that the Central Bank as an institution is subject to the Parliament through its committees. That is the method of accountability that we have set up and that is the method of accountability that until we change it we support it.

Yes, we decided sometime ago to put the Central Bank as an institution exempt under the Freedom of Information Act and the reason for that as we have explained it in the past was this: In the Central Bank Act of itself there is a secrecy provision. The reason for that is because it is very easy to destroy your financial system. As a former Minister in the Ministry of Finance, I am aware of the information you receive every month when the Central Bank does an analysis of the financial institution.

It does it in a number of ways. It looks at its risk profile, it looks at its capital, it looks at its governing structure, it looks at its issues relative to future growth and development, therefore it looks at a number of things. It gives it a ranking. Depending on what ranking it gives it you know whether the institution is going to be in hot storage, cold storage, the level of intervention that you have. But the intention in all of that is to ensure that the institution does not find itself in a situation where the Government has to basically go in and bail out the institution because of some bad practice. That is what happens.

I hear parliamentarians asking for that information to be available, but I am sorry, that cannot happen, because that is the basis for the financial services sector to continue to operate at good times and at bad times, and therefore people make decisions on information. Therefore that kind of understanding of the business that we are in must be understood by those of us who are required to manage the affairs of the country and therefore in that regard the Government will be irresponsible to agree to matters of that nature.

Depositors—

Sen. Mark: Will you give way?

Sen. The Hon. C. Enill: Of course.

Sen. Mark: Let me tell my hon. colleague that in New Zealand which I had an opportunity to visit sometime ago under the umbrella of the CPA, it is clear from the information that we received that the Central Bank of New Zealand is under the purview of the Freedom of Information Act. In the United Kingdom they recently passed the Freedom of Information Act and the Bank of England falls under that. In the United States they have a Freedom of Information Act; the Federal Reserve, and in the northern countries the same secrecy that my hon. colleague refers to, it takes place in all those other jurisdictions.

So, I think it is not proper and it is not, to my mind, in keeping with modern governance processes for my colleague to be saying that because of secrecy and the need for confidentiality there is no need for us to have the Central Bank incorporated under the Freedom of Information Act. It does not make sense! So I just wanted to let him know that he is not in keeping with the realities of today.

Sen. Drayton: I am sorry. The only comment I want to make here, it depends on the information. If it is information that could materially affect the share price of a listed company, that is a different mater. That cannot be treated in the context of just public information.

Sen. The Hon. C. Enill: I thank the Senators. Mr. President, I did not mean to have a discussion. All I meant was that in the context of managing the affairs there was a conflict and the way around the conflict from where I sit is to review the Central Bank Act which is something that will come, because there is an inherent conflict with the Governor of the Central Bank and his board carrying out a mandate under that Act and some of the other provisions. That is the point I am making.

So, Mr. President, I do not disagree with Sen. Mark, but I am saying in the current circumstances where the conflict exists, until you deal with the principal piece of legislation—and we are going to deal with that at some point because we are reviewing that—then the method to correct that piece of what we consider to be mischief,—Let me tell you what occurred, just to bring you information.

Every time a challenge was made for information it cost us $750,000 almost immediately, because what occurred is that you had to get a battery of lawyers to determine if this thing occurred, what is the liability to those who are providing the information. So, we had about five or six and when we got to about $5 billion we felt that that was not a good use of taxpayers' money and therefore we sought to correct it. So, I am not arguing with that, I am just putting that on the Table.

In the context of depositors there is deposit insurance and those who talk about $500,000 really need to understand one element of all of this: Who is paying for all of this? This is really a pool of funds and somebody has to pay and what you are trying to do is you try to give the best benefit for the lowest cost. Quite recently, I think, we moved the individual limit and what it basically says is that an individual as a depositor in any one institution, in any one deposit—I think it is—if you make more than one deposit I think it is $75,000 per deposit, but that is simply an addition to some of the other things that you have within the system. So that who is looking after the depositors? There is a whole regime of law that basically deals with that.

A lot was said about the Home Mortgage Bank. One of the things that I am very careful about with financial legislation is not to change it in the Parliament. We agreed on the last occasion when we sought to change the Home Mortgage Bank Act on the floor of the Parliament that we would make an amendment that we thought was appropriate because we wanted to ensure—so we thought—that somebody was going to be responsible for regulating this activity. So what we basically did was say, let us put them under the Central Bank. Well, the impact of doing that was to render the entire organization the next day, and all its directors, in a liability situation that we never contemplated. Because when you got the legal

people to sit down and look at what we did we had to come and reverse it because it just could not work, and therefore what we thought we were doing as it related to that particular thing could not be done in the manner in which we had suggested.

Therefore, in making changes to financial regulations one always needs to be aware of the fact that there are consequences for changes and it is not only in this Act that those changes occur, but sometimes they occur in other legislation as well and we need to be able to understand how those things flow through the system before you change some of those things, because those things are properly thought out and our people spend a lot of time looking at that. I just wanted to make that point as well.

High inflation rate, non-energy deficit as a function of the policy of the Government, reason for changes; those are issues we could deal with but in the context of this debate as it relates to the Financial Institutions Bill. I think the point was already made that the Governor, as it relates to monetary policies, is independent. The Constitution, the law gives the Minister of Finance responsibility for the economy; in that context therefore there is a mechanism in which the thing works. The person who has final responsibility for some of those decisions is the Minister of Finance and not the Governor of the Central Bank, and therefore one has to be clear as to who is held accountable to the people of Trinidad and Tobago, and as far as I am aware, that is still the Minister of Finance or the Government and therefore until we change those relationships then that is how that is.

There was an expression, I think it was by Sen. Oudit, about three things really. The first one had to do with exemptions, the second had to do with lack of accountability and the third had to do with projects without cost benefit analysis. I am not aware—and maybe there is—of any project that the Government has ever undertaken in which the Government did not have a reason for doing it and there are a number of reasons. Sometimes it has to do with social infrastructure, sometimes it has to do with a promise made by the Government as it relates to a particular activity and sometimes it has to do with a particular objective that we have as it relates to moving or doing something differently.

8.00 p.m.

You see, all government projects and the things that you do, are really not based only on commercial terms. If they were, then many of the things that we have done and the manner in which we have done it, really would not have

happened. So when you look at government projects and the manner in which certain things are done, some of the questions you have to ask, will include things like: Is the majority of people benefiting from this particular activity?

Let us take for example a typical one right now, the subsidy on petroleum products. There are those who will say that that distorts the economics, and therefore, it should not happen. There are those who will say that looking at unemployment and basically focusing on unemployment as an objective, is not a good thing.

Sen. Dr. Charles: Just like Mariano Browne. He is one.

Sen. The Hon. C. Enill: Well, whoever it is could speak for themselves. But the fact of the matter is that sometimes the Government takes a particular policy decision and does it, because it recognizes a particular need and it must deal with that need. And there are those in our society who have a different view. That is okay.

Sen. Rahman asked a very important question and I will like to relate to that because he says, "How does this help the small man"? How does it help the small one? Well, in a sense what it is doing, it is ensuring that the small man when he believes that if he interacts with this particular institution, the institution will be faithful to him and will return to him that which he has deposited or will treat with him in a particular way, he therefore is helped because the Government has an intervention mechanism that allows him to make sure that those individuals who are charged with the governance do not make it smaller than it is, but in fact try to keep it safe.

Sometimes in asking the question, the intervention that you are looking for is in the wrong sector. So for example, you talked about the people at the lowest levels having to pay the highest rates. Yes, that is so, but there are alternatives available. Because one of the alternatives available for people at the other level, is of course, the mechanism of the credit union system. What does the credit union system do? It takes a number of people of similar means; they pool their resources and lend it to one another. That is the basic philosophy. The difference between that philosophy and the banking sector philosophy is a set of depositors take their resources and lend it to a set of discrete or desperate people. So that in a sense, if that is all the credit union does, I am not sure why you would want to put the same kind of stringency in the context of regulation that you will have where it is a closed system—it is only a few people getting involved—in one in which

you have a different system. So sometimes when we talk to some of these issues, it is difficult to follow the discussion because sometimes we are using the systems in an interconnected way and the system really does not work that way.

I think that in some instances we need to be very clear about whom we are targeting; what descriptions we are in fact applying to particular sectors; understanding the dynamics of the sector; and how it will work within the context of some principles, the principle of transparency and the principle of accountability. But in different sectors those will take on a different kind of relationship.

Mr. President, I just thought that I will make those few interventions— [*Interruption*]

Sen. Mark: May I just engage my colleague by asking him, whether it is the intention of the Government to transform the toothless and harmless Financial Services Ombudsman into a real biting animal, so that the investigative powers, its determination to grant awards to aggrieved consumers could in fact realize an organization with the appropriate legal authority within the shortest possible time frame? I was wondering whether we could not incorporate it in this measure that we are now debating, because I really feel that we need a strong legal institution to provide some kind of mechanism to protect the consumer.

Sen. The Hon. C. Enill: Mr. President, I hear what the Senator is saying. I think that when we contemplated the Ombudsman, it really had a different focus. It had a focus where the companies that were involved in the industry would subject themselves to the decisions of the Ombudsman in matters that came to his or her attention and that they resolved. Now, I must confess that I did not look at the results to determine if there is a requirement for any further action, but I do not know if the Government has any difficulty in strengthening any provision that allows those organizations or those individuals to be able to have more power to investigate if that is where the investigation lies. Because the Central Bank by itself also has individuals who have the powers to investigate and to make reports to the inspector and he will take action as it relates to the practices, the policies, and some of those kinds of things.

In fact, if you look at the administrative report of the Central Bank, you will see where the Central Bank is one of those institutions that does not only stay in-house, it actually goes out and investigates on your premises to make sure that the things are happening. So that, it is a matter that the Government will look at, but

at this point in time I am not sure that we have looked at it. Certainly, I have not; I do not know if the Minister of Finance has. I certainly do not know whether there is any intention at this point in time to strengthen that.

So Mr. President, there may be the need to have some amendments. I would ask the Senate to let us look at it and see where we can in fact strengthen the legislation and get this one out of the way because in the current circumstances as we see it, I think this particular piece of legislation when enacted will allow the Central Bank and its agencies the ability to continue to assist us in having a financial sector that obviously will be able to weather the storm as we see it in the next few months.

And so, Mr. President, I want to thank hon. Senators. [*Desk thumping*]

Sen. Dr. Carson Charles: Thank you very much, Mr. President. I rise to make a few comments on the legislation before us and to say at the outset that I will not be going clause by clause.

I just propose to make a few comments in respect of the basic concept if you like to choose, taking perhaps from the Minister of Planning, Housing and the Environment, a philosophical approach to the matter. It seems as if basically there are two reasons why the Government is prompted to bring this matter to a head now, if you like, after six or seven years. One has to do with the interest in the establishment of the International Financial Centre clearly, because Government intends to update this financial legislation as far as the infrastructure required for supporting it and I have to assume that, that is one reason. I imagine that it is prompted to do it now; and the other reason I also imagine has to do with the international economic environment within which we operate today. I want to say that like my colleagues, and perhaps like Senators generally, I believe I support the legislation.

We intend to support it, subject to a number of amendments which would be proposed—Sen. Mark has already proposed some—and subject to these amendments which we would like to argue for at the committee stage, we propose to support the legislation. But I want to also say that although it is legislation worthy of support, the Government really in my opinion is wrong on both counts in respect of the IFC issue and in respect to the extent to which this will protect or assist us in any way in the international environment that we are in. I believe that is wrong on both counts and if those are the reasons for bringing this to a head now, then I do not think that the Government is on the right track at all, which does not mean that it is bad legislation. The decision stands on its own and in my

opinion it is important to regulate our financial sector and the Government has already said that this is just one of the instruments which it is putting forward to regulate the financial sector. There are others which will govern other aspects of it.

When ITL crashed many, many, many moons ago, there was nothing in place to prevent it from crashing and when Workers Bank went down and we had a—I had a front seat at that time when Workers Bank went down and all kinds of things happened. The Government intervened and eventually we had FCB out of it. Again there was nothing to prevent it and when the Hindu Credit Union went down, there was nothing to prevent it, so perhaps we are constantly closing the stable doors after all the horses have bolted.

I do not know if we should not be closing another door right now because I am not sure if this is the right door we are closing. The door needs to be closed I agree, but I suspect that there are some other doors elsewhere that we really need to close and we are not closing. We should have closed the credit union doors sometime ago by the way. One horse has already bolted and there may be other doors that we should be closing and I suspect that you are closing a door that nobody is really trying to bolt from in that particular stable. There are other issues in that stable completely different from this particular one.

Mr. President, the issue of the International Financial Centre is something which is one of the issues giving impetus to the Government bringing this Bill here. The International Financial Centre is 'pie in the sky'; it is not something that is practical. It is not practical because all of us know there are ingredients that go towards making us a suitable candidate for the International Financial Centre, not just the desire to have it. Anyone desiring to be the seat of the FTA and so on, the desire is fine and I commend those who have lofty ideas and would like to see us at the centre of things and so on. I have no problem with that, that is great, but it is 'pie in the sky'. You cannot have an International Financial Centre if you have to run in a couple feet of water every time the rain drips. You cannot be serious, if you believe that you are serious. You put the infrastructure in place and there are all kinds of other things that you cannot attend to and you have no sense of urgency about it.

I am amazed. It blows my mind that they show no sense of urgency about these things. It is just routine, every day rain falls, we flood, we walk in the water in Port of Spain or we swim in town and who is going to believe that you are really trying to establish an International Financial Centre in this same capital city when that happens? It really gets to the credibility issue. It gets to the

creditability issue all the time, so that nobody believes that this law will be an important plank in establishing an International Financial Centre, although it is important, yes, if you want to establish an International Financial Centre because I do not see the other planks even being cut from the forest, far less fashioned and put in place. And that is a creditability issue I really have a problem with.

8.15 p.m.

I do not even want to talk about the other aspects of international financial centre, I just want to give some examples I do not want to speak until the morning.

Mr. President, the other aspect of it however, which is the world economic environment that we are in now, and I wondered when the Minister of Planning, Housing and the Environment was speaking, whether she was going to go to the logical conclusion that perhaps the crisis is one of the capitalist system as we know it, and not one of the subprime mortgage market, or any particular area because there will be fissures all over the place, if it does not crack here it will crack somewhere else. That is the reality.

The entire system is in jeopardy and there are changes taking place in it and this has been going on for quite sometime. Back when the iron curtain fell and there was this great over confidence in the system of capitalism that developed, it was obvious even at that stage that the failure of one did not mean there was some great victory of the other. We have imperfect systems that we are trying to work with and the capital system taps into basic human greed, but the enterprise system has to manage human greed, we have to tackle it because that is what drives the entire system.

It is the desire of each person to have all kinds of things: to have the good life; to have tomorrow's products today: to live on credit. I am sure the Minister of Planning, Housing and the Environment would reflect on my contribution when I thought I had walked into a "jack Spaniard" nest when I made my contribution on housing some time ago. I thought Senators did not get my point which was, if you have poor people who could not afford mortgages, you should really design a product for them like cheap houses or starter units rather than trying to design a mortgage system for them. If you design a mortgage system for them, they are poor people, some do not have regular jobs, and they actually fudge it all on the paper and pretend they have all these things that are required to get the house.

What you ought to be doing is trying to design a really cheap alternative that they can actually afford in real life, but you have your product on the market and instead you design a mortgage system for them which allows them to access

mortgages that they cannot afford and which goes to the next generation and so forth. I wonder when you go in that direction if you do not see the connection between that model and the one which just cracked and crashed, which is, people living on tomorrow's money.

It is a natural thing; we all want to get what we can afford tomorrow, today. You only have so many years on the earth and why can you not enjoy the beautiful things right now that perhaps you can work for over the rest of your lifetime. All of us think that way and we therefore need to borrow, we want to have things. The majority of people cannot afford the things they want to enjoy now on the income they are earning now, or they have earned in the past, they need to use the future income to enjoy the things now, so they borrow and the capital system works on the basis that people need to borrow and get things to enjoy life.

Everybody wants to enjoy the good life because that is what is promoted in this system we live in and there are countless things all over the place telling you about the good life, for example, "The Suite life of Zack and Cody", for those who watch television with their children. There are all kinds of things telling the young ones what the good life is, so everyone is trying to live the good life even from small. Therefore, the whole system is heading in one direction and those who are able to manipulate the system are able to create wealth out of nothing really, and money which is supposed to be a medium, instead become a commodity.

So instead of using money to buy goods, we have to use it to buy money. Once you start using money to buy money and you are trading in money it was perhaps inevitable that you would have a problem along the way, and we have a problem. I do not know if it is going to be solved by trying to pass these bits of—[*Interruption*] Well that is the solution they have found because what else are they going to do? They actually have no solution. So the problem is caused by living on tomorrow's money and they take more of tomorrow's money and put into it to solve the problem.

Until someone finds some other solution, that is the one they are going to use, which is to put more and more and hope it will all go away. All of the experts—and I know we have a local expert here, our Prime Minister said it will all go away by year 2010. As Prime Minister he gives us that assurance, I suppose, and maybe it will, I am not a guru, so I do not know if it will go away by 2010, but it seems to me that the experts themselves do not know when it will go away. If the experts are now discovering that America was in recession since December 2007 and it is now discovering that in December 2008, I would like to understand how they can tell us it will go away in 2010 or not.

Sen. Dr. Dick-Forde: In order to decide you are in a recession you are supposed to have two consecutive quarters of decline and it is not something that you rush, like how there are pundits saying that we are in a recession, or we will be, you are not supposed to say it so soon because you will actually throw yourself into it.

Sen. Dr. C. Charles: Thank you very much, hon. Minister. We are not supposed to have people shouting at the top of their heads that we are in a recession, and people are shouting at the top of their heads that we are going to end it in 2010. I agree with you. I do not think that is what you are supposed to do. So my point is that you are not supposed to declare these things off the top of your hat. I agree with you fully. The point is well made.

If we shoot from the hip—that is figuratively—that is one thing, when the Prime Minister, or the Minister of Finance for example—in that field you cannot afford to do these things. [*Interruption*] Thank you very much, and therefore, you should advise your honourable senior likewise.

Mr. President, I am making the point that the international financial system is one of the systems which has failed to contain itself because of overconfidence in its beauty and infallibility, perhaps brought about by the fact that its competitor system crashed so many years ago and in the absence of any other pole, people think that their pole is the only good one; there is no other. That is human nature, that is how people see things. Look around and there is no other so it is overconfidence. The system is perfect, it works; all you have to do is tinker now and then and everything will work itself out, every crisis will resolve itself and so forth and that overconfidence meant that no one was trying to look for a better way or system, they were just working with the system they had.

The system has been in crisis for the longest while with rich people becoming richer, wealthy people becoming obscenely wealthy and poor people in the world becoming poorer and poorer every day. The statistics are there showing poverty with the world generating wealth at a fantastic rate, yet the poverty is spreading across the globe, deepening, expanding everywhere even in wealthy countries and, therefore, there must be something wrong with the system that does that.

If you look at the result of the system, the product of it, something is wrong with the system, but if you are just seeing within your own narrow circles and you have on your blinkers you will not see anything else, you will think that something is wrong with people, perhaps the people of the world, not with your perfect system, and this is what has happened.

I do not know if our tinkering here with these things—these doors that we are closing in stables where there is nothing happening—I do not know if these things are really going to be able to address the bigger systemic issue, but we will support it because on its own it is something beneficial, but we should not think that by doing that we are in fact really addressing the bigger issue. What can we do with the bigger issue which has prompted us to come forward with this and have so much confidence in it? It is nice and thick and fat and that tends to make people feel confident, but I am not going down that road, I am just saying that people feel confident when they see these big, voluminous documents.

I really rise to caution us not to get carried away with the beauty of our own production here, this nice big Bill that is supposed to control the financial sector and stake off all the—who are better at producing colourful documents than the Government of the day, the People's National Movement? Are you cutting back on advertising by the way? You are cutting back on all kinds of things; do not cut back on housing. I have serious problems with the housing programme only from the perspective of the poor for whom I think you should really design a product.

Sen. Dr. Dick-Forde: It is not normal for me to keep interrupting people so thanks for giving way. We are not cutting back on housing; the Prime Minister said we are not doing new developments. It is not new houses, we have 14,000 plus houses that we need to complete and we will be explaining that shortly. What we are actually doing is helping people to get houses faster.

Sen. Dr. C. Charles: I will be leaving you to build houses, just design a product because what you have does not cater for the very poor. That is my point. I am glad also to see that there was a statement made that people who are buying land for housing will in fact get the tax break, a point that we made before. I think the days when you had to voter pad with your houses have gone now because those were the first batch of houses, but you were not the Minister then. You had to address that issue with the first batch of houses, perhaps you do not have to address it these days so you can actually produce things for the poor and keep the construction sector going rather than rely on the mega things.

The problem is really with the big mega projects. You cannot be still intent on building the tsunami shelter? It blows my mind, I do not get it. We are responding to the problem we have and we are going full speed into the tsunami centre, that is the Brian Lara Cricket Stadium long after the World Cup has gone. I do not understand why you cannot scale that back. Does it create employment, does it generate economic activity?

If you are really responding to the international crisis and our own situation, I do not get that. I thought you would want to build some hospitals because that is important even in a crisis and the really bad things to do would be the pet projects that look big and nice, but take huge amounts of money for one project.

The reason I am making this point is that I think to address the issue of economic security in the midst of this turbulence, you have to go back to fundamentals. This Bill is good, it is a fundamental thing but there are other aspects you have to address that are fundamental because you do not know how the wind is going to blow. What are the fundamentals? Spending money efficiently on the right things, spending it on the productive things and producing the basic things required for human sustenance. You find money in a crisis to provide food, you have to, because you do not know what is going to happen in that area when the world goes into a recession in a serious way. Do you think it means the price of food is just going to fall? Why do you think you are just going to have a fall in the price of food if there is a scarcity, a shift in energy policy and we are going to use more and more food, corn for example to produce fuel? Why do you think the prices are going to go down? You shift and focus on the fundamentals in terms of what we require to sustain ourselves. That is my comment on that aspect of it which has to do with the international environment. I do not want to go on very long on it but this Bill as a response to that, I do not think this will help us in that aspect; what will help us is spending the money on productive things.

8.30 p.m.

Now more than any time ever would be the time to redirect the programmes that you have out there that you know you are spending money just for social things but not producing anything, and to keep the social benefit but put the people to productive use. Now more than any other time would be the time for that. When else would you take your hordes of CEPEP workers and put them to productive use, but now? When? Is this going to save us if you have them out there still doing the same thing on the side of the road?

It is this insistence on pushing to the extreme, continuing in the face of all evidence to the contrary; all evidence that says you should be going in another direction but you insist. It is that which is part also of the international crisis; the insistence on pursuing a particular path. We are falling in the trap here, of

continuing on the same path. We are going to regulate everybody else except the Government; we are going to regulate everybody else except the biggest player in the financial system, and the biggest player, which is the Government, is the most indisciplined player; that is the player doing all the wrong things.

The Central Bank Governor is screaming—okay, you say if he is screaming and the Government is not taking him on and they are not stopping him from screaming, that means he is independent. I think that was the point that was being made. He is screaming, "Please, do not do what you are doing; you are mashing up the economy". You are not taking him on, which is your right. I would like to advise the Government that that could only be said in a country that is a developing country. In any country, the kind that we aspire to, from your own words, which is a developed country, you cannot imagine an official who is appointed through due process to be the manager of the Central Bank, which means he has a particular kind of function in the country, to be saying one thing and the Government ignores him and simply says: "It is our right to ignore him; we have the authority to ignore him; the buck stops with us; we have the final say." And that is enough of an explanation as to why they ignore him.

Do you think that could happen in a developed country? Do you think in the United States of America, Barack Obama, with all his new mandate and so on, can simply go out there and make a statement and say: "I have the authority to make this statement", even though the person who has been appointed to be the adviser in this field, or is recognized as the expert in that field, or has a particular responsibility in this area, says something completely different, and I can just go ahead merrily along my way and do what I am doing? You cannot do that.

So it is not a matter simply of what—

Sen. Dr. Dick-Forde: Why did Colin Powell leave the Bush administration?

Sen. Dr. C. Charles: I do not want to go into American politics in any detail; I am making a completely different point.

Sen. Dr. Dick-Forde: You said developed countries versus us.

Sen. Dr. C. Charles: Well, of course, you can have a different opinion and when you have a different opinion to the person who is a particular individual looked up to, there is a high price to pay, but it is not enough to simply say, "It is my decision to make". I am saying that is not good enough. I am saying if you have raging inflation in the country, you cannot simply say, "it is my decision to make

so I am making it and I am doing this when the Central Bank Governor is saying that if you do not stop, or curb or change your spending profile, that inflation will continue to rise." That is what I am saying.

That is underdeveloped country thinking; that is backward country thinking, when you can say that and believe you ought to get away with it, and that is what I am pointing out.

You see, my role here, Mr. President, I think is partly to tell the PNM that they can be better at this business of government. Even though I think that there is a limit to what they can really do—I always tell you I am an optimist—I really believe you can do better even though things are so bad. [*Interruption*] No, no; things are bad, on the right side, like Rowley side. [*Interruption*] You want to cut my throat slowly and quietly. [*Laughter*]

Sen. Dr. Saith: You want it on Jack side? [*Laughter*]

Sen. Dr. C. Charles: I did not know Jack had a side. I thought he was the Deputy Leader of the United National Congress. I did not know he had a side; a football side or something? Do not get carried away with these things. Do not get the wrong impression, you know. Fighting is important but people must have a fair way of fight, but fighting is important. Human nature—the same thing about the drive and the free enterprise system and so on, is all the energy that comes out and people get things done; they achieve a lot of things that way if you know how to manage it.

Anyway, my point is that all this is wonderful but you are regulating everybody except the bully on the field. The one who needs regulating you are not regulating. And how are you going to regulate him? Well, self-regulation is what is required, because the only people who can regulate the government are the electorate. Therefore, since the electorate does not have an instrument to regulate the Government, because we are a developing country—and I mean that in the sense that because of our state, when you get to vote for the Government once every five years, you really get almost no say after that for the next five years, which is not how democracy is supposed to work. You are supposed to have a say all the way through and people do not even think they have a say so they do not even bother to say. That is the sad condition. They do not think they really have a say; they do not think they have any power so therefore they do not exercise any power. Therefore, you have to regulate yourselves. Therefore, please regulate yourselves in the same way that you intend to regulate the financial institutions, please regulate the Government as the biggest financial institution in the country and do the things that you are asking the private financial institutions to do.

That is what I am asking the Government to do. Please do these things yourself; please regulate yourself and hold yourself up to the same standards that you seek to hold these financial institutions up to. That is the problem. If you do that, then we have a chance. Since you are the biggest player, if you do not deal with the issue of Government spending as a cause of inflation, then we cannot fight inflation. Since you are the biggest player, if you do not deal with Government corruption; the corruption in the Government sector which is not pointing at any particular Minister, but it is corruption in the State sector, or the issue of interlocking directorates in the State sector; if you do not deal with those issues, it is not enough to deal with those issues in this sector, because the Government is not a small player in this country.

In fact, the economy is right now being propped up by Government spending. That is why we are not going into recession, because the Government is propping up the economy. Remember I never told you to stop spending, you know. I said stop spending wastefully. I never told you to stop CEPEP; I said put them to do productive work, which should be the easiest thing. If you do not have people who can show them what to do, I am sure I could advise you, I could tell you of some people who could help you. [*Interruption*] You can put people to work productively, not only in CEPEP or in URP and so on; in every sector you have to put people to work. You think it is only URP and CEPEP people who do not do productive things with their time. Lots of people do not do productive things with some of their time in the State sector. You have got to put people to work, and if the Government can do that, the Government can deal with the issues of corruption and accountability in its own sector; if the Government can listen to the Central Bank Governor, and not only ask these people to listen to the Central Bank Governor, we would be getting somewhere.

If the Government can decide to do a rapid rail project and for once observe the right standards that you are required to observe, which is to have a feasibility study before you spend all your hundreds of millions—I do not buy this thing about spending $300 million to get a feasibility study; I do not buy that. I do not buy it! Where did you get that from? If we had to go and borrow the money from the IADB, as we used to have to do in the old days when we did not have all this wealth—

Mr. President: Senator, I do not know about anybody else here, but it is getting late and I am getting very tired. Either talk about this Bill or sit down.

Sen. Dr. C. Charles: Thank you, Mr. President. I am going to speak about this Bill. My point on this Bill is that it is an excellent Bill and it sets certain standards for the private financial institutions. I support the intention of the Government to regulate the financial institutions by these mechanisms, and although I would not continue the point, I was merely saying that I would like the Government as a big player to also observe these standards. That was my point. I think the Government got my point. Whether they wish to act on it or not, it is their call.

With respect to a number of the specific matters that were raised, of the power of the Inspector and so on, this is all a matter of recognizing that what we are producing is not perfect. Despite the fact that you take six or seven years, it is not perfect. Therefore we have to be careful with the tendency to fix things by giving somebody a really big hammer, because that is what you are doing. You appoint an individual and you give him tremendous power and you set very high fines, very high penalties and you are trying to fix things that way.

I think we have to be a bit more moderate in terms of how we seek to fix things. Perhaps the best thing about it is the fact that, as Sen. Prof. Deosaran pointed out, you have a provision whereby the Governor can, in a sense, warn someone and get someone to behave appropriately without taking it all the way to have that person charged and dragged before the courts, which will take forever, in any event. You will get all tied up in the court system if you had to go that way, because people would defend themselves.

So that, perhaps, is a good model that you should look at for other aspects of managing corporate behaviour and even managing behaviour in other aspects of civil life whereby people can, in fact, be brought back in line without having to be charged and taken through the full judicial system.

But I am making the point that you have to be a little careful with the attempt to solve a problem by bringing in the really big hammer and giving a man the hammer in his hand to use to control everything. We tend to feel that the only way to control deviance is with really big fines and long jail terms and that, I do not think, is necessarily the way to deal with deviants.

With respect to the institutions which are excluded, I have not heard an explanation from the Government. I understand the point about other agencies like credit unions and so on, having their own controlling legislation and you do not need to have them included here, but with respect to why you have the Unit Trust outside of it, I have not heard an explanation for that.

Sen. Enill: They have their own legislation.

Sen. Dr. C. Charles: Which is adequate in terms of the extent to which this goes?

Sen. Dr. Saith: Sure, man.

Sen. Dr. C. Charles: I do not think so. I mean there was a time when Unit Trust, because of how it was established and what it was established for, we could see it as being outside of the regular financial institutions, because you were trying to achieve something with it, a particular sort of socio-economic transformational goal. I could understand that. You have to say whether that is still the case. Is Unit Trust still doing that? Do you still need them to be treated in some special way to achieve that? You at least owe us that explanation, which would be a reason you do not have to include them as a regular financial institution.

I am being advised that Unit Trust was originally part of the Third Schedule so you are actually taking them out. So I think we need an explanation for that, as to whether there is some particular reason for that. Similarly, with the others, Home Mortgage Bank and so on, whether there is a particular reason for leaving those out, if they serve some kind of transformational purpose as well, which I rather doubt is the case. It may be that those are simply oversights or things that you should not have done that you wish to correct. So I support the proposal to reconsider that.

The other points made, I do not think I want to repeat what Sen. Mark said, but I want to lend my support to a number of the other issues which I think the Government should not have too much difficulty with flexing to, like advertising in two newspapers and so on. Surely you like the other newspapers as well—[*Interruption*] You do not like them? You have no problem with that. The fight against monopolistic behaviour, that is something we would like to promote. I would like to support those and so on.

So like I said, my main point really of joining the debate, is not so much to go into the details of this Bill because I think the experts have had their say. You have had some consultations and people at least had the opportunity for consultations, even if they do not always participate in consultations, but people had some opportunity. It is a pity that a Bill of this size could not have come to a committee of the Parliament because that is where we really have to look at the function of the Parliament, the way the Parliament works, and when you have things of this size, whether you should not automatically have some structure whereby something like this goes to a committee of the Parliament

8.45 p.m.

When you take this to Cabinet it is not circulated several days in advance and on a Cabinet morning you meet and go through and say pass. It does not work that way. I am sure that this goes to a Cabinet committee and is considered in some detail. In spite of all the consultations you may have had, it goes to a Cabinet committee and is assessed in detail. People get a chance to ask questions and answer. When you come to Parliament, in the same way you ought to have a system whereby something of this size, import and seriousness goes to a committee where it can be looked at in detail; questions can be asked; some discussion can take place and we can find what we missed out and put them in before we come back to a full debate. That is something at which we should look. Whether or not you refer it today is another question, but as a matter of principle I believe that perhaps is the real point about it.

I will not go into detail with these clauses. I will say simply that it is welcome legislation subject to the various things which have been pointed out and which I am sure that the Government would like to address at committee stage, subject to the fact also that you bear in mind that it would all be for naught, if the Government does not take its advice which it is giving to private financial institutions. If it does not listen to the advice of the Governor of the Central Bank even though they expect everybody to listen to him, then it would all be for naught.

With that, once again I support my colleague with his amendments here and I look forward to the discussion at the committee stage.

Thank you.

Sen. Gail Merhair: Mr. President, I rise to make a contribution to the debate on the Bill to provide for the regulation of banks and other financial institutions which engage in the business of banking and business of a financial nature, for matters incidental and related thereto and for the repeal of the Financial Institutions Act, 1993. I stand here today not only as an Independent Senator, but also as an aggrieved citizen of Trinidad and Tobago, demonstrating my frustration at a level of malaise that has been allowed to flourish for far too long. Our financial institutions are relatively strong, but certain cracks have been allowed over the period of time that I think should have been addressed long before now.

In this debate, I wish to address the supervision of the financial institutions, confidentiality, security of deposits and the character of individuals in charge of

financial institutions. I am upset sometimes when I reflect on what has happened before in Trinidad and Tobago in terms of 1983 and 1994 where many people lost money in what we had known then as the Pyramid scheme, where everybody was trying to get quick money. Many people lost their money.

I reflect again on the crisis of 1986, when institutions failed due to weak internal controls and excessive exposure to the real estate market. In the same year, 1986, the Central Bank Act and the Financial Institutions (Non Banking) Act had to confer special emergency powers to intervene in financial institutions to protect the interest of depositors and creditors. Because of this, the Deposit Insurance Corporation as a subsidiary of the banking sector was established. In 1986, the Central Bank had to close five non-financial institutions. The Central Bank was also called upon in 1986 to intervene in the Trinidad Co-operative Bank and in 1989 in the Workers' Bank of Trinidad and Tobago.

In 1983, the Central Bank moved to merge three indigenous banks, the National Commercial Bank; the Workers' Bank and the Trinidad Co-operative Bank to form what is known today as the First Citizens Bank. These actions were designed to avoid losses for depositors and forestall systemic problems in the banking system. The history is there, hon. Senators, as far as what has transpired before.

I will place emphasis on one issue that is not addressed directly in this Bill. I cannot in good conscience sit here today, hon. Senators, if you would permit me to deal with the matter of the credit unions. I urge the Government in the interest of the people of Trinidad and Tobago to bring legislation early in the new year to deal with the credit unions. Within recent times we have seen the Hindu Credit Union has had people lose their life savings because of what transpired. I understand what the hon. Minister of Energy and Energy Industries said in terms of the credit unions. It falls under the purview of the cooperative movement of Trinidad and Tobago and not under this Bill.

When you look at the Preamble of the Bill it says, other financial institutions which engage in the business of banking and business of a financial nature. I wonder what the credit unions do. As the hon. Minister of Energy and Energy Industries said, they are supposed to come together to help the more vulnerable persons in society to come together to borrow, lend and save money. We have had incidents which were reported in the newspapers that members of the credit union had Costa Rican people or business people who were not members of the institution borrowing money. How was this allowed to happen?

I am amazed from having to look at the history of the Hindu Credit Union. My hon. colleague, Sen. Prof. Ramesh Deosaran, spoke about white collar crimes. How did this same individual, the president of this financial institution march along the length and breadth of Trinidad and Tobago trying to fight crime? He went to Piarco International Airport with a big march and he is the perpetrator of white collar crime against innocent citizens of Trinidad and Tobago. This is not supposed to happen if we are to protect the more vulnerable and the people who have invested their money in Trinidad and Tobago.

I am urging the Government and Senators to bring legislation quickly in the new year so that we can protect these individuals in the credit union. This is not supposed to happen. As a matter of fact, I am so passionate about this issue, I think these people should be jailed! They should be locked up! We need to clear some area in Golden Grove. They want to pretend to be entrepreneurs and open all kinds of institutions and have the spirit of entrepreneurship. Well, perhaps—the hon. Minister of Agriculture, Land and Marine Resources is not here—a suggestion I can pose to him is that we can clear a piece of land and let them start to plant on it, so that we could help with the inflation. They need to be locked up and put to productive work not taking people's money. That is wrong.

Certain members of this country were disadvantaged. This is not supposed to happen at any time. I will not go into the history of the number of complaints that have been filed against this credit union and the amount of money that has to be recovered and everything that has happened. Everybody in this Senate—it is quite late in the evening. I know that many of you know what has transpired. It was in all the news. I will not go into the amount of money that was lost by these innocent persons of our society whom I consider to be the more vulnerable people.

The Second Schedule states:

> "Every person who is, or is to be a director, controlling shareholder, significant shareholder, acquirer or officer of the licensee must be a fit and proper person to hold the particular position which he holds or is to hold."

Then, these people should not be even walking about in Trinidad and Tobago.

Clause 2 of the said Schedule states:

> "In determining whether an individual is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgment for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfill these responsibilities and to whether the interests of depositors or potential depositors of the licensee are, or are likely to be, in any way threatened by his holding that position."

As my hon. colleague, Sen. Prof. Ramesh Deosaran said, white collar crime is a crime just as if somebody puts a gun to one's head. It is only when we begin to treat criminals regardless of class or where they fall in society, we would make the first step towards dealing with the criminal elements in our society. When a thug puts a gun to your head; robs you of $15 and gets 15 years in jail, how can there be sympathy for somebody who fleeces someone's life savings? I agree with what is mentioned in this Financial Institutions Bill. If anybody perpetrates against someone in terms of their life savings and money, then they should feel the full brunt of the law. I am not advocating by any means, drastic measures. Regulations must be tempered with the fact that we live in a market economy. The authorities would be well advised to take all the necessary precautionary measures, as recent selective citizens search for quick justice in terms of what is transpiring.

The Bill is strong and I congratulate the Government in its desire to ensure that our financial services sector is sufficiently regulated to prevent any systemic collapse and to guarantee that depositors, shareholders and investors are protected by guidelines that provide for free and fair trading. I agree with the intent and direction of this Bill. It provides a framework for us moving forward and taking our rightful place.

Be that as it may, I want the Government to take note that whatever we are doing in terms of this Financial Institutions Bill we must do so not with haste but we should take our time especially with all the indicators that are happening on the international market. What we put in position we should ensure that we are solid, strong and can overcome any challenges that come to us as a nation. After all, we are protecting the integrity of our country.

Clause 8 of the Bill provides for confidentiality of information that is obtained by the Central Bank and it seeks to strengthen sections 35 and 36 of the Financial Institutions Act, 1993. While this is a positive step, more work should be regarded in terms of the confidentiality of information to ensure that it would not seep through to the public domain. I know of three former members of Parliament who sat in this honourable House and in the other place and became embroiled in political battles and had their private information in the public domain. We need to put all the information in this Bill to ensure that the confidentiality clause remains intact.

Clauses 33, 34 and 35 dealt with the fitness and propriety of directors and officers of licensed financial institutions. I cannot stress the need for these clauses

in a world where scrupulous individuals who tend to retire from time to time and reside are just waiting to pounce on individuals for any reason.

I welcome the move to restrict the credit exposure of financial institutions contained in clauses 41 to 45.

Clause 46 poses some problems for me in that it provides for the prior approval of the Central Bank if a licensee is to invest in establishing a subsidiary at home or abroad. I would like the Government to indicate the time frame for the granting of permission, hoping that it would not impact negatively on people wanting to do business or subsequent transactions with Trinidad and Tobago.

Clause 51 provides for prior notification of the Inspector of Financial Institutions when a licensed financial institution wishes to offer a new product. While I agree with the intent, I feel that this might be a bit restrictive since we are operating in an open market economy. The Inspector of Financial Institutions should play a more proactive role in monitoring the services offered rather than having it approve products for offer.

9.00 p.m.

One word of caution, I am aware that the establishment of the International Financial Centre here in Trinidad and Tobago is premised on proper and adequate regulation of the sector, but again, I urge the Government to go cautiously in this venture and perhaps we may take some time off on somber reflection before we go ahead.

In terms of excessive regulation—I heard many of my colleagues talk about excessive regulation, such as excessive taxation—it tends to send the wrong signal to the business industry and may even weaken and kill it. If the financial sector is supposed to be vibrant, and you put very strong legislation, one may think that excessive legislation may pose an opposite effect in terms of making you competitive and in terms of people wanting to operate in a free jurisdiction in terms of capital.

So, I think that Government needs to find a balance in terms of protecting our citizens and encouraging economic prosperity. In terms of trade and development, it is my wish that the Government continues to involve all stakeholders in their consultation to make sure that we achieve that balance.

I wish the Government well in bringing this Bill forward and hope that it will be done in the interest of the people of Trinidad and Tobago.

Sen. Dr. Jennifer Kernahan: Mr. President, thank you for giving me the opportunity to make a small contribution to this Financial Institutions Bill.

We are debating this Bill in the context of a confirmed economic recession in the United States. It is a serious situation because they have announced job losses of over 400,000 for October alone and they are projecting a major slowdown in demand for goods and services.

This is important to us because over 35 per cent of our products go to the United States, including products from the energy sector on which we are very dependent—urea, methanol, LNG and so on—as well as manufactured goods. The recession in the United States has serious implications for our projected growth.

Mr. President: Hon. Senators, I am advised that dinner is available in the tea room. We are not going to break, so you may just filter out, but please make sure we have a quorum.

Sen. Dr. J. Kernahan: This confirmed recession has serious implications for our projected growth of 2.5 per cent in 2009. What is happening is that the thrust of the debate globally and in the United States in particular—people are trying to come to terms with the causes—is that the international financial meltdown was due to a lack of regulation. Maybe that is why we in Trinidad and Tobago and, in particular, the Minister of Finance are so happy to appear to be proactive in bringing the Bill to Parliament at this time. The administration is hoping that somehow bringing these regulations would protect us from the contagion of recession in the international environment.

There is also a school of thought—it came surprisingly enough from some of the most rabid, conservative elements on the talk shows, the political fora internationally, MSNBC, Fox and so on—this recognition, in the midst of the meltdown, that the capitalist system is based on greed, fear and naked self-interest. This whole pack of cards which we call the system tends to fall when fear overrides greed.

What happens then is that investors are fearful of investing and the greed that drives them to invest and to uphold the capital markets, is overcome by fear. They stop investing and all the capital markets and institutions are unable to function. That is the analysis that was made with respect to what is happening.

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

Given this analysis by the experts, the question is: Is regulation the solution to the question of fear and greed as the primal driving forces behind the capitalist system and the capital markets? We have to understand this evening, as we

debate the Bill, that even as we accept the need for regulation of the financial and capital markets, that it is not really the solution. It is not really any magic key; it is not a panacea for all the evils that are being experienced, therefore it will just limit to some extent the kind of financial damage that is being wrought internationally. It is not really the solution.

Mr. Vice-President, we have recognized the need for a regulatory framework because the Financial Institutions Act, 1993 does not reflect the substantive changes that have taken place internationally in the marketplace; the whole evolution of the globalization process; the breaking down of barriers to trade and financial flows and the fact that the globalization and regionalization of markets means that we are more exposed to risk and to the problems that arise in the international arena.

The fact that the Central Bank, by this Bill, is given greater supervisory powers over financial institutions, which form part of the conglomerate structures both locally and internationally and that by this Bill the Central Bank is facilitated in its bid to supervise banking subsidiaries that will naturally be looking for markets and areas where they can do what they do best—make a lot of money; the fact that the Central Bank will be looking at the whole issue of interlocking directorships and taking early measures to try to prevent the meltdowns that we have seen, is just a small part of the problem that faces the world.

We have said before that we recognize that in this context you do what you can, given the constraints of the system under which we operate, and this regulation is necessary. We also recognize that legislation and regulation must do what they are supposed to. They are not to be counterproductive; it must be well thought out because this is the law we are putting into effect. It must be for the long term, not the short term; it must not be reactive, but must not go further than necessary, but as far as is necessary.

Mr. Vice-President, given that train of thought, we understand, as the Government has said, that there has been consultation with interest groups over the past few years, but the problem is, that coming to Parliament and trying to get through this Bill of over 132 clauses in one afternoon, is really a disservice to the people of this country. Even though you have all the issues of the need for regulation, these problems will be there tomorrow and next week and we, in our bid to deal with the problem, must deal with the process of dealing with the problem.

We accept the fact that there have been all these consultations, but Parliament has a special role and function and the fact that you have consulted with all those

other groups does not mean that you can just ride roughshod over Parliament and expect us to deal with this very voluminous piece of legislation in one afternoon. That is why I agree with my colleagues on both the Front and Back Benches, who have said that we really need a special select committee to go into detail and to look at all the ramifications and repercussions of the Bill before us. Sen. Prof. Deosaran always says that we are not making law for today or tomorrow but for the long term. I agree with my colleagues that this is far too serious a matter and too important a matter to be dealt with in such a cavalier fashion.

Mr. Vice-President, I want to look at some of the clauses that I feel should give us pause and make us think a bit and would give us some basis for the need for a deeper reflection on this Bill.

Clause 10, for example, says that:

"The Central Bank may issue guidelines on any matter it considers necessary to —

(a) give effect to this Act;

(b) enable the Central Bank to meet its objectives;

(c) aid compliance with the Proceeds of Crime Act, 2000, the Anti-Terrorism Act, 2005, or any other written law relating to the prevention of money laundering and combating the financing of terrorism; and

(d) regulate the market conduct of licensees."

It struck me that it is an open secret in this country that the drug trade generates billions of dollars in illegal, ill-gotten financial proceedings. This administration has been promising over the past five years to bring legislation to tighten the Money Laundering Act to ensure that all the loopholes are plugged and that the ill-gotten financial gains of the drug trade are taken from the system.

Everyone knows that the multi-billion dollar drug trade in this country is really wreaking the economic system, is driving up the price of land, goods and services and so on. There are all these people out there with all this money who are undermining our economy and it is a serious issue. The Government has done nothing although it has kept on promising to bring legislation to tighten the loopholes to deal with this issue.

9.15 p.m.

So, we see another commitment in this legislation that is before us that the Central Bank would issue guidelines and so on, but they promised to bring

legislation to this Parliament and to deal definitively with the question of the drug trade and illegal proceeds that is so damaging to our economy. I find it very difficult to wrap my mind around the commitment of this administration and the seriousness of this administration—as Sen. Dr. Carson Charles said earlier on—when fundamental issues are not addressed.

You have the whole issue of the impending contagion and so forth, and you come with legislation that mentions this "by the way" in this Bill—the Central Bank will issue guidelines and so forth. What has been happening over the past five years? Where is the legislation? Where are the guidelines? Where are the white collar criminals who are supposed to be behind bars?

Sen. Merhair spoke so passionately just now about the issue of white-collar crime in this country. I totally agree with my colleague, Sen. Dr. Carson Charles. When would we see the end of this nonchalant, cavalier, laissez-faire approach to these major issues in this country? We question the integrity of this administration with respect to the issue of compliance, regulations and so forth. All these regulations that we have before us, are they going to be enforced? Certainly, the Proceeds of Crime Act and the question of money laundering and so on are not being enforced in this country. People are living large, and there are no repercussions. We do not see any white collar criminals being prosecuted in the courts and so forth for the multi-billion dollar industry that is wreaking our economy. So, we question the Government's commitment to anything that it has before us this evening because of their history.

Mr. Vice-President, I looked at clause 14 in the Bill, and I think this is one of the clauses that Sen. Ramkhelawan might have been referring to when he was questioning the powers of the inspector and so on. I think he spoke specifically to this clause which says.

> "In the exercise of their functions under this Act, powers and duties under this Act, the Central Bank, the Governor and the Inspector may delegate any such function to, and exercise any of their powers and duties through, any officer, employee or agent of the Central Bank."

I agree with the objection to this particular clause. I believe that the powers given to the Central Bank and the inspector in this Bill are very wide-ranging, and it seems very frightening that you would have in the Bill that these powers could be devolved to any officer, employee or agent of the Central Bank. It could be the janitor. What does this mean in terms of any employee? This is law we are

making here. I agree with the Senator who made the point that this could not be good law. It is very vague. We do not know what it means and it is improper given the wide powers that are given the inspector and the Central Bank in this Bill.

Mr. Vice-President, clause 20 deals with the application for a licence to carry on the business of banking or to carry on the business of a financial nature and that it should be made to the Central Bank in writing and be accompanied by a number of different things—the statement of the applicant's name, address and so forth—all the basic mechanical things that you would require.

The grounds for refusal follow in clause 21(2)—after all the documents have been submitted to the Central Bank like the certified copy of incorporation and so on—and it says:

> "Where the decision is made to refuse a licence, the Central Bank shall give reasons for the said refusal to the applicant within fourteen days of the date of refusal."

Apart from all of that, I was wondering whether the Central Bank's decision to refuse is made or would be made only on the requirements here, in terms of just ordinary mechanical details of the company or if the Central Bank's decision to refuse would be made also on the assessment of the capital market here—an assessment of the profile of the capital market here.

Mr. Vice-President, for example, we have signed the EPA that allows financial services companies from Europe to come here and offer financial services. So, you can have a whole slew of companies coming in to set up international financial centres here and people might feel that it is a good market to do business and to make money and then send all that money back to Europe. Is it that the Central Bank is going to look at the profile of the capital market here? Based on their assessment, would they be able to refuse companies licences based on what is good for our economy and our capital market? That is something I would like the Minister to comment on. Later on there is mention about the terms and conditions. Clause 21(4) says:

> "A licence to carry on the business of banking or a licence to carry on the business of a financial nature may contain such terms and conditions as the Central Bank considers advisable taking into account the particular circumstances of the proposed licensed institution."

I was wondering whether that sort of consideration would be part of the terms and conditions that the Central Bank would consider advisable.

Mr. Vice-President, you will appreciate the fact that you have all these people—all these institutions and big financial players and so forth—who would want to come into a very limited market. What will be the criteria for refusing one or accepting the other; not necessarily based on the mechanical requirements, but the assessment of our market and what is good for our market?

Mr. Vice-President, with respect to clause 23, it provides for a revocation of a licence by the board. There are a number of criteria. It says that the board is able to revoke a licence of any licensee or any company. Clause 23(9) says:

> "Where any licensee is aggrieved by a decision of the Board to revoke its licence pursuant to subsection (3), that licensee may appeal to a Judge in Chambers within fourteen days of the date of receipt of the notice of revocation setting forth the grounds of such appeal."

Mr. Vice-President, it also says in this Act that where the Central Bank revokes the licence, within seven days they must publish such fact in the *Gazette* or in a newspaper. The question I have is, if the licensee has 14 days to apply to a judge in chambers to appeal against this revocation of his licence, but within seven days the Central Bank is going to publish the revocation of this licence, it seems to me that the Central Bank will then preempt the possible decision of the judge in chambers. In any case, after you have been published, there is this loss of confidence.

I think Sen. Prof. Deosaran mentioned that financial institutions are very vulnerable and, therefore, if within seven days the Central Bank is going to publish that your licence has been revoked, what is the point of this 14 days leeway for you to apply to a judge in chambers? Obviously, you are not going to get a response within that time. I am wondering on the basis of natural justice, if your judgment should not come in before the Central Bank actually publishes that revocation. As a layperson, this occurred to me that this could really be against natural justice. You have the right to appeal but, at the same time, your revocation and so forth would already be published and it would affect the functioning of your establishment in the interim.

[MR. PRESIDENT *in the Chair*]

If you do win the judgment it might be just a pyrrhic victory, because you would have already lost your customers and the confidence in your institution and so on. That is why we are saying although we need the regulations and we understand that it is important to have regulations in place, cases like that would give us pause, because you want to regulate and you do not want to be counterproductive. If you want to build your capital markets and this is the system that you are in—you want to have these institutions functioning and so on—you do not want to regulate to the point where you are being counterproductive. That is one of the questions that we really need to look at.

Sen. Annisette-George: Mr. President, through you, with respect to the 14-day period to appeal against the backdrop of the seven-day period for the notification, all that is going to happen in a practical sense is that an aggrieved licensee would use the processes available at the court to stop the publication of the notice, pending the hearing and determination of the appeal. So one would use the legal mechanism that is available to them to avoid the very event that you anticipate could happen if you follow the exact letter and the timetable set out in the Bill.

S**en. Dr. J. Kernahan:** What the Attorney General just said made sense, but the fact is that in law it says that the bank can do that after seven days. So, I am not sure. Suppose the person does not get that judgment from the court within that seven days, is the bank going to go ahead and do it?

Sen. Annisette-George: I think what we have to understand is that one would expect that if the bank has revoked somebody's licence, it must give notice in a very timely manner to the national community that the licence has been revoked. In a scenario where one is not appealing, one could see that seven days is really more than a reasonable time for giving notification to the public.

9.30 p.m.

However, what will happen is this, that if a party is aggrieved and wants to challenge the decision to revoke the licence they would, within the seven-day period, make an application to the court and one of the things they will ask for would likely be some sort of restraining order, some sort of injunction to prevent the publication pending the decision of the judge in chamber on the appeal. So that there would not be any decision on the appeal until the court has heard it and certainly there would not be any publication pending the hearing and determination. So that is how it will work.

Sen. Dr. J. Kernahan: Thank you, Attorney General.

Mr. President, with respect to clause 33(1)—this is Part IV—and it deals with directors and management says:

"A person who has been—

(a) a director or officer of a company in the ten years immediately preceding a winding-up order being made by a court or the date that the company has been placed in receivership;

(b) adjudged bankrupt under the Bankruptcy Act;"

and it goes on to other conditions:

"..shall not, without the express approval of the Central Bank, act or continue to act as a director or officer or, be concerned in any way in the management of a licensed institution or financial holding company."

So, Mr. President, I am not an expert in these areas, but I do find this provision a bit drastic in the sense that a person might have been a director or officer of a company in the 10 years—and that is a pretty long time—preceding the winding up, but that person might not necessarily have been somebody who is not a fit and proper person. That person may have been making representations to the board that were not taken on board; that person may have been trying his best to stay in there and do what he had to do to get proper management procedures and so on, and it is sort of judgmental to say because you have been in a company within the last 10 years, that you are necessarily not a fit and proper person to be a part of any financial or other institution.

There may be extenuating circumstances, and to put this in law might be drastic, and given our small country—we have a small country, we have a limited number of people with a certain level of financial training and so on—I do not know if you would want to carte blanche and in one drastic move, eliminate a whole lot of people from their ability to contribute in financial institutions, organizations and so on, because they have been part of an organization that might not have functioned in a particular manner. I am sure that there would be people who would be unfairly targeted through this particular clause in this legislation.

So therefore, Mr. President, that is why we are saying that the implications of this legislation are so far-reaching and so important, we do not want it to be counterproductive, to create other problems than the ones that you are trying to cure. By bringing this type of legislation which might be applicable in larger

countries, in bigger countries where you have all of these institutions producing hordes of young graduates and financial wizards and so on—we do not have that here and therefore you have to be careful that you do not, therefore, now have to, after you eliminate a whole lot of people—maybe nationals and so on—you have to look outside now for your expertise and for your directors and so on who would, because of the whole globalization issue, be able to move in and take up these positions. So, we have to be very careful that when we are looking at legislation that we are not counterproductive and we are not "over curing" the problem that we purport to solve.

Mr. President, I would like to look at clause 55 and this clause deals with disclosure, and it says:

> "No"—one who—"receives information relating to the business or other affairs of a depositor or customer of the licensee or of any other person shall disclose the information unless—"

and there are four conditions:

> "(a) the disclosure is required under compulsion of law;
>
> (b) there is a duty to the public to disclose the information;
>
> (c) the interest of the licensee requires disclosure; and
>
> (d) the depositor or customer expressly or impliedly consents to the disclosure."

I just want to ask, in this clause, what is the meaning of "there is a duty to the public to disclose the information"? You have, disclosing information is an offence, it is serious and so on, and there are fines implied and you have a clause that says that you may disclose if there is a duty to the public to disclose. Now who is going to decide that? How is that going to be decided? That is a very serious thing to decide. This is a very subjective thing. I might decide that it is my duty to the public to disclose and somebody else will say you have no business to disclose; what makes you think that that is your duty to the public. And it would be law in this country. So, it is open, it is vague and I think that it needs to be looked at a little more closely to understand exactly what we mean by that.

With respect to clause 62, this is Part VII of the Bill, it deals with inspection, investigation and winding up and I think Sen. Ramkhelawan spoke to this clause when he said that the inspector is next to God because this section deals with all the powers of the inspector, very wide powers.

Clause 62(1) says:

> "The Inspector shall examine all applications for approvals, licences and permits to be granted or issued under this Act and make recommendations thereon to the Central Bank."

But it also says in clause 62(3) that:

> "The Inspector shall make or cause to be made such examination and enquiry into the affairs or business of a member of a financial group if, in the opinion of the Inspector, such examination and enquiry is necessary to assess any risk that such member may pose to the licensee."

And in clause 62(4) it goes on to say that:

> "The Inspector shall make or cause to be made such examination and inquiry…if in the opinion of the Inspector, such examination and inquiry is necessary to verify that no business activity other than referred to in section 50(a)(2) is being carried on."

And so on it shall be referred to the bank.

The thing is, in clause 62(9) it goes on to say:

> "Where a person fails to comply with a request to provide information…the Inspector shall restrict any further transactions among the licensee and the financial holding company, controlling shareholder, significant shareholder or affiliate and take such other measures as he may think fit against the licensee, financial holding company"—and so on—"if he considers that the transactions or relationship among the licensee, financial holding company…may expose the licensee to undue risk…"

So, the point I am making is that a lot of this is subjective—the inspector can stop a whole operation based on what he considers fit, what he considers proper and so on. I think I agree with Sen. Ramkhelawan when he says that we should have some check and balance on the inspector in terms of referral of these issues to the Central Bank Governor, maybe to a committee to have more than one mind dealing with this problem. Because you are talking about multimillion or multibillion dollar enterprises here and I am wondering if it is proper to give one man the power to shut down institutions in this manner because he "thinks fit".

I think it is a very dangerous situation and I agree that there should be some check and balance on the powers of the inspector. These things should be referred to some committee in the bank or the Governor of the Central Bank and so on, and the inspector should not be given these wide powers as enunciated in this Bill

as present. Because the inspector is authorized in clause 62(13) to enter into the premises of any licensee or financial holding company to inspect any books, to determine whether there is compliance and so on; he has very wide powers. It is based on what he thinks and what he sees fit, he can shut down the operation.

Therefore, as I said, although the Government feels that there is need for regulation, we agree that there is need for regulation, you cannot be counterproductive, you cannot over regulate, you cannot go beyond the bound of what is necessary. Because if it is you want to establish your capital markets, if that is what you want to do, then you cannot give one man the power to shut you down in the morning because he has a problem. You must have checks and balances.

Mr. President, clause 73(8) says here:

"In determining whether to approve the merger"—this deals with mergers—"the Minister shall consult with the Central Bank and shall take into account the public interest, which shall include, without limitation—

(a) the interests of the financial services industry in Trinidad and Tobago; and

(b) the interest of consumers of financial services in Trinidad and Tobago."

And I wanted to draw the Minister's attention to this because it relates back to a question I had asked earlier. If the Central Bank's view in terms of granting or not granting licences they would take into account the interest of the financial services industry in Trinidad and Tobago? Because it says here, when you are dealing with a merger you will take those things into account, so that is why I wanted to find out. As well, in your determination to grant licence and so on, if you will take into account the interest of the financial services industry in Trinidad and Tobago? The Bill is not clear on that and I think that is important because the question of globalization, our open boundaries, cross boundary, organizations and so on, have come into play and therefore there must be some limit, there must be some profile that you would want to look at to determine whether or not you are going to allow people to come into your industry.

9.45 p.m.

Mr. President, the last clause that I would like to deal with is Part X, clause 86(1), Compliance Directions and Injunctions, which deals with the powers of the inspector and it says:

"Notwithstanding any other action or remedy available under this Act, if in the opinion of the Inspector, a licensee or a financial holding company, controlling shareholder or significant shareholder of a licensee, or any director, officer, other employee or agent of the licensee, financial holding company, controlling shareholder or significant shareholder of a licensee—

(a) is committing, or about to commit an act, or is pursuing or is about to pursue any course of conduct, that is an unsafe or unsound practice in conducting the business of banking;"

And it goes on:

"(b) is committing, or is about to commit, an act, or is pursuing or is about to pursue a course of conduct, that may directly or indirectly be prejudicial to the interest of depositors;

(c) has violated or is about to violate any of the provisions of this Act…;

(d) has breached…or failed to comply with any measure…

the Inspector may direct the licensee, financial holding company, or controlling shareholder…to—

(i) cease and or refrain from committing the act…;

(ii) perform such acts as in the opinion of the Inspector are necessary to remedy this situation or minimize the prejudice."

Mr. President, it comes back to the issue of checks and balances of the repercussions for failing to comply with an inspector, one person who may be prejudiced or biased and may have other issues involved there. This clause also needs to be looked at in terms of—who is to determine who is about to commit an act? I do not know you can penalize somebody because you thought he or she was about to commit an act. Who is going to determine that? How are you going to prove that in court and so on? So, this is a very draconian, wide-reaching sort of language in the law.

Mr. 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. J. Kernahan: Thank you, Mr. President. This whole question of whether the inspector determines that you are about to commit an act or violate

the Act and so on, can bring a fine of approximately $500,000 for each day that the offence continues in his view or in his opinion and so on. So there are very serious implications in terms of the cost to the institution and there must be checks and balances with respect to the powers this inspector has. His powers are far too wide-ranging, unilateral and counterproductive.

So, these are some of the issues I thought I would bring to the attention of this Senate with respect to this Bill and it underscores the need for a more meticulous, a more reasoned and a more rational approach to looking at these issues because we cannot have a knee-jerk reaction. We have all this contagion and fears of recession and so on that you are going to rush to regulate and over-regulate and it is going to be counterproductive because you are going to have one man being able to mash up what you worked for in 10 years, mashed up in 10 hours.

The fact is that as I said before, the other point is that regulation is not going to solve all our problems because the basic fundamental problem I think Sen. Dr. Charles was making, and as the commentators have said, the market is built on fear and greed and that is what is going to determine whether people invest or do not invest. And the fact that naked self-interest determines that investors in the United States prefer to invest in India, China and all those countries where it is a race to the bottom, they can get cheap labour and so on. That is why 400,000 jobs are being lost in the United States in one month because they seek their own self-interest. They do not seek the interest of any country and have no loyalty to any country. Their loyalty is to the bottom line of their profits, and therefore, regulation in the United States will not solve the problems they have, and regulations are not going to completely solve the problems we have, but we have to do what we can, given the system under which we operate.

As I have said before, I agreed with my colleagues that we need regulation, but over-regulation is not the solution either and the Parliament of this country has a special duty and we have a function here. The Government can come to this Parliament having consulted with two million persons, but the people in these Benches are the ones whom you have to consult with. We have to understand the Bill and it is our responsibility to point out the problems that we have with this Bill and to raise our voices to get them corrected.

Mr. President, this is our position and I thank you. [*Desk thumping*]

The Minister of Finance (Hon. Karen Nunez-Tesheira): Thank you, Mr. President. In my contribution and in winding up the debate, I hope that I would not be too long. I recognize the late hour and essentially we have heard from the

Independent and the Opposition Benches and clearly there is support for the Bill in general, so I do not think we need to belabour any of the points, except to clarify certain issues that arose.

First, I want to thank the Central Bank. I heard Sen. Dr. Carson Charles speak at length about our ignoring the Central Bank and their advice. One of the things in preparation of the Bill and in fact, in preparation for my contribution both at the Lower House and at the Upper House, it was as a result of the efforts and the contribution of the Central Bank. In fact, the staff is here and I want to thank them for their assistance in this regard.

The issue of consultation I think has been mooted quite a bit and we recognized that the Bill has been long in making, 2000. I think Sen. Merhair and other Senators spoke to that issue, and that in fact the Bill was available on the Internet. In fact, I want to share that when this Bill had gone to the Cabinet working in tandem with the Central Bank, I was asked as Minister to go back out and do a public consultation and that is why the public consultation was held in May 2008. So this was a product of extensive consultation.

I want to deal with some points that were raised. One of the points that was raised was the question of increasing deposit insurance coverage to $500,000 from the current $75,000 and I understand the issue behind it. It is a question of protecting the consumer and that is laudable. But I want to mention that it is not a matter for the Financial Institutions Bill, it is covered under the Central Bank Act. I think one of the other speakers on this side spoke to the fact that they had increased the amount from $50,000 to $75,000. So just to mention that while it is laudable, it is dealt with under another piece of legislation in the Central Bank Act.

I am just trying to deal with the issue that I think that Members on the other side and also—sorry for using the language of the Lower House—both the Independent as well as the Opposition Senators raised. Another issue that was raised—perhaps it was not raised on the floor itself, but it was brought to my attention, the question of post-employment restrictions. Post-employment restrictions, that is for persons who had worked in the Central Bank in certain key positions and having left, that there should be a moratorium between the time that they have left the institution and taking up employment in a financial institution where one could see perhaps there will be a conflict of interest. That issue was considered at length and one of the issues that arose out of that was: Did we want to put it in the legislation?

We understood perhaps why we would want to put it in the legislation, but it would raise a number of issues with regard to constitutional issues. In fact, the Governor of the Central Bank has given the undertaking as part of your contract of employment as a policy position. Not only for all key positions of the inspector, deputy inspector and deputy governor, but for all those key positions, one of the terms and conditions of the contract of employment as a policy, would be this moratorium, I think a minimum of two years.

With regard to the powers of the inspector, I think that has been raised by several speakers on the issue of the overarching powers of the inspector or so it appears and appears to have been ascending to the position of deity, if I were to listen to Sen. Ramkhelewan. In fact, he almost genuflected to the inspector who is here in the Senate. However, one should say that the powers of the inspector are not unfettered and I will go through some of the provisions. It is clauses 62 and 63 that really deal with that.

First, regard to the inspector, what is the inspector's role? The inspector's role is really to attend to the day-to-day business and the operations of the institution. However, if any institution has any difficulty that can lead to any suspension—not that they are closing down—restriction of a licence or revocation of any licence, he must refer the matter to the board of the Central Bank of Trinidad and Tobago, which would include the Governor. So as a reporting mechanism, the inspector must report to the board and it is not for him to make the decision, it is for the Central Bank. So you have a level of a check and balance. It is also important to note that the inspector cannot grant a licence, cannot close down a licensee and that therefore provides a key check and balance.

When you look at clause 62(1), the inspector is an officer of the Central Bank and as a result, it is subject to the Governor as well as the board of directors.

Clause 62(5): Also, the inspector is required to report to the Governor at the conclusion of each and every examination or other enquiry. So he must report and having reported the matter to the Governor, if there is any action to be taken, it is dealt with by the board of the Central Bank. So that in looking at the issues of unfettered powers of the inspector, there are clearly checks and balances operating more on an operational basis, supporting the Governor and the Governor is only a member of the Central Bank of Trinidad and Tobago. So there are a number of levels of oversight over the inspector.

With regard to penalties, this was a bit of a conundrum for me. Why was it a conundrum for me? I heard many speakers on the other side speak about the naked greed of those involved in the financial institutions and the need to protect the poor and defenceless. We heard all kinds of discussions from many Senators on the other side and what I found was passing strange, is that having said that and taken such a strong position with regard to the need to protect the defenceless because as we recognized, we look at the Enron scandal, at AIG, the Lehman Brothers, all of them and one of the things about other things, a lack of corporate governance, a lack of proper regulatory framework, a lack of proper oversight, but the issue of greed. Greed at the expense of the employees and that is a recurrent theme.

So, these are persons when you talk about those organizations, I am sure you know the story of the automobile industry for example, coming up in a private jet to "cap a begging" so to speak. These are people who are not without deep pockets, those are not the ones you need to protect. It is the depositors who Sen. Wade Mark spoke with such passion about, so therefore, what do you do? The language they understand is the language that affects the bottom line. The language they understand is the dollar because that is what motivates them, and therefore, you have to provide this incentive for that behaviour. This incentive is the deterrent. What is a deterrent if it does not have an impact on their bottom line?

Therefore, to speak of the penalties as being draconian, there was something about that that did not sit well with me because I could understand a capitalist speaking in that language. I could understand a person who had a private sector interest and declared it, but one who speaks to the socialist theories of life and speaks to the underdog, I would think they would have rushed in and said to me, "The penalties are not hard enough", because what you want to do is to act as a deterrent against the avid, naked and unbridled greed. That is the story of Enron, AIG, Lehman Brothers. That is part of the story.

I just want to say with regard to the penalties, it is a maximum penalty, so there is always discretion on clause 68(1), for the court has the discretion to set a lower penalty. It is just a maximum and you can go beneath that maximum. It gives the court discretion.

Another point that was raised on the other side—and these are good points because they need clarification. If it is raised, it means that it needs clarification—the $15 million maximum capital base. I believe it was Sen. Mark

who made much about the fact that $15 million—what is $15 million? That is where you are getting the contradiction. The penalty is too much, but the operating base is too low. But the $15 million is just setting the capital base in the way that the penalty sets the maximum and you go down the ceiling, the $15 million is your base.

10.00 p.m.

One of the reasons is because the situation is so volatile and change is so rapid, to go and hamstring yourself into a particular number you are going to find yourself coming every Monday morning in order to correct that. The intention is that you set a base, but you allow the Central Bank to do what you have asked them to do, regulate. So you set a risk profile and in that clause 16(4), whilst the Minister has power, he must do that in consultation with the Central Bank, and apart from the base as a starting point, you use the risk profile of the institution to determine what the requirement is for doing business.

Sen. Mark: Hon. Minister, the issue of capital adequacy ratios, can you tell me where in the legislation this issue is addressed? Because if you go to the 1993 Financial Institutions Act there are regulations that outline capital adequacy, so I want to know where in the legislation this whole issue of capital adequacy ratios have been addressed.

Hon. K. Nunez-Tesheira: Sen. Mark, I am advised that when the legislation is passed that will be addressed. I heard a lot of persons speak about the need to make haste slowly. We have been making haste slowly for eight years and while I recognize the concern, one of the things that is important is that we have confidence in our regulators. I do not think anyone has an issue with regard to the credibility of our regulator which is the Central Bank.

So in the context of not putting together, actually having the regulations, the capital ratios and so forth, there is a profile, it is underwriting assessment and I think at the end of the day that whilst it is commendable, it probably is the more appropriate thing to have the regulations in place. What we do have in place in terms of the legislation is sufficient checks and balances and guidelines from which the Central Bank can do its job of regulating the financial institutions.

I was going on to the point about the unsecured capital because I really wanted to answer all the issues that were raised on the other side. I think a point had been made that we should limit it to 10 or 15 per cent so you can borrow unsecured. The question is the balancing act, you spoke of it and it is true, it is a

balancing act; the balancing act of protecting, but at the same time not stifling the financial institutions because they do contribute significantly to our GDP, and employment. They are a major player in our diversification thrust and would certainly be a major player when the international financial centre becomes a reality.

So we have looked at how we can balance those two competing interests and in doing so, the Central Bank considered the recommendation and is of the view that the underwriting criteria set by the Central Bank will address that. In fact, the concern appears to be with the unconnected parties, lending to unconnected parties. That is where the difficulty arises and there is a limit of 10 per cent unsecured for connected parties, whether secured or unsecured, there is a limit of 10 per cent.

I conferred with the Central Bank which is the regulator, and it is of the view that the criteria that it put in place will be sufficient checks and balances, and the real risk you want to avoid, which is the connected parties, there is a limit of 10 per cent as opposed to the 25 per cent.

Sen. Ramkhelawan: Minister, on a point of clarification, in the existing legislation there is a 5 per cent limit for unsecured lending and anything beyond that to any one party, or even a group beyond that, it is secured. What we are doing is passing the buck from the legislative agenda to the discretion, if you will, of the inspector and the Central Bank and I would ask you to reconsider that carefully so that you make sure that the legislative level is covered rather than only leave it to the discretion of the inspector. That is the point I was trying to make.

Hon. K. Nunez-Tesheira: Thank you Senator, I understand your concern. One of the things this legislation seeks to do is strengthen the regulatory framework and the supervisory authority of the Central Bank and I suspect the concern is that to increase the unsecured limit is really to give a broader discretion. My answer to that would be that the Central Bank to whom the responsibility of the regulations has been conferred is confident that the prudential criteria are put in place, the underwriting criteria and all the checks and balances are put in place and at the same time not attempting to micro manage or seem to be stifling the financial institutions.

I have just received a note here, Sen. Mark, and I would read it out. I hope I can make sense of it myself because I am reading it out carte blanche.

> Please note that the Prudential Criteria Regulations, 1994 which deals with capital adequacy will still be in force. Additionally, clause 9(3)(a) also provides for making additional regulations for capital adequacy.

So still is in force.

With regard to the other issues that had been raised, I believe one was the need for a negative resolution for regulations. The view is that the negative resolution would not be required. Was that your point, Senator, that it should have negative or affirmative resolution? [*Inaudible*] Affirmative resolution, because you were saying we must come here and be able to vote on it. The negative resolution gives you an opportunity to object and it would have to be debated. Remember you are dealing with the financial institutions and what you want to balance is the need for oversight and at the same time to create efficiencies in response. If there are concerns, the Member can raise them and they will have to be debated. I think the concern that you have with the check and balance is built into the opportunity to be debated by way of negative resolution.

I think the other concerns which were larger, and I am just going through what I recall. One was the concern about the legislation, what is happening with credit unions and the Securities Industry Act. I really have to borrow from Sen. Dr. Kernahan in her language because I was really struck by the passion and eloquence of Sen. Merhair on the issue.

We talk about the consultative process, in fact, since I am working in tandem again with the Central Bank, it has been working on the credit union policy and there were two sticking points; who was to be the regulator and the separation of financial and non-financial. As we know, many credit unions are no longer doing the "Mom and Pop" kind of thing which is to be applauded, but they have grown, and yet the legislation that governs them has not kept up and that is really the issue. So that has been a sticking point.

We have had a number of consultations with the credit unions and I am assured by the Central Bank, in fact, only last week I raised it again and if not this week, definitely next week the Central Bank, the credit unions and I are going to meet with regard to coming to a conclusion on that, to take the policy to the Cabinet and the draft legislation subject to the approval of the Attorney General and bring that to the House in the first quarter of next year. That is my undertaking. It is said in economics, all things being equal. So all things being equal, that is the undertaking with the credit union legislation.

With regard to the Securities Industry Act which is sort of complementary to this legislation, that also is before the Legislative Review Committee. Cabinet approved it, we did the consultation again, we went back for consultation, it was approved by Cabinet and it is before the Legislative Review Committee and is supposed to be heard on Monday, December 08, 2008. Once it is approved, it would be early in the next term. So those two pieces of legislation and definitely the Securities Industry Act will be early in the new term and later the credit union legislation.

Sen. Dr. Kernahan: You are talking about legislation with respect to the credit unions, but the fact is that the Commissioner of Cooperatives was supposed to be in charge of all the credit unions and I know there is supposed to be the AGM where they audit the books and so forth. Why can we not get the people to do what they have to do?

Hon. K. Nunez-Tesheira: I am going to be accused of being irrelevant by the President and I do not want to be, but that is a subject for a different debate, because that is a whole long conversation we could have about looking at the cooperative legislation.

I just want to say in all fairness, Sen. Merhair, I hear your pain with a particular credit union but I do not think it is fair and I know you do not mean that, but I just want to clear the air, that you are not painting all the credit unions with the same brush. I know that is not your intention and it would not be correct because there are about 300,000 persons who are members of credit unions or even more, that is the kind of membership and their asset base is in the billions. I do not have the figures at the top of my head so we cannot paint them with the same brush, but they do a lot of good work but clearly there is need for more regulatory oversight, but it is not under the Financial Institutions Act. It is true they need regulation but they do not fit into the narrow confines of a financial institution. They need different treatment and that is what we are dealing with at the moment, and I assure you there is the commitment to that.

That brings me to the concerns that were expressed as to why certain companies were excluded from the ambit of this Bill. Some of them are the Home Mortgage Bank (HMB), Trinidad and Tobago Mortgage Finance Company and the Unit Trust Corporation. I think Sen. Enill made a very good point quite apart from everything else, this is not the place to settle that because when you do it that way you are going to get yourself in trouble—when I say trouble, you are going to have to undo what you have done. So this is not the place, because that is not the

reason for the HMB. The HMB is governed by Central Bank and there was an amendment made to the Home Mortgage Bank Act to allow for the Central Bank to be the regulator. One of the reasons it was not put under the Financial Institutions Act, for the same reason you would not put it—it is not that you are not going to regulate, but it is not appropriate to come under the Financial Institutions Act for the same reasons that you talked about public policy considerations, it is not really a financial institution in that narrow sense which does not mean that it is not regulated. It is being regulated by the same regulator that the financial institutions are and the same regulator as insurance companies, but under its own legislation.

You spoke about the Unit Trust Corporation. I think someone spoke about the background and it was a good learning for me of how it came about, it was maybe an oversight because the fact of the matter is, it is a creature of statute. Sen. Dr. Charles made the point whether it has moved beyond the social goods purpose. The short answer to that is when the Securities Industry Act is brought before Parliament which it would be in the next term, the Unit Trust Corporation would be brought under that because it is more suited to that. It is of a securities nature rather than a financial institutions nature. That deals with two, there was another one.

The Trinidad and Tobago Mortgage Finance Company is governed by statute. The argument was what the oversight is. It is the Corporation Sole, the oversight is the Ministry of Finance, and the legislative provisions in the Trinidad and Tobago Mortgage Finance legislation. The argument is that it is a public purpose institution which does not lend itself to supervision under the Financial Institutions Act. I have heard what you have said on that issue, it has not fallen on deaf ears, but at this point in time for those reasons that is why those organizations or statutory authorities have been exempted, because they are really not financial institutions in the same way the credit unions are not.

10.15 p.m.

I think Sen. Mark had circulated a document giving recommendations. I am just going to deal with one because, actually, it was an education for me; reducing the period of time when a bank had to keep open an account and they reduced it from 14 years to seven years and he asked why. Well, it was the banks that wanted that because it was an administrative burden in keeping these accounts, because every year you had to keep the books open; you had to account and it was costly and it was accruing interest on the account.

However, eventually those accounts would go to the Central Bank and they are put in an inactive account and once the person comes forward, they have a right to recovery. So that you have that protection but at the same point in time you are not putting an undue burden on the banks. But it is the banks that asked for the reduction from 14 years. I do not know if the seven years have something to do with the law, that after seven years it could be declared dead. But that is the rationale.

So I think I have treated with the issues that were raised, only to say in conclusion—I do not think I need to deal with the financial holding companies. I think there has been no debate on the need to having financial holding companies, nor no debate to having consolidated supervision. The only issue I think is with the directors. I just want to raise the issue with regard to the directors and this is what I found strange, persons debarred from management.

The person debarred is not the man in the street, you know; it is a director or an officer of the company. Those are persons with a fiduciary relationship; those are the persons who have a duty of trust; they have a special relationship and, therefore, when they breach that, it is not an arms-length kind of relationship. So if they are not able to discharge that responsibility which has been given to them, having shown themselves to be persons whom you can entrust—because that is what it is; a question of trust to manage any board, because a board makes policy decisions and it surprised me that that position was taken given that Sen. Dr. Charles was very eloquent on the point of the human nature; the Hobbesian theory of "nasty, brutish and short theory".

He has subscribed to that view and if you subscribe to the view of greed, then you certainly do not want to put persons who have shown themselves at some point in time incapable of not surrendering to temptation, to put them in a position where they can do harm, not only to others but perhaps to their own selves.

I think we need not detain ourselves much further on the matter. Sen. Dr. Saith is telling me I have dealt with all matters. I hope I have dealt with all matters adequately to the satisfaction of all. I just want to say, in closing and in all sincerity, I thank the Members of the Lower House who supported the Financial Institutions Act and they did not have to; they could have insisted on a number of reasons we could not pass it; we could have done a number of things. I was really happy and I was gratified—all of us on this side—to see the kind of support. I

suppose the crisis abroad—not in Trinidad and Tobago—has had an impact, so they wanted to make sure it does not come to our shores. I hope that the other side, both the Independent Bench as well as the Opposition, will support us in this effort.

I thank you and I so move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Hon. Members, before I put the question, we will take it in parts. There are 15 parts and 132 clauses and there are only seven parts that have amendments. We have eight parts that have no amendments so we will take it in parts.

Clauses 1 to 4 ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Sen. Mark: Mr. Chairman, I have circulated an amendment for the consideration of the Minister and it has to do with the need for some degree of accountability as it relates to the Central Bank and the Governor to the Parliament. We are not asking for a moment for confidential information; we are not asking for that, because we do not want to jeopardize the bank's operations in relation to the commercial banks that it is supervising and regulating. But because they have already been exempt from the Freedom of Information Act, ordinary citizens cannot seek information from the Central Bank.

So we in the Parliament would like to be kept abreast with activities on the performance of these financial institutions. So the same report that is going to the Minister of Finance, we are saying, with some changes here and there, where confidential information can be withheld because it can jeopardize the system, you make available the information in the form of the report, minus the confidential aspects of it that you consider to be confidential and you would not want it to come openly in the Parliament for public consumption; but at least to keep the Parliament abreast with some overall understanding and appreciation of the operations of the institutions that they are supervising and regulating. That is why I have put forward the amendment for your consideration.

Mrs. Nunez-Tesheira: Thank you, Senator. With regard to your concern, you have said the right thing, the issue of confidentiality, the run on the banks and the run on the institutions. These institutions depend on their confidentiality and therefore you do not want to jeopardize that. In any event, to answer your question, since it is not the confidential information you seek but some level of, kind of reporting, so to speak, there is an annual report by the Central Bank and that report is laid before the Parliament. So you get the opportunity to examine the report of the Central Bank in the Parliament.

Sen. Mark: I would not want to pursue it, but reluctantly, I do not support the view that is being expressed but for purposes of progressing and moving on I will withdraw.

Amendment withdrawn.

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clause 6 ordered to stand part of the Bill.

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Sen. Mark: Mr. Chairman, under clause 7(8), I have an amendment as follows:

"Clause 7(8) be amended after the word '*Gazette*', the words 'or in at least two daily newspapers.'"

Sen. Annisette-George: May I intervene and say in the interest of time, we agree with the amendment to clause 7(8).

Mrs. Nunez-Tesheira: I am being told by the draftsperson that to be consistent with the language, we should use the same language as appears in clause 30(3) which would be "and at least two daily newspapers published and circulated in Trinidad and Tobago". So you would achieve the same thing; it is just the language there.

Mr. Chairman: The question is that clause 7(8) be amended as follows:

The words "or in at least two daily newspapers published and circulated in Trinidad and Tobago" be inserted after the word "*Gazette*".

Sen. Ali: Mr. Chairman, should that not be "and in" rather than "or in"? Because as you are seeing it there, it can be gazetted and that is the end of it. I thought the intent was that it will appear in the dailies.

Sen. Annisette-George: You are correct—clause 30(3).

Question on amendment [Sen. Mark] put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clauses 8 to 13.

Question proposed, That clauses 8 to 13 stand part of the Bill.

Sen. Mark: Mr. Chairman, I just wanted to ask the hon. Minister that wherever between clauses 8 to 13, the question of the one daily newspaper comes up, that there would be automatic amendments.

Mrs. Nunez-Tesheira: Yes.

Question put and agreed to.

Clauses 8 to 13 ordered to stand part of the Bill.

Clause 14.

Question proposed, That clause 14 stand part of the Bill.

Sen. Mark: Mr. Chairman, again, I found clause 14 to be too loose and too wide and it is somewhat open-ended and I sought to really advance a provision that could capture the essence of what could be done but, of course, in the regulations because I do not have the language to advance at this time to capture exactly what is required, let me just tell you my thinking.

What this clause is saying is that the powers, functions and duties of the Central Bank as a body, and the Governor as well as the inspector, could be delegated or may be delegated to any officer. It says "any employee". I do not believe that is the intention of the legislation. It has to be certain categories of employees.

10.30 p.m.

It must be certain categories of officers. I am not clear on when you talk about an agent of the Central Bank. What are we talking about here? I looked in the interpretation and definition sections and I could not find a definition for an agent of the Central Bank. How can an agent be given the powers, duties and functions of the Governor of the Central Bank to carry out? Who is this agent? These are the things I want to get clear in my mind. We are dealing with legislation and we do not want to send the wrong message or give the wrong signal. I have no problem with delegation. It must be confined to certain categories of officers and employees. I do not know who is an agent of the Central Bank.

Mrs. Nunez-Tesheira: Under section 67 of the current legislation, there is a power of the Central Bank to exercise its powers and duties to any of its officers authorized on that behalf. It is very broad. The reason for that is that you do not want to hamstring the Governor or the inspector because it goes to the issue of credibility and the question of micro managing. That is his responsibility. The responsibility is to manage and act through its employees because the Governor cannot do everything. None of us can. It goes to his credibility and ability to exercise his functions.

The concern I understand is adding an agent. My understanding is that perhaps some things are needed to be done. For example, if you need a special audit and because of whatever reason, the Central Bank because of capacity constraints needs to outsource that, they want to have the ability to have an accounting firm to do that. That is the reason for having an agent.

Sen. Mark: I understand what the hon. Minister said. I prefer to remain with the status quo in section 67 of the original Act, 1993. It is stated that the Central Bank may exercise any of its powers. We could say may delegate any of its powers and duties under this Act through any of its officers authorized in that behalf. I prefer we remain with officers. I am sure that the Central Bank minus this new provision, when they were hiring auditors or outsourcing, they knew what they had to do under section 67. To come with legislation and make this broad, open and loose and open-ended is dangerous.

I am not seeing the regulations to govern this particular provision. Where are the regulations to govern this provision? They are not before us.

Sen. Enill: I am trying to understand Sen. Mark's issue but I do not seem to understand it. This is a normal management function with the conduct of any organization. What is the issue?

Sen. Mark: When you say "any officer" and "any employee" what does that convey to you?

Sen. Enill: It conveys any employee and any agent as determined by those who are mandated with the responsibility for carrying out the function. It has to do with the context of the mandate of the organization. You are giving them the right to give it to anybody whom they deem fit. We do that all the time. What is the problem with it?

Sen. Mark: We are talking about the Central Bank.

Sen. Enill: The Central Bank is no different from the Ministry of Finance or any other organization. It is the regulatory body that is empowered to do certain functions and deal with it in the context of a management structure.

Sen. Mark: I beg to disagree with my colleague. I prefer to stick with the status quo of section 67.

Question put and agreed to.

Clause 14 ordered to stand part of the Bill.

Clause 15 ordered to stand part of the Bill.

Clauses 16 to 29.

Question proposed, That clauses 16 to 29 stand part of the Bill.

Sen. Mark: In clause 16(6) I think the hon. Minister said that in terms of the capital base it would come in the form of regulations. Those regulations are not here but they would be coming shortly. Am I hearing you correctly, Minister?

Mrs. Nunez-Tesheira: Yes. I corrected myself by saying to you that I got a note that said that those prudential requirements are contained in the 1994 regulations. I thought they were not in place but they have confirmed that the regulations are there.

Sen. Mark: What is there?

Mrs. Nunez-Tesheira: The prudential requirements.

Sen. Mark: Is that in the 1993 Act?

Mrs. Nunez-Tesheira: The regulations of the 1993 Act.

Sen. Mark: May I suggest with respect that if a foreigner or student who is studying public finance wants to understand the Financial Institutions Act and this becomes law, there is nothing in the Appendices that tells that student that we have regulations of a prudential nature governing the activities of commercial banks and other financial institutions. May I suggest that these regulations be extracted from the 1993 Act and appended to this piece of legislation which is to become law? We have been told that these regulations will be retained until further notice. Right now they are not in the current Bill before us. I am suggesting that they be included so anyone who is looking at this legislation will have a comprehensive piece of legislation before them.

Sen. Annisette-George: Mr. Chairman, very often the regulations follow the Act. It is common for us to get a Bill separate from the regulations. You are talking about a question of research.

Sen. Mark: I am advancing simply, that in the 1993 legislation before us there is a provision entitled and appended Financial Institutions Prudential Criteria Regulations. It is in the 1993 Act. These regulations are in force until further notice. That is what the hon. Minister said. I am suggesting that these regulations be appended to this new Bill which will become an Act very shortly. Any student who is studying the Financial Institutions Act will have as an appendix to this Act the regulations governing the prudential criteria. It is not here in the Act of 1993, at this time.

Sen. Annisette-George: If the hon. Senator looked at the date that the regulations came into effect, he would see it is the same thing. When the Bill that became the 1993 Act came to Parliament, it would not have had the regulations. It would have been a Bill and the regulations came after. You have a published version subsequent to the Act and regulations being passed and come to you as a package. They were not enacted in that way.

Sen. Mark: Subsequent to the passage you would have the regulations?

Sen. Ramkhelawan: Can we have an Act being repealed and the regulations that adjoin that Act remain in force?

Sen. Annisette-George: The regulations remain in force even though the Act is repealed.

Question put and agreed to.

Clauses 16 to 29 ordered to stand part of the Bill.

Clause 30.

Question proposed, That clause 30 stand part of the Bill.

Sen. Mark: Mr. Chairman, I beg to move that clause 30 be amended as follows:

In clause 30(1) by deleting "a daily newspaper published and circulated in Trinidad and Tobago" and replacing same with the following words, "and at least two daily newspapers published and circulated in Trinidad and Tobago."

Clause 30(3) by deleting the words after *Gazette* "and in a daily newspaper published and circulated in Trinidad and Tobago" and replacing same with the following words, "and at least two daily newspapers published and circulated in Trinidad and Tobago."

Question put and agreed to.

Clause 30, as amended, ordered to stand part of the Bill.

Clauses 31 to 36 ordered to stand part of the Bill.

Clause 37.

Question proposed, That clause 37 stand part of the Bill.

Sen. Annisette-George: Mr. Chairman, I beg to move that clause 37(1) be amended as follows:

Delete the words, "or upon request" appearing in the second line and substitute the words, "and at such time as requested."

Question put and agreed to.

Clause 37, as amended, ordered to stand part of the Bill.

Clause 38.

Question proposed, That clause 38 stand part of the Bill.

Sen. Annisette-George: Mr. Chairman, I beg to move that clause 38(4)(b) be amended as follows:

Delete the word, "board" and substitute the words, "board of directors of a licensee."

Question put and agreed to.

Clause 38, as amended, ordered to stand part of the Bill.

Clauses 39 to 49 ordered to stand part of the Bill.

10.45 p.m.

Clause 50.

Question proposed, That *clause 50 stand part of the Bill.*

Sen. Ali: Subclauses 50(3)(b), 50(4)(b), and 50(5)(d) speak to the closure of branches and notices required. If you look at this, there is no provision for a closure due to force majeure. There is a fire, they cannot give you notice, but according to the way it is written now, these people would have committed an offence because they have not given any notice if the place is burnt or otherwise. It seems to me that you have to include "except for force majeure".

Mrs. Nunez-Tesheira: As I understand it, your concern is that there is no specific provision in the legislation for force majeure?

Sen. Ali: I do not know if it is there generally, but under this clause 50, they say a licensed domestic institution, et cetera shall not close without at least so many days notice in writing to the Central Bank.

Mrs. Nunez-Tesheira: While that legislation does not specifically provide for that, challenging my knowledge of the law, the common law would apply. So whether it is an act of frustration—the law recognizes the concept of frustration—a force majeure would fall into that category and as a consequence it does not need to be stated in the law.

Sen. Ramkhelawan: Mr. Chairman, if you look at clause 42(6), this is one of the cases where the inspector may take action on virtually his own volition without any reference to the Central Bank Governor. You spoke to, I believe, section 62, but between the formation of a licensed institution and the suspension, in-between the inspector can take this action on his own volition; not even after consultation with the Central Bank Governor. I may be wrong, but this is the section that seems to give the inspector powers where there is no need for referral. I believe there is need to adjust the section.

Sen. Annisette-George: Would you like to insert the words "after consultation with the Governor of the Central Bank"?

Sen. Ramkhelawan: Yes. That is what I am saying. And it continues along in this particular section.

Mrs. Nunez-Tesheira: I am being guided by the Central Bank. They are saying that is an irrational issue and from their point of view it is a day-to-day issue and asked whether you would want to have the Governor involved in something like that.

Sen. Ramkhelawan: I am saying, yes. There is nothing that the inspector should be allowed to do on this own volition without a check and balance. I am sure on a day-to-day basis he may actually do that, but there is nothing in the legislation that requires him to do so.

Sen. Dr. Dick-Forde: My reading of 42(6) shows the inspector addressing a matter of operational issues. It says that the inspector may require a licensee to reduce his credit exposure. I cannot see why an inspector would need to consult with the Governor on this. This is no wide power; it is really stretching the clause. The inspector is not going to close anybody down. He will require certain measures to be taken. You are talking about an inspector who is appointed under stringent measures; somebody competent to do what the clause is saying.

Sen. Ramkhelawan: I still hold to the view that there must be checks and balances and that the inspector should not be allowed—In proper management and reporting relationships, the inspector should not be allowed to take action on his own volition.

Mr. Chairman, remember that in a financial institution, it is not the suspension that kills the organization, it is the word that something is happening there and the inspector is taking an action that could delete and destroy you.

Mrs. Nunez-Tesheira: I think that the view that was expressed both by Sen. Dr. Dick-Forde, who was an employee of the Central Bank, as well as the Central Bank on the issue of delegation of powers applies. The question is: Are you putting too many constraints on the inspector in what is an operational issue for someone operating at that level? That is the concern being raised.

Sen. Ramkhelawan: I need to reiterate the nature of financial institutions. It is not the suspension. You can cause liquidity issues; you can cause runs on a bank; you can cause all kinds of situations to arise. The inspector can do this and say I want you to do so and so, but the Governor, according to law, does not know what is going on. He hears about it after the fact. I do not think that you want to run an organization and hear that your subordinate does something which causes a situation for which you have to take responsibility. At least there should be some consultation.

Mrs. Nunez-Tesheira: Senator, you have argued your case well. We have agreed and we will put into the provision "after consultation with the".

Sen. Ramkhelawan: Much appreciated.

Sen. Mark: Mr. Chairman, seeing that we have crossed that hurdle, before you go on, I have a comment on clause 53(4). We are dealing with truth in banking and that has been an issue that has impacted negatively on the society—misleading advertisements by banks. People have paid a hefty price for misleading advertisements. I would like to submit, for the consideration of the hon. Minister, that while the Minister may make regulations, which she is entitled to do, I would like to have a proviso after regulations, "subject to an affirmative resolution of the Parliament". I believe that the Parliament representing the people should have an interest in what is going to be established in the regulations controlling advertisements and so on. I ask the hon. Minister to consider this matter.

Mrs. Nunez-Tesheira: Can I use one word? No. Because Senator, this is going into minutia; a level of detail and micromanaging of the work that is going too far.

Sen. Mark: I do not understand why. We are putting into the legislation a provision that deals with truth in lending. You are making regulations and all we are saying is that if you do not want to go with the affirmative, go with the negative and table it so that Members of Parliament would know the provisions contained in the

regulations. Do you want me to withdraw "affirmative"? I withdraw it. I now say "subject to a negative resolution". I am advancing that it be "subject to a negative resolution".

Mrs. Nunez-Tesheira: You are going into minutia; a level of detail.

Sen. Mark: You are not making a determination; you are just informing us of the provision. [*Interruption*] Your want me to see it in the newspaper? I submit that for your consideration.

Mrs. Nunez-Tesheira: Senator, we give and take, but that one we do not agree with that.

Sen. Mark: If you want to reject, that is your right. You are telling this Parliament that parliamentarians will see it in the newspaper. That is disrespect. If you are making regulations, what is wrong with tabling those regulations in the Parliament? I am not saying to debate it. I am saying you are just informing the Parliament. I have withdrawn the affirmative aspect; I said negative, so you just table it for information. What is wrong with that? Is that asking too much? It is just courtesy.

Sen. Enill: We can do it, but we do not have to put it in the legislation.

Sen. Mark: At least when it is in the legislation, it will ensure that when you, a good person is not there, the negative force will not frustrate the wishes that you would have expressed then.

Sen. Baptiste-Mc Knight: Mr. Chairman, I cannot understand why we want to make laws based on courtesies.

Mr. Chairman: Hon. Senators, before I put the question, we have noticed that in clause 57 at least, perhaps in others, there is the question of the notice being published in the *Gazette* and I think we had an understanding a while ago that wherever it occurs in the Bill, it would be changed. I would not put the question for all those amendments. When the amendments are done to be sent to the other place, it will be assumed that we have done so, without having to go through every single clause and subclause.

Question put and agreed to.

Clause 50, as amended, ordered to stand part of the Bill.

Clauses 51 to 61 ordered to stand part of the Bill.

11.00 p.m.

Clause 62.

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

Sen. Annisette-George: Mr. Chairman, there is an amendment in clause 62 at subclause (17) and subclause (18).

Mr. Chairman: Clause 62 is amended as follows:

(a) Delete subclause (17) and substitute the following new subclause:

Where the Inspector or a person authorized by the Central Bank is:

(a) prevented from exercising the powers given to him under subsection (13), hereinafter referred to as the powers;

(b) required to exercise the powers outside of normal working hours or;

(c) required to exercise the powers urgently.

he shall apply for and obtain an ex parte Order of a judge in a High Court, which Order shall cost you the warrant for the designated authority to enter into the premises of the licensee or financial holding company.

(b) Delete the word "sixteen" occurring in subclause (18) and substitute the word "seventeen".

Question put and agreed to.

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

Clauses 63 to 70 ordered to stand part of the Bill.

Clause 71.

Question proposed, That clause 71 stand part of the Bill.

Sen. Annisette-George: Mr. Chairman, there is an amendment at clause 71(6).

Mr. Chairman: Clause 71 is amended as follows:

In clause 71(6) delete the words "fifty per cent or more" and substitute the words "more than fifty per cent".

Question put and agreed to.

Clause 71, as amended, ordered to stand part of the Bill.

Clauses 72 to 75 ordered to stand part of the Bill.

Clause 76.

Question proposed, That clause 76 stand part of the Bill.

Sen. Mark: Mr. Chairman, I listened intensely to what the hon. Minister had to say about the explanation offered by the bankers. Unfortunately, this Bill has not been referred to a special select committee, so we cannot summon the banking community before us to get some statistics. In other words, we are hearing that they are talking about administrative fees, but we do not have before this honourable Senate what is the cost involved and how many inactive accounts are there in each bank. We do not know. I think it is unfair to the depositors and to the population to just make this broad-brush amendment and change it from "fourteen years" to "seven years" on the basis of someone complaining about administrative cost and we have no evidential information before us. I would like to suggest that the status quo be retained until further notice.

Mrs. Nunez-Tesheira: In terms of the persons whom you are hoping to safeguard, no one is negatively impacted. What we have said is that whether it is seven years, nine years, or three years or how long it is, at the end of the day, once someone does not come forward and claim the money it goes into the Central Bank, and at any time that person can come forward and claim it. So that person is protected.

What you have, as a bank, is nuisance value. It is keeping alive accounts with administrative cost—employees just servicing accounts with minimal amounts. There is no harm being done. In fact, it is a win-win situation. Currently, the persons who are affected by that are the banking institutions that have to keep these accounts alive which are really cluttering to a large extent. There is no harm being done to the persons who are affected. It goes into a secured account in the Central Bank.

Sen. Mark: Then, why go to seven? You should say one year or two years. What is the rationale for moving from "fourteen years" to "seven years"? Okay, why not say 10 years?

Sen. Ramkhelawan: Mr. Chairman, the hon. Minister made an eloquent case for reducing it to seven years. I think that for the banking sector it is really nuisance value. And like the hon. Minister of Planning, Housing and the

Environment, I have worked in the banking sector, and I can tell you that this adds no value to anybody. So, I would appeal to Sen. Mark to let this one go. It adds no value; it creates no greater protection for the depositor. It just makes very little sense. We could move it to five years, if you want to move it. [*Laughter*]

Sen. Annisette-George: Mr. Chairman, there is another amendment in clause 76 and that is the understood amendment.

Question put and agreed to.

Clause 76 ordered to stand part of the Bill.

Clauses 77 to 132 ordered to stand part of the Bill.

New clause 122.

Question proposed, That new clause 122 stand part of the Bill.

Sen. Mark: New clause 122 reads as follows:

The Minister, may after receiving the recommendations of the Central Bank, make Regulations subject to an affirmative resolution of Parliament for—

(a) any matter required to be prescribed under this Act;

(b) the transfer of funds by electronic money; and

(c) generally for giving effect to the provisions of this Act.

New clause 122 read the first time.

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

Sen. Mark: Mr. Chairman, it is abundantly clear, and given the confession made by the Minster earlier, that regulations are required to give effect to several provisions in the legislation. However, I suspect that it may be an oversight, because I do not believe that it was done deliberately. There is need for a provision, and I am proposing in this new clause that regulations that are made by the Minister to give effect to several provisions contained in the legislation be subject to an affirmative resolution of the Parliament. I specified that in the current legislation the very provision is contained therein. I have transferred it as a new clause to be incorporated in this legislation, because regulations must be made and tabled in Parliament, and I am suggesting, subject to an affirmative resolution.

Mrs. Nunez-Tesheira: With regard to your proposal with the new clause 122, under clause 9 of the new Bill it is already covered. In fact, it is a little more detailed and it is by way of negative resolution so it will come to Parliament. So,

your concern about it coming to Parliament and if there is an objection, it would be debated upon. In fact, under the Financial Institutions Act, 1993, there is a similar provision and there is a provision for negative resolution. So, it is already covered and it is more extensive than your proposal. It is under clause 9 which we have approved, but it is by negative resolution. So, it would come to the Parliament.

Sen. Mark: Mr. Chairman, we are of the view that given the serious challenges that the financial apparatus is being subjected to, the oversight responsibility of the Parliament to safeguard the national interest, particularly in the field of finance which is the lifeblood of any economy, I would really like to submit that the past has been the past. We are now going into the future, and I would like the hon. Minister to give consideration to deliberation in this Chamber via an affirmative resolution. I do not like this idea that if Mark does not like it or if John does not like it you can bring a Motion within a 40-day period. I believe that these regulations governing the legislation are too important to trifle and tamper with. So, that is why I would like to insist that we go with an affirmative resolution. I would like you all to consider it.

Mrs. Nunez-Tesheira: Sen. Mark, you have argued your point, and I think your concern about getting the credentials and the oversight of Parliament is there. We have to balance what your concern is against being expeditious in the way that we respond. If there is any objection, you would get the opportunity to debate it. So, we would like to stand by our position with regard to that matter. You would get the opportunity to scrutinize it in Parliament, and if you have any objections, to have it debated.

Sen. Mark: I stand by my position. Mr. Chairman, what the hon. Minister is saying is that my provision is already captured in clause 9. So, I am not arguing that. All I am saying is that if we go to clause 9, rather than have a negative resolution, I am just saying to change it to an affirmative resolution. That is all I am saying.

Mr. Chairman: We have already passed that clause. Do you want to withdraw it?

Sen. Mark: No, I am not withdrawing. I am just asking if the Minister would consider—

Mrs. Nunez-Tesheira: You would have to withdraw new clause 122.

Sen. Mark: I do not mind withdrawing new clause 122, if you give me the commitment that you are going to ask the Chairman to revisit clause 9. I keep my new clause 122.

Question put and negatived.

11.15 p.m.

Clause 42 recommitted.

Question again proposed, That clause 42 stand part of the Bill.

Sen. Annisette-George: Mr. Chairman, with respect to clause 42(6) and it is at page 54; the proposed amendment is at 6(b), "in the opinion of the inspector" and the words to be inserted there is "after consultation with the Governor."

Mr. Chairman: Clause 42(6) be amended as follows:

(a) That the following words "after consultation with the Governor" be inserted after the word "Inspector" in clause 42(6)(b).

Question put and agreed to.

Clause 42, as amended, ordered to stand part of the Bill.

Clause 16 recommitted.

Question again proposed, That clause 16 stand part of the Bill.

Sen. Annisette-George: Mr. Chairman, if we could crave your indulgence, we know it is late and I guess it is affecting all of us, but again being guided by a question asked by Sen. Ramkhelawan and his experience as a banker, we would like to revisit on page 22, clause 16(6). That is with respect to the prudential criteria and —

Sen. Mark: Where is that now?

Sen. Annisette-George: Page 22, clause 16(6). Mr. Chairman, two issues were raised there. Sen. Mark had raised the issue with respect to all the regulations being incorporated in the Bill, and then Sen. Ramkhelawan had asked the question whether if the 1993 Act was repealed, whether the regulations subsist, and I had said yes, the regulations subsist and that is under section 29(3) of the Interpretation Act, but out of an abundance of caution to make things absolutely clear we want to propose that the words, "after regulations made under this Act" be deleted. That is towards the end of the paragraph of the subclause and it would now read, "imposed by the prudential criteria regulations". That is what it is called.

Mr. Chairman: Drop the word "regulations"—

Sen. Annisette-George: Just put, "imposed by prudential criteria regulations" and we are deleting, "made under this Act".

Mr. Chairman: So, it is, "imposed by the—

Sen. Annisette-George: No, not "the" Mr. Chairman, I am sorry, "proposed by prudential criteria regulations".

Mr. Chairman: Made under this Act.

Sen. Annisette-George: No, "made under this Act" is to be deleted.

Mr. Chairman: Clause 16(6), be amended as follows:

By deleting the words, "regulations made under this Act" and including the words, "Prudential criteria regulations."

Question put and agreed to.

Clause 16, as amended, ordered to stand part of the Bill.

First Schedule.

Question proposed, That the First Schedule stand part of the Bill.

Sen. Mark: Mr. Chairman, I just wanted to bring to the Minister's attention that the First Schedule is a bit bare, it is naked and I am just trying to put some clothing on this particular Schedule. And I would like to suggest to the Minister that when I look at the current Act which is going out of existence shortly, the First Schedule dealing with the same activities and classes dealt with the business of a financial nature including the following types of business.

So anyone who is referring to the First Schedule, they will know what the First Schedule is all about rather than leaving it bare, you do not know exactly what this First Schedule is about. So when we look at what is in the 1993 Act we know what the First Schedule is because it has the same types of business, same class of business, but it is read after the First Schedule just under, "business of a financial nature including the following types of business", and it goes on to describe—I would like the hon. Minister to consider just amplifying, elaborating, this particular aspect so that the public will know what we are talking about.

Mrs. Nunez-Tesheira: Senator, I think your concern is that you think it is a little too wide, an open-ended clause but I want to turn your attention to clause 17(3) which perhaps would answer your concern, which says and which is relevant to that First Schedule to which you are referring and clause 17(3) says:

"A person shall not carry on business of a financial nature of any of the classes specified in the First Schedule unless he is licensed by the Central Bank in respect of that class of business."

So it tightens that concern that you have expressed because it limits the businesses for which you could get a licence from the Central Bank for those specified in the Schedule.

Sen. Mark: Withdrawn.

Question put and agreed to.

First schedule ordered to stand part of the Bill.

Second Schedule ordered to stand part of the Bill.

Third Schedule.

Question proposed, That the Third Schedule stand part of the Bill.

Mrs. Nunez-Tesheira: Mr. Chairman, we want to add, based on consultation with Sen. Ramkhelawan, he expressed his concerns. In the Third Schedule we would want to add a new item, Part II and in that Part II we would want to add under institutions, Chap. 83:02 a securities company registered under the Securities Industry Act and for activities:

"(a) the business of repurchase agreements; and

(b) lending and borrowing against the securities as defined in the Securities Industry Act."

Mr. Chairman: We have another amendment but let me put this question separately. Okay?

Sen. Mark: Mr. Chairman, I think that we need to be consistent eh? You know I had a proposal, "Minister may make regulations subject to a negative"—the other side said there was no amendment before you and you dutifully and properly proceeded and I got wiped out in the process. Now the Minister does not have a recommendation or an amendment—

Mrs. Nunez-Tesheira: Yes.

Sen. Mark: Where?

Mr. Chairman: It is on the other side.

Mrs. Nunez-Tesheira: PTO, PTO.

Sen. Mark: Oh, I withdraw, Sir. [*Laughter*] I withdraw.

Mr. Chairman: Okay, I will put this first and then I will put yours. Okay?

Sen. Piggott: It is late in the evening.

Sen. Mark: When I am wrong I withdraw.

Mr. Chairman: The Third Schedule be amended as follows:

Insert the following new item in Part II under institutions,

Chap. 83:02 a securities company registered under the Securities Industry Act under activities:

"(a) the business of repurchase agreements; and

(b) lending and borrowing against the securities as defined in the Securities Industry Act."

Question put and agreed to.

Mr. Chairman: We have another amendment to the Third Schedule.

Sen. Mark: Mr. Chairman, I would like to suggest a compromise for the consideration of the hon. Minister. I would like to suggest that we retain the status quo as outlined in the current Act, Third Schedule. I have an amendment here Sir, to delete certain institutions that have been incorporated in this particular Third Schedule. I am saying I am prepared to make a compromise by withdrawing what I have advanced and keeping the status quo as contained in the Third Schedule. [*Crosstalk*]

In other words, I am prepared to withdraw. I am prepared to withdraw my amendment if the Government is prepared to maintain the status quo in the Third Schedule of the 1993 Financial Institutions Act, because one can understand the arguments advanced by the hon. Minister, although I have done that reluctantly. The Agricultural Development Bank Public Policy indicated Mortgage Finance Company Public Policy, Small Business Development Company Public Policy, but in the case of Unit Trust I am not convinced and I believe that the hon. Minister has indicated and I would like her to give an undertaking, how soon would the Securities Industry Bill arrive in this Parliament, and I understand she said the first quarter of 2009 and I think what the hon. Minister is advancing is that the Unit Trust Corporation, the regulation of that industry, company or corporation will then be addressed in the Securities Industry Bill, 2009.

Mrs. Nunez-Tesheira: That is correct.

Sen. Mark: And the others you are saying those are as a result of public policy and you would not want to have those institutions. What has caused the change of heart or the change of position? I ask this question, Mr. Chairman, because when I look at the Third Schedule of the current Bill I could only assume that they were considered; now whether they were regulated I cannot argue, but why did the Government not incorporate these entities then, because they existed then? The ADB existed then; the Unit Trust existed then; the Trinidad and Tobago Mortgage Finance Company existed then, so why is it for instance we left them out in 1993 and in 2008 we are now going to exempt them? That is all I am asking. I want to get some logic into what is being advanced.

11.30 p.m.

Mrs. Nunez-Tesheira: I am being guided that it is covered under the new Schedule. They have given me an example if I may. For example, SBDC is now the financial operations of—Small Business Development Company Leasing Limited are now conducted by Caribbean Leasing Company Limited, which is a wholly-owned subsidiary, SBDC.

Sen. Mark: So the SBDC is there? I am just saying that if you look at the 1993 Schedule, we did not have Mortgage Finance there, we did not have Unit Trust there and I am asking why all of a sudden they have appeared. That is why I am saying we could maintain the status quo and leave them out. That is my argument.

Mrs. Nunez-Tesheira: The understanding is that it may have been done in error.

Sen. Mark: In error?

Mrs. Nunez-Tesheira: That is the explanation I got and I can only tell what I have been told, but I can assure you that the Unit Trust Corporation will be governed as it should be under the Securities Industry Act because it operates more as a securities company rather than a financial institution and I made the undertaking that that will be before the Parliament, all things being equal in the first quarter of 2009.

Sen. Mark: What about the Credit Union Act?

Mrs. Nunez-Tesheira: Senator, we have explained that also, the Credit Union Act is under—Central Bank is dealing with that.

Hon. Mark: First quarter?

Mrs. Nunez-Tesheira: Well, what I am saying is it has not reached the advance stage as the Securities Industry Act.

Sen. Mark: And the insurance?

Hon. Senators: Oooh.

Sen. Mark: No, I am just trying to get clarification, so I would like to know when it is coming.

Mrs. Nunez-Tesheira: I understand the proposed Insurance Bill is going out for consultation this week and it is starting on the Central Bank's website.

Sen.. Mark: Could you make sure you invite workers' representatives and the trade union next time?

Mrs. Nunez-Tesheira: I will make sure I send an invitation for you, Sen. Mark.

Sen. Mark: Banking Insurance and General Workers Union and the National Trade Union Centre.

Mrs. Nunez-Tesheira: You are watching the time, Sen. Mark? I am going to send a special invitation just for you. [*Laughter*]

Mr. Chairman: What do you want me to do, withdraw the questions?

Sen Mark: Yes.

Mr. Chairman: Very well.

Third Schedule, as amended, ordered to stand part of the Bill.

Fourth to Seventh Schedules ordered to stand part of the Bill.

Preamble ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, with amendment.

Question put, That the Bill be read a third time.

The Senate voted: Ayes 29

AYES

Enill, Hon. C.

Annisette-George, Hon. A.

Joseph, Hon. M.

Piggott, Hon. A.

Dick-Forde, Hon. Dr. E.

Gronlund-Nunez, Hon. T

George, W.

Rogers, L.

Hadeed, G.

Lezama, Miss L.

Melville, Miss J.

Primus, J.

Cummings, F.

Gayle, N.

Saith, Hon. Dr. L.

Mark, W.

Charles, Dr. C.

Kernahan, Dr. J.

Rahman, M. F.

Sharma, Miss C.

Oudit, Miss I.

Deosaran, Prof. R.

Ali, B.

Annisette, M.

Ramkhelawan, S.

Baptiste-Mc Knight, Mrs. C.

Nicholson-Alfred, Mrs. A.

Drayton, Mrs. H.

Merhair, Miss G.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I wish to thank Members of the Senate for the demonstration that we just experienced. However, I beg to move that the Senate do now adjourn to Tuesday, December 09, 2008 at 1.30 p.m., where we propose to do the following: the Elections and Boundaries Commission (Local Government) (Amendment and Validation) Bill, 2008; the Report of the Special Select Committees on the Tobacco Control Bill and the Trinidad and Tobago National Steel Orchestra Corporation Bill. Both reports are currently before select committees.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 11.39 p.m.