

SENATE*Thursday, February 05, 2009*

The Senate met at 1.30 p.m.

PRAYERS[MR. PRESIDENT *in the Chair*]**CENTRAL BANK (AMDT.) BILL**

Bill to amend the Central Bank Act, Chap. 79:02 [*The Minister in the Ministry of Finance*]; read the first time.

Motion made, That the next stage be taken forthwith. [*Hon. M. Browne*]

Question put and agreed to.

INSURANCE (AMDT.) BILL

Bill to amend the Insurance Act, Chap. 84:01 [*The Minister in the Ministry of Finance*]; read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings. [*Hon. M. Browne*]

Question put and agreed to.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Agricultural Development Bank of Trinidad and Tobago for the year ended September 30, 2007. [*The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]
2. Memorandum of Understanding dated January 30, 2009 made between the Minister of Finance acting for and on behalf of the Government of the Republic of Trinidad and Tobago (hereinafter referred to as "GORTT") of One Part and CL Financial Limited of CL Duprey Building 41—43 St. Vincent Street, Port of Spain (hereinafter referred to as "CLF") acting for itself and as agent for its affiliates to include Colonial Life Insurance Company (Trinidad) Limited (hereinafter referred to as "CLICO"), CLICO Investment Bank Limited (hereinafter referred to as "CIB") and British American Insurance Company (Trinidad) Limited (hereinafter referred to as "BA") of the Other Part. [*Sen. The Hon. M. Browne*]

To be printed as a Senate Paper.

ORAL ANSWERS TO QUESTIONS

**Rent Restrictions Act
(Re-validation Amendment of)**

1. **Sen. Gail Merhair** asked the hon. Minister of Legal Affairs:

Would the Minister inform the Senate of the steps which are being taken to re-validate and/or amend the Rent Restrictions Act, Chap. 59:50?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, the answer to question No. 1 is not now ready. I believe that it should be ready in two weeks.

Question, by leave, deferred.

**East-West Maxi-Taxis
(Regulation of)**

2. **Sen. Gail Merhair** asked the hon. Minister of Works and Transport:

Would the Minister inform this Senate of the steps if any, which are being taken to regulate maxi-taxis that work parts of the route along the East-West Corridor?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, the answer to this question is also not ready. It should be ready in two weeks.

Question, by leave, deferred.

**Medical Treatment Abroad
(Funding of Children)**

4. **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 Health (Sen. The Hon. Jerry Narace): Thank you, Mr. President. In 1979, Cabinet agreed to facilitate the medical treatment of nationals in institutions abroad and to establish a Medical Aid Committee to review cases, especially as they related to children. The programme was expanded further in the

1990s to include special cases, where the treatment was not provided by government institutions and especially where the patient is unable to meet the cost of treatment at home or at a private institution locally.

The guidelines for determining eligibility of patients to benefit from the fund are as follows: the need for investigation and treatment; the availability of the treatment in Trinidad and Tobago; the inability of the patient to afford treatment, either partially to wholly; and the proposed good prognosis with the good prospect of cure. These guidelines will take effect when the applicant has been seen and recommended by a consultant, a specialist medical officer in the Ministry of Health and the applicant was assessed by the medical social worker regarding ability to afford medical treatment abroad.

Consequently, the Ministry of Health has been constantly increasing the allocation of funds to the Medical Aid Committee in order to increase the coverage, access and treatment to more patients, especially children requiring urgent care, both locally and abroad.

In this regard, the actual expenditure of funds for all patients has increased from \$455,521 in 1995 to \$2.5 million in 2001, to a revised estimate of \$45.6 million in 2008, according to the draft estimated figures. More specifically, the expenditure on children has increased from \$886,847 in 2007, to \$2 million as of October 31, 2008. Furthermore, the number of children accessing the fund increased from 110 in 2007 to 148 in 2008.

In addition to the Medical Aid Committee, the Ministry of Health has been funding the UWI Telehealth Initiative for the last five years, with an annual expenditure of TT \$90,000. This initiative enables needy patients, especially children, to gain substantial access to the required health care services through consultations by local health care professionals with specialists at the Hospital for Sick Children and other sites in Canada. A total of 56 consultations were conducted during the period 2004—2008. These sub-specialties or consultations include child development, paediatric neurology, complex congenital abnormalities, cardiology, oncology, genetics, haematology, endocrinology, dermatology, gastroenterology, infectious diseases, nephrology and nutrition.

More importantly, the Ministry of Health also contributes to the National Heart Care Fund for children, which manages the provision of paediatric open heart surgery in and out of Trinidad and Tobago. This fund has been in existence for the last 10 years and the Ministry of Health contributed approximately \$2.7 million per year, which benefited approximately 350 persons.

Furthermore, there are a number of medical teams from the United States, Canada, the United Kingdom, Sweden and Germany who continue to provide free medical, dental and optical services throughout Trinidad and Tobago on a periodic basis.

Towards this end, 20 infants were screened for cardiac surgery during the period September 28 to 30, 2006. In addition, it is expected that a paediatric cardiac surgical team from the University of Ohio Children's Hospital should arrive in Trinidad and Tobago in March 2009, to conduct more surgical procedures.

Hon. Senators, the Ministry has expended approximately \$5.6 million for over 200 children seeking local and overseas treatment for the last fiscal year, via the Medical Aid Committee, the UWI Telehealth Initiative and the National Heart Care Fund for Children.

Based on the foregoing, the Ministry recognizes the need to further create an additional funding arrangement especially for children requiring medical treatment abroad. Firstly, the Ministry has increased its provisional allocation from \$15 million in 2008 to a sum of \$42.5 million in 2009.

Secondly, the intention is to develop a public/private sector partnership in an effort to secure additional funding for patients in need of specialty treatment abroad and more importantly to develop an appropriate assessment and policy guideline for the type of medical services offered abroad to citizens of Trinidad and Tobago.

Thirdly, the introduction of a National Health Service in the next few years would be aligned with this policy guideline to source the appropriate provider and funding arrangement to fund children and other persons requiring specialized surgical medical care not provided in Trinidad and Tobago.

The purpose of this system is to, inter alia, ensure the provision of timely and quality care and redress the challenges we face in regard to children seeking medical treatment or aid abroad.

Brian Lara Cricketing Academy
(Details of)

5. Sen. Wade Mark asked the hon. Minister of Sport and Youth Affairs:

Could the Minister inform this Senate of:

- (a) the current status of the Brian Lara Cricketing Academy in Tarouba;
- (b) the total sum expended on the project as at December 31, 2008;

- (c) the estimated sum required for the completion of the project; and
- (d) the completion date of the project?

The Attorney General (Sen. The Hon. Bridgid Annisette-George): Mr. President, unfortunately the answer to this question is not ready and as soon as it is ready it will be delivered.

Sen. Mark: I know it caught you by surprise, but could you tell us if it will be ready in one week or two weeks? Could you give a commitment that within one week it will be here?

Sen. The Hon. B. Annisette-George: Mr. President, unfortunately, I am not in a position to say when it would be ready. I can give the undertaking that it would be ready as soon as it possibly can and it will be presented here in this Senate.

Sen. Mark: I cannot accept that. I think that we have a duty to give this Senate an undertaking that it will be ready in two weeks, three weeks or 10 weeks, but do not tell us it is almost unending. I think I would ask the Leader of Government Business to address that issue for me, Sir.

Question, by leave, deferred.

Ministry of Education Tower (Details of)

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

Could the Minister inform this Senate of:

- (a) the current status of the Ministry of Education Tower located on lower St. Vincent Street, Port of Spain;
- (b) the total sum expended on the project as at December 31, 2008;
- (c) the estimated sum required for the completion of the project; and
- (d) the expected completion date of the project?

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Mr. President, the answer for this question is not yet ready. We anticipate about three weeks for it to be ready. Thank you.

Question, by leave, deferred.

**Bail Outs
(Details of)**

7. **Sen. Wade Mark** asked the hon. Minister of Finance:

Regarding bail outs of private financial institutions by European countries with which Trinidad and Tobago has trading relations under the Economic Partnership Agreement (EPA), could the Minister state:

- (a) Trinidad and Tobago's position in the absence of similar bail outs?
- (b) Whether such bail outs violate any of the terms and conditions of the EPA?
- (c) If the answer to (b) above is in the affirmative, could the Minister state the steps the Government intends to take to address any violation of the Agreement?

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, the answer to this question is not yet approved, but I expect that it would be ready within one week.

Question, by leave, deferred.

Mr. President: Hon. Senators, I am going to suspend the sitting for about 10 minutes while the Leader of Government Business, the Leader of Opposition Business and the Leader of the Independent Bench consult with me in my chamber on a procedural matter.

1.45 p.m.: *Sitting suspended.*

2.05 p.m.: *Sitting resumed.*

RELATED BILLS

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, in moving the second reading of the Central Bank (Amdt.) Bill, I seek the leave of the Senate to debate along with this Bill, Bill No. 2 on the Supplemental Order Paper, the Insurance (Amdt.) Bill, 2009, as they are interrelated.

Question put and agreed to.

CENTRAL BANK (AMDT.) BILL

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, I beg to move,

That the Bills entitled the Insurance (Amdt.) Bill, 2009 and the Central Bank (Amdt.) Bill, 2009, be now read a second time.

These Bills have been passed in the other place. Arising out of the challenges now faced by one of the major regulated financial entities in Trinidad and Tobago, an MOU was undertaken between the Government of Trinidad and Tobago, the Colonial Life Financial Group and the Central Bank, which seeks to provide for a course of action to correct the situation that now exists, and put the company back on a sound financial footing.

This MOU was published in the press, it was circulated in the House and it has been circulated and laid today in the Senate. These Bills seek to enact enhanced regulatory provisions to facilitate and give effect to the intentions of the MOU.

They are intended to be a precursor to more expansive legislative amendments to the Insurance Act to be brought to this House during this year to govern the supervision of the insurance industry. These amendments have been ongoing, and the Central Bank has been in discussion with the stakeholders for some time. The amendments to the Insurance Act, which we are considering today, would be considered in the first instance.

Hon. Senators are asked to note that there is a preamble to this Bill and the other Bill entitled the Central Bank (Amdt.) Bill, which declares that there are provisions which are inconsistent with sections 4 and 5 of the Constitution and, as such, will require the support of, at least, three-fifths of Members of this honourable Senate.

The constitutional issues which arise since certain clauses are inconsistent with section 4 of the Constitution will be discussed when dealing with the specific clauses.

Clause 1 of the Insurance (Amdt.) Bill, 2009 cites the resulting Act as the Insurance (Amdt.) Act, 2009.

Clause 2 of the Bill provides an interpretation of the word "Act" to mean the "Insurance Act".

Clause 3(a) of this Bill amends the definition section which is section 3 of the Insurance Act where the term "Inspector" is currently defined to mean "the Inspector of Financial Institutions appointed pursuant to section 30 of the Financial Institutions Act".

Under the recently enacted Financial Institutions Act, 2008, the appointment of the Inspector of Financial Institutions is now to be found at section 7. Clause 3(b) adds the definitions for the terms "annuity contract" and "registrant". Mr. President, "annuity contracts" have been defined to include both the accumulation

stage of the contracts where funds are contributed over a period of time toward the receipt of an annuity or the pay-out phase. Both immediate and deferred annuities are accordingly covered under the proposed definition.

Clause 3(b) of this Bill includes a definition of the term “registrant” to mean “a person registered pursuant to section 16 of the Act”. Section 16 provides for the registration of a company where the company satisfies the Central Bank that an application has been made in accordance with the provisions of the Act and that the company meets certain share capital requirements, and is likely to be able to comply with applicable provisions of the Act. Clause 3(c) expands the definition of the term “policy” to expressly include annuity contracts.

Clause 4 of the Insurance (Amdt.) Bill introduces a new section which is section 6A in the Insurance Act to provide for the sharing of information regarding the business affairs of a registrant, or any of its affiliates, with any local or foreign regulatory agency or bodies that regulate financial entities. This provision will allow the Central Bank to share information with other regulators, both within Trinidad and Tobago, as well as in many other jurisdictions where insurance companies registered in Trinidad and Tobago also conduct business.

Information sharing between regulators has been identified as a major element in proficient supervision of companies that conduct cross-border financial services. Such information sharing assists regulators in the assessment of the overall risk profile of regulated companies which operate in multiple jurisdictions. While many of the regulators in some of these jurisdictions where our registered insurance companies operate are empowered to share information with us, we are unable under the current provisions to do likewise.

The purpose of section 6A is to allow the Central Bank to share regulatory information about an insurance company with other regulators. This is an important provision given the multinational nature of CL Financial operations. Mr. President, because the sharing of information will involve the disclosure of private information regarding an insurer or an insured, it is felt that this provision will impact on the fundamental rights provisions under the Constitution with regard to the right to privacy. As such, this Bill will require a three-fifths majority.

Section 37 of the Insurance Act now requires insurance companies to maintain a statutory fund to support the policyholders’ liabilities and contingency reserves in respect of long term insurance business and motor insurance business. The fund is to be maintained by placing assets in trust on an ongoing basis. The Insurance

Act now provides for an annual assessment of the statutory fund positions as determined by a company's insurance liabilities and as reported at the end of its financial year.

Clause 5 of the Bill seeks to strengthen the provisions governing the assets to be placed in the statutory fund.

Clause 7 of the Bill inserts a new provision, section 61A in the Insurance Act, requiring insurance companies to submit quarterly returns within 28 days of the end of the quarter. This clause 5 of the Insurance (Amdt.) Bill strengthens the statutory funds provisions by requiring insurance companies carrying on long-term insurance business and motor vehicle insurance business to have sufficient assets in their statutory funds to meet policyholders' liabilities as established in the quarterly returns. These assets are to be in place within seven days of the filing of the quarterly returns; a total of 28 days after the end of a quarter. Accordingly, the assessment of the sufficiency of the statutory fund will be done on a quarterly basis instead of the annual basis as currently obtains.

Clause 6 of the Insurance (Amdt.) Bill inserts a new section which is section 50A to enhance the capability of the regulator to conduct on-site examinations of a registrant. The new section 50A is intended to afford access to the company's premises to conduct on-site examinations if the regulator is physically prevented from entering the premises.

The persons who would be allowed to carry out these on-site examinations will be the Inspector of Financial Institutions, a person authorized in writing by the Central Bank, or a designated member of staff of the Central Bank. Where the Central Bank, through its specified officers or agents, is prevented from exercising the powers of intervention, an ex parte order may be sought from the High Court authorizing on-site examination. The provisions introduced by the clause seek to give the Central Bank the requisite power to act where there may be efforts to circumvent its regulatory actions in discharge of its responsibility to adequately supervise the insurance industry.

Mr. President, as I indicated in explaining the provisions of clause 5, clause 7 adds a requirement for insurance companies to submit quarterly returns within 20 working days of the end of each quarter. This would be in addition to the annual returns now required under the Act.

Clause 8 of the Bill seeks to amend sections 65—67 of the Insurance Act which currently provide for intervention by the Central Bank. Under the Insurance Act, there are certain procedures that a regulator can implement when serious

regulatory concerns are identified. The implementation of these procedures is carried out through an intervention process.

The Central Bank has found this intervention process to be very time consuming and it hinders the effectiveness of its regulatory process because of the fixed lengthy notice period. It is proposed that the intervention process be replaced with the general ability of the bank, as a regulator, to issue compliance directions which can either be cease and desist or to perform a particular action. It is also proposed that the regulator shall have some flexibility in determining the notice period, although the grounds for issuing compliance directions would be similar to those currently required for intervention. Compliance directions could be issued under the new section 65 to insurers or to any controller, officer, other employee or agent of the insurer or principal representative of a foreign insurer or any other person.

2.20 p.m.

It is also proposed that the Central Bank should have the ability to seek an immediate compliance direction in cases of urgency, without requiring prior notification to the insurer. If an objection is raised, the inspector would consider the objection and make a decision within 20 days from the date the direction was given. Decisions of the Central Bank can be appealed to the High Court.

As part of the legislative support for the new compliance direction provisions contained in the proposed section 65, clause 8 also inserts a new section 66 of the Insurance Act, which will provide the Central Bank with the power to seek an injunction from the court to take immediate action, either to compel someone to take a course of action or, alternatively, stop a course of action. This has become necessary as it is recognized that there are situations when immediate action may be necessary to protect the interest of policyholders or the financial system. The ability to seek injunctive relief would give the Central Bank an opportunity to address such issues, either as a complement to or in lieu of the usual enforcement process.

Clause 9 amends the heading before section 68, to delete "Judicial Management and Winding Up" and insert "Suspension and Winding Up". Sections 68 to 75 of the Insurance Act currently enable the Central Bank to apply to the court for an order that a company, or part of its business, be placed under judicial management. The Central Bank has advised that the experience with this process has proven to be time consuming and costly. It is ineffective and hampers efforts to implement remedial action, all of which affect the stakeholders' returns.

Accordingly, clause 10 of the Insurance (Amdt.) Bill deletes the existing judicial management provisions of sections 68 to 75 of the Insurance Act and replaces these sections by a new section 68 that deals with suspension. These provisions facilitate the suspension of a company's operations for a period of 60 days. During this time, the inspector has the opportunity to examine the affairs of a company in order to identify the appropriate course of action leading either to the resolution of difficulties and resumption of normal business activities, or the winding up of a company. The replacement of the judicial manager by the inspector allows a quicker and less costly process, since a court order will not be required to appoint a judicial manager.

It should be noted 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:

- i) set at the maximum and subject to the discretion of the magistrate;
- ii) only applicable on summary conviction; and
- iii) intended to be a greater deterrent and reflect the severity of the offence in current value terms.

Mr. President, the Central Bank Acts governs the operations of the Central Bank, inclusive of its powers in relation to the regulations of the financial sector. The powers of the Central Bank under section 44C allows the bank to take action to protect the interest of depositors. These powers now apply only to institutions licensed under the Financial Institutions Act and not to insurers registered under the Insurance Act. Notwithstanding that, the Central Bank of Trinidad and Tobago has regulatory oversight of the insurance industry, accordingly, the Central Bank (Amdt.) Bill, 2009 seeks to achieve the following:

- Clauses 1 and 2 are introductory, as clause 1 cites the name of the Bill, and clause 2 defines the term "Act" to mean "Central Bank Act";
- Clause 3 updates the reference to the Financial Institutions Act, 2008;
- Clause 4 seeks to amend section 44C of the Central Bank Act to expand the definition of an institution to include:
 1. an insurance company registered under the Insurance Act; that is a company registered by the Central Bank and authorized to conduct insurance business
 2. a society registered under the Co-operative Societies Act;

- Clause 5 amends section 44D of the Act to include policyholders and members of co-operative societies.

Mr. President, those provisions are the provisions of the Acts as they are before us. It would be remiss of me if I did not provide a few words of explanation.

Mr. President, hon. Members of this Senate, the financial services industry, in the last 25 years, has undergone significant change. It has long been recognized that banks are a special financial creature and they require strong regulatory oversight. The reasons for this, which are cited in the literature, are threefold and at its core. Firstly, banks, are important to the exercise and conduct of financial services transactions in the system, without which corporate and our personal lives would fail; secondly, because they are important as a measure of value, as a storehouse, as a conduit to achieving liquidity in the financial system, and to facilitate business, and thirdly, because they are instruments of monetary policy by which our monetary aggregates and ultimately our gross domestic product are manipulated by regulators. For these reasons, governments, central banks, take a very strong oversight of financial services firms.

I want to deal with the term "a financial services firm", because it is core to the changes in the legislation which have taken place over the last couple of years, and is reflected in the fact that the Financial Institutions Bill has also taken it into consideration, and these amendments take the insurance companies into consideration.

Why is that so? Mr. President, hon. Senators, over the last 20 years we have seen the regulations. In a 1970 survey of one of our largest economies in the world, the United States, the banking system held approximately 75 per cent of the total financial assets of that system. In the year 2000, the banking system accounted for approximately 20 per cent of those financial assets.

The majority of other firms operating in that jurisdiction, in the financial services industry are unregulated, or alternatively have oversight by the Securities and Exchange Commission in different ways. Unfortunately, that regulatory oversight does not extend to specific areas of doing business and more importantly, to deal with issues of intervention and the financial system.

We have come here today partly as a result of the course of action which we set ourselves in 1971. In 1971, the Finance Act of 1971 recognized the need to develop Trinidad and Tobago's financial system and required all financial services firms, insurance companies in particular, to hold 80 per cent of the their assets in domestic instruments, as a result of which we have seen the growth of many new financial services firms.

These firms have grown and grown significantly. The regulatory oversight has only recently been put into position, as a result of which, if we were to take the instant case, which is the subject of the Memorandum of Understanding, the CL Financial Group's total market share, based on its asset base as a percentage of the total assets of the life of the insurance industry, accounts for approximately 56 per cent of the total assets. Its total annuity and deposits as a percentage of the total premium income of the industry is 75 per cent.

Mr. President, hon. Senators, insurance companies are important as part of the financial services mechanism. They maintain control and operate assets, which are due to pension fund holders, who are critical to the issue of raising capital in the system, and are a significant part of the system. Not only that, they provide a number of products which are quasi banking products insofar as they provide rates with a guaranteed rate of return to all manner of commercial enterprises and not individuals alone.

Therefore, we, ourselves, in our own local market have seen the expansion of the financial services industry and by definition, the expansion of other firms to undertake financial services activity, which would bring them into the realm of monetary policy or, if you want, to the extension of monetary policy by another name. These developments have wrought a number of other changes. There have been changes in the regulations; in the interest rate environment; in the customer base and the needs of our customers, which are also reflected in the wide variety of financial services products now offered by a number of institutions not regulated.

More importantly, we are seeing also, the need for an increased capital base, which is not currently required under the existing insurance company provisions. In the absence of those provisions, it has become necessary—given some of these developments—to take immediate action to ensure that the regulator has access, not only to the books and records, but the ability to take and intervene in the market as and when required.

This is important, if only because the financial system is critical to the functioning of our economy. Were it not for that fact, no government would ever intervene to support a bank. It is precisely because the banks are critical, they are important, because they underline and are the underpinnings in which all financial transactions occur, and therefore, they are important to any economy. All countries have strong regulations with regard to the banking sector, and it is now recognized that it is important to extend those regulations to move into other spheres of financial services activity. This is what these Bills here attempt to do.

Central Bank (Amdt.) Bill
[SEN. THE HON. M. BROWNE]

Thursday, February 05, 2009

Mr. President, it will be also remiss of me if I did not point out that of the 170 odd members of the IMF, literally, every country, without fail, has had some financial crisis in the last 20 years, and none of the Organization for Economic Co-operation and Development (OECD) countries has escaped. In other words, the largest economies in the world, have not been immune from those occasional shocks.

There is ample evidence that today's date, if we look north, south, east, west we would see that all of the major companies are taking necessary and massive interventions in order to ensure that the financial services firms, and by definition, the banking industry, remain stable, remain afloat.

I give, by way of example, the intervention of the President through Troubled Assets Relief Programme (TARP). The Bill was introduced to the House, I think it expanded from some four pages in October—that is on the Monday—to approximately 119 pages when it was introduced in the Senate on October 08, 2008; the Bill was defeated. The Bill asked for an intervention of approximately \$700 billion. Notwithstanding the fact that the Bill was defeated by the Senate, the Federal Reserve Board acted quickly and decisively that very afternoon to inject \$600 billion into the system; in other words, without legislative support and without the approval of the Senate.

The moral of the story is it was considered important, urgent and necessary to act in a fashion to maintain the stability and the confidence of the financial system. All over the world, we see today, actions which are being taken to ensure that confidence is maintained in the financial system; for without confidence and trust, there is no financial system and there is no economy. As such, it is critical, it is important that we give our regulator the powers of intervention and the capacity to act in situations where it is demanded. As we speak today, the situation and the circumstances require that.

We want to ensure that the difficulties which are experienced by our largest insurer, will not extend to the rest of the financial community.

2.35 p.m.

In large measure we have been isolated from the difficulties that have affected other international financial systems. And the reason for the fact that we have not been so far affected has largely to do with that saving ratio, the ratio which requires most of our financial institutions to maintain the most significant portion of the assets in Trinidad and Tobago, that 80:20 principle of which I speak. Hence therefore, we have been able to avoid the contagion effect that we see, which has taken place in other economies north of us.

That notwithstanding, however, it behoves us to act in this situation to deal with the circumstances which have arisen with respect to this insurance company and to this insurance group. One company—Clico Investment Bank—falls under the rubric of the Banking Act and the Financial Institutions Act and therefore is not included for action, but the insurance company and its affiliates do not so do.

These Bills are brought before this Senate today to give the Central Bank the power to intervene and the power to intervene directly and decisively.

Mr. President, I beg to move.

Question proposed.

Sen. Wade Mark: Mr. President, thank you very much. These Bills, when we examine them in a more detailed way reflect a situation in which the Government has decided to react to a situation that ought to be more rationally approached.

It appears to us that these two measures before us today represent somewhat a knee-jerk and at times violent reaction to what has taken place in the financial sector today. It is our view that this has come about because of negligence on the part of the authorities for the last 20 years. But I will demonstrate in my contribution where, according to the Governor of the Central Bank, the matter involving the insurance industry, and in particular, the entity that is now under examination, has been in existence since 2004.

You would recall that in 2007 the Government amended the Insurance Act in an effort to allow insurance companies to invest on the stock exchange or to purchase excess moneys or excess liquidities that they had in their possession; they were able to use the excess liquidity to purchase or to engage in equity holdings. I recall that was sometime in 2007 and we were told that the problem affecting this particular entity—Clico, in particular—has been in existence since 2004, according to the Governor of the Central Bank.

We will also demonstrate in our contribution today why we consider some of the provisions, particularly in the Insurance (Amdt.) Bill, to be harsh, draconian and oppressive, and also, we will look at some of the clauses which we see are not properly sequenced, and we would like to bring this matter to the attention of the Government.

There appears to be a confusion at times in the legislation between the power of the inspector and the role of the Central Bank board, and also we will demonstrate the inconsistency as it relates to several provisions contained in the

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

legislation, particularly, in the Insurance (Amdt.) Bill that violates sections 4 and 5 of the Constitution and under section 54(1) of the Constitution would require not a three-fifths but a two-thirds majority. We were hoping that we would have been given the opportunity to have further consultation with stakeholders in the industry, because this matter that we are addressing today requires a little more consultation, particularly, among the stakeholders.

I want to also indicate from the very outset that it is firms which are involved in competition. Firms compete, not countries, and in the economy that we have today, a capitalist, market-driven economy, we need to be extremely careful when dealing with the firm and dealing with, particularly an indigenous firm or organization. Therefore, as lawmakers, we have the responsibility to do whatever we can to promote, to sustain and to develop the national private sector and not to destabilize through measures, this important institution, an aspect and element of our national economy.

Mr. President, confidence in the financial system is very important and therefore the stability of the financial system will always be uppermost in our minds as an alternative government. We believe that in order for us to make an informed decision and arrive at the best possible outcome in the interest of not only our depositors but all our policyholders, the creditors, the workers and holders of liability instruments, it is imperative that we engage in full disclosure. It is important that we deal with up-to-date information, and it is critical that matters are transparent and open as far as is possible.

As lawmakers we need to appreciate the various options, the alternative proposals that are available in this scenario. We do not have to be saddled by a single option or proposal that is currently before us today, because we do not know all the facts. We do not have all the information before us, and therefore, we are given one singular option by the policy makers manifested in legislation today, but we do not have before us any alternative proposals. Was this the only option available to the Government, as an example? Is this a bail out or is this a takeover? *[Interruption]*

My understanding of a bail out is that if an organization, a corporation, a company finds itself in this turbulent economic environment, experiencing a cash flow problem, not because the company does not have assets, the company might be asset rich, but because of the turbulence prevailing in the economic environment that particular company or corporation might be experiencing a cash flow problem. And, as we understand it, when you have an illiquid situation you have the authorities coming in, intervening to extend this line of credit in order for that organization to continue to live and to survive.

I think that the population of our country seems and appears to be in a state of confusion as it relates to the Government's action concerning this particular entity or these entities. Is it a bail out or is it a takeover? I think the hon. Minister needs to explain to this Parliament whether this is, in fact, a bail out. We do not see it as a bail out, because I would imagine in a bail out the Government or the Central Bank might have been able to extend a line of credit using the assets of the company as collateral in order to secure its investment or its line of credit over a period of time. But as we see it, what has happened is that the Government is actually engaging in a virtual stripping of assets of this particular company and these entities that are before us in the memorandum of understanding.

Therefore, we would have liked the Government to engage the lawmakers of this land in more meaningful consultation so that we could have at least worked together to find the best answer, the best solution and have the best outcome for the citizenry of Trinidad and Tobago. That is what we as lawmakers would have liked because at the end of the day, we are being called upon to support laws that are far-reaching in nature. We are being called upon as lawmakers to give the Government a virtual blank cheque.

2.50 p.m.

Mr. President, we do not know as we speak today, what is the extent of the liability. We heard in another place and it was published in the newspapers, that the liability is between \$7 billion to \$8 billion and counting. I do not believe a serious Parliament should be doing business in that kind of way. We need to know what is the extent of the commitment of the taxpayers of this country, at a time when this Government is about to engage in deficit financing, at a time when there is a crisis of cash at Petrotrin, at National Gas Company and many other state enterprises that are now facing serious financial losses for 2009. Therefore, we as lawmakers, we need to know, we need to have the facts before us and if we have the facts before us, we can at the end of the day, collectively make intelligent decisions in the interest of our nation.

Mr. President, I want to put on record that we on this side are fully in support, and we are fully committed to ensure that all depositors and all citizens who have deposits in those institutions that are currently before us, that their deposits are secured and safe. So we want to let the population know that we are at one, when it comes to the safety and security of their deposits at all the institutions in question. Similarly, we want all the policyholders to know that we are at one with them as it relates to securing their policies, all the creditors, all the holders of liability instruments, and in this regard, I would like to appeal to the

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

Government—I saw an amendment coming from the other place where they have now included the Cooperative Societies Act, so that credit unions would now fall under the provision of the Central Bank (Amdt.) Bill.

I want to appeal to the Government that whilst we are fully in support of depositors, policyholders, creditors and holders of liability instruments, we must never forget the people who create wealth in our nation, the workers. We are talking about all categories of personnel which I fully support and we fully support, but I am not hearing anyone speaking to the interest of workers in this country. I want to appeal to the Minister in the Ministry of Finance, for his colleague, the Minister of Labour and Small and Micro Enterprise Development, to take immediate steps to amend the Retrenchment and Severance Benefits Act. [*Desk thumping*]

Mr. President, do you know when a company closes its doors like Clico Investment Bank, they are ordered closed, those workers, if it is 100 workers in that organization, will go home even though they might have worked for 16, 15 or 10 years, they will leave that company without any severance payments because the Retrenchment and Severance Benefits Act defines workers who are retrenched in an organization as surplus labour? When you have surplus labour in an organization and you retrench 10 out of 30, then those 10 workers according to the formula, would be able to access severance. But if the company closes down, if it is liquidated, if it goes into receivership, every single worker will go home without any severance payments.

I think that we as a Parliament, as lawmakers, must take into account the interest of the working people of our nation, and I call on the Government, the Minister in the Ministry of Finance and the Leader of Government Business, the hon. Conrad Enill, with the same speed in which they have amended the Insurance Act, with the same speed in which they have amended the Central Bank Act, to take the same kind of interest and amend the Retrenchment and Severance Benefits Act, so that the workers of this country and the workers at CIB, would be guaranteed some degree of severance payment when they are retrenched. Because the Governor has served notice that CIB will be closed and its licence will be revoked very shortly. When you revoke the licence of CIB, then you revoke the employment of all the workers at CIB. What will happen to those workers who are now going on the breadline? Who is going to give them something to carry them through from one level to another level until they gain new employment opportunities in this country? So I call on this Government to address this particular issue very seriously.

Mr. President, we are dealing with a matter involving several entities, and the Memorandum of Understanding that we have before us outlines those entities, but we seem to be getting conflicting information from the authorities. On the one hand, we are being told that this situation that occurred at this particular entity—let us say in this instance Clico—with the statutory fund requirement, was known to the authority sometime in 2004. We are now in 2009, today is February 05, and the Governor of the Central Bank is now responsible for the supervision of all insurance companies in this country. The legislation, I believe, was amended to take from the Supervisor of Insurance which was under the ambit of the Ministry of Finance, and place that responsibility in the hands of the Inspector of Banks or what is now called, the Financial Inspector of Banks. That office holder is responsible for supervising the insurance sector.

Mr. President, the question must be asked, why has it taken some five years almost to address an issue? Why for instance, this issue could not have been addressed in 2004 or 2005 or 2006 or 2007, or even 2008? Why it is, we in this country have to wait until we have a crisis in order to respond and in order to react? Why? Somebody must explain to this country why it took so long. Who is culpable? Who is liable? Who is responsible? Who will we impose a penalty on for what has happened in our nation today? Is it the Governor of the Central Bank who is liable and culpable? Is it the Inspector of Insurance Companies who is liable and accountable? But somebody must be accountable for what has happened. What has happened as a result of this crisis, we have a kind of violent reaction, given the draconian provisions that are contained in the legislation before us. So we have gone from one extreme to another extreme. As my colleague is saying, this is a "government by crisis".

Mr. President, tell me and tell this country whether what we have witnessed over the last few days in this country, all that you have heard and all that we have heard—you know the population is coming to the conclusion, rightly or wrongly, but based on the information in the public domain today, citizens are coming to the conclusion that this crisis may have been facilitated, may have been engineered by the authorities in this country. That is what some people are saying, rightly or wrongly. I am not accusing anyone of engineering this crisis, but the evidence is emerging that something is in the mortar besides the pestle and we need to get some answers. I believe that the Minister in the Ministry of Finance has not been—maybe when he is winding up he will be able to provide us with some more answers to some of the questions that the people are asking in the society out there. And as I said, how can we really come to any reasonable and rational decision in the absence of adequate information?

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

Mr. President, if we are told that there were financial challenges at several of the subsidiaries of the CL Financial group including CIB, Clico, British American, is there not a responsibility of the Inspector of Banks to have intervened and taken action? Under the Insurance Act which is still law in this country, there is a provision in the Act that gives the Inspector of Banks who is now supervising insurance companies the power to intervene, and if you look at section 65 of the Insurance Act, Chap. 84:01, it says and I quote:

"Subject to subsection (2) and to section 66, the Supervisor"—who is now the inspector—"may at anytime intervene in the affairs of a company registered under this Act to carry on insurance business."

3.05 p.m.

So there is a provision in the Insurance Act, 84:01, section 65, which the Government is now about to amend, essentially. Why did the Government not invoke, through the Central Bank, this provision, 65(1), in order to intervene in the insurance industry, in order to save us from the debacle that we are now experiencing? This is a law that has been on the statute books since 1984 or sometime in the 1980s. So it is a lack of enforcement of the law; a lack of implementation of the law. It has to do with a lack of effective monitoring of the system.

You are now going to call on taxpayers of this country to finance a liability gap, because of negligence on the part of the authorities. We are paying for the negligence on the part of the Government of this country. Therefore, we are arguing, in this debate, that the Government had sufficient time to intervene and take action in order to avoid the crisis.

If you go to section 65 subsection (2)(b), it says that the supervisor, who is now the inspector, once he is satisfied, has the power to intervene in any insurance company that, in his opinion, has failed to satisfy any of the obligations imposed on that company by this Act. So, again, the Supervisor of Insurance under section 65 of the legislation had the authority to intervene and take action on behalf of policyholders.

The question that, again, must be asked, is why did the inspector and the Governor not intervene in the case of Clico? Why did they allow this thing to string out for almost five and a half to six years? I listened very attentively and carefully to the Governor of the Central Bank; two mornings ago he was on television. I think it was on Monday morning, Sir, that he was on CNC3. He made it very clear that the Governor, the Inspector and the Central Bank were in discussions, because they were aware of the problem with Clico for several

years—but because of trying to allow them and facilitate them and encourage them, in accordance with the law, to meet their statutory reserve obligations, and to deal with other matters, I am sure.

What was significant about what he said was this: He told the population that because of the crisis in the international market that saw ammonia and methanol prices plummeting, it was very difficult thereafter. In other words, it appears to us that the situation got worse when this crisis emerged. If that was the case, Mr. President, there was a crisis of cash, because of the declines in prices of methanol and ammonia, why did the Governor not invoke 44D of the Central Bank Act and enter and provide financial assistance? Why did he not do that? Not the Government, not the stripping of assets; but why did the Governor, under the Act, not intervene and provide a line of credit, given the financial crunch? Why did he not intervene, and use the assets of Republic Bank and Methanol Holdings as collateral in an effort to bail out this company by offering them a line of credit?

I am not saying that you have to go overboard, but, at least, the Government could have done something in order to save that organization and avoid the stripping of their assets; because what is effectively taking place in this debate here today with the legislation before us and the Memorandum of Understanding, is that the Government of Trinidad and Tobago is stripping the assets of an indigenous conglomerate, a conglomerate that has made Trinidad and Tobago proud; that has global reach. I believe that we should be encouraging indigenous entrepreneurs. I believe that we should be promoting the private sector and make it the engine of growth in our country. When you strip the assets of the company or conglomerate, in exchange for a line of credit, at the end of the day, you are weakening the private sector.

More importantly, that company called Clico was established in 1936 by a gentleman called Cyril Duprey. You could understand the environment in which this company emerged. It was in the corridor, right there on St. Vincent Street, where it is today. Ordinary African citizens and ordinary Indians were able to save, for the first time. Through that savings mechanism, they were able to obtain loans so they could have built their own homes, own their own homes and create wealth in this country.

We cannot understand why the Government of Trinidad and Tobago, a government which says that it is for black people—sometimes you get that impression, that it is a government of the people and for the people, and it is supposed to be for all the people—would do everything in its power to strip an institution, and an indigenous institution at that.

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

According to the Memorandum of Understanding that we have before us, the Government will take all the shares from Methanol Holdings Limited. I do not know what the value is; that is something we have to be very careful about; the valuation of assets is very important, and you cannot make mistakes with these things. But in the Memorandum of Understanding, all the methanol shares are to go to the Government. The 55 per cent shares owned by CL Financial in Republic Bank will go to the Government. Why? Where are they going to put it?

In the first instance they are going to let the NIB, First Citizens' and UTC have them. I can tell you, Mr. President, that as soon as that happens, within a short period of time, the Government will be selling the shares they have in Republic Bank to somebody else on behalf of the country.

There is talk circulating today that the Hong Kong bank, Shanghai Hong Kong Banking Corporation, has an interest in taking over Republic Bank. *[Laughter]* That is what is circulating today. *[Crosstalk]* Is it the intention of the Government, ultimately—I am just asking questions. What are you getting so "tizick" about? I am just saying that this is what I am hearing. I would like the hon. Minister, in his winding up, if he could give an undertaking that those shares they are going to buy, in exchange for the line of credit they are going to get, will remain in the hands of the citizens of this country, and they would put those shares on the local stock exchange, so that local investors and the citizens of this country can buy those shares and own Republic Bank, if they do not sell them back to CL Financial, which owns the majority of shares in the bank.

I am calling on the Government to tell us what the plans are for Methanol Holdings. Who is going to buy methanol, the Chinese? Who will buy methanol, the Bank of Hong Kong? All I am asking and insisting on today is that we get some assurances from the Minister in the Ministry of Finance and the Leader of Government Business, that those shares in Methanol Holdings Limited and Republic Bank will not be sold to any foreign entity. We want an undertaking from the Government today that those shares will remain in the hands of nationals of this country. Those institutions are owned by nationals and they must continue to be owned by nationals. We want an undertaking from the Government today that they will not dispose of those shares to any foreigner. *[Interruption]*

National Insurance Board is, of course, owned by nationals. I am saying that when you put it there it might eventually— You see, the person in charge of NIB, accounts to no one; he is a law unto himself, so the next thing you know he might take our shares at NIB and just sell them to the Bank of Hong Kong. We do not know; that is why we are calling on the hon. Minister in the Ministry of Finance

to give us the assurance today, that once those shares are put in NIB, First Citizens and Unit Trust, they will remain there. This is why we are seeking to get clarification from the hon. Minister on this question.

Mr. President, you know that in the Far East today: Thailand, places like Sri Lanka, parts of India and Pakistan, because of the tsunami experience that they had in recent years, they have now established what is called an "early warning system", where, once an earthquake is triggered beneath the seabed, there is an early warning signal to all those countries that are immediately exposed. All the persons who are in low lying areas are moved immediately to high areas, so they can be secured.

I would like to ask the hon. Minister in the Ministry of Finance: What was the early warning system established at the Central Bank? Is there an early warning system in the Central Bank? Do they have an early warning system to tell them to intervene, and not intervene when the bank or the organization is about to collapse? You should intervene long before the bank is in trouble. You should intervene before, so you could save the institution. You do not wait until the institution is tottering on the brink of collapse and then intervene. Why could we not intervene two years ago to save Clico? Why could we not intervene to save CIB, CMMB and British American? Why did we wait so long?

3.20 p.m.

I was very happy to read in the newspapers today that the National Gas Company cleared the air on the amount of money they took out and actually refuted the Prime Minister's statement in the newspapers when the Prime Minister misled the Parliament and the country by saying that NGC had \$3 billion in that bank called CIB. And in today's *Express* there is a statement by the National Gas Company saying that between the months of April and June of 2001, the NGC placed, through a bidding process—not what the Prime Minister was trying to give the impression that somebody went behind the scene and got something and put it there. It was a bidding process and they won the process and it was US \$48 million, just over \$300 million. Where did this \$3 billion come from? Why did he exaggerate and mamaguy and fool the country about \$3 billion? Why?

Then my good friend, the hon. Minister in the Ministry of Finance with responsibility for Corporation Sole; he is responsible for all those state enterprises; that is what I understand. Did you know that NGC was about to make a run?

Sen. Browne: Make a run?

Sen. W. Mark: Take out its money.

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. Dr. A. Nanan*]

Question put and agreed to.

Sen. W. Mark: Thank you very much, Mr. President.

So people are asking questions and I think as a Parliament and as lawmakers, we need to provide them with some answers and I would like to call on my colleague and friend, the hon. Minister in the Ministry of Finance, when he is addressing us later on this evening, to tell us the role that Nipdec played in this whole matter of the CIB run; what role did Nedco play in this particular scenario. All I ask is for clarification on this matter. I think the time will come when we may need a forensic investigation into that particular arrangement to see exactly what happened at that particular institution.

I would like the hon. Minister to look at the Central Bank (Amdt.) Bill which is before us today. This annuity contract in clause 4, when it says that it "includes a contract for an annuity at the accumulation stage or the pay out stage", do we anticipate extenuating circumstances that may cause someone to probably break his or her annuity contract? When we talk about the accumulation stage, is the Minister saying here that at any point in time someone can just go and call this their annuity contract?

I need to get some clarification from the Minister on this particular matter. I also would like to ask the hon. Minister, through you, why in clause 5(b)(v)—it reads as follows:

"to provide such financial assistance to companies which carry on the business of banking or business of a financial nature as licensed under the Financial Institutions Act..."

I think with the amendment that has been circulated it says:

"to provide such financial assistance to companies which carry on the business of banking or business of a financial nature as licensed under the Financial Institutions Act 2008 as it considers necessary to prevent the collapse of the institution, other than an insurance company regulated under the Insurance Act or a society registered under the Cooperative Societies Act."

Here it is, we are arguing in favour of depositors of the HCU, the Hindu Credit Union, and the Government makes an amendment to specifically exclude those

people and all other credit unions. What is even worse, they made an amendment to the original Bill to exclude insurance companies regulated under the Insurance Act. What is the justification; what is the rationale for allowing insurance companies and, in this instance, cooperative societies, to be excluded?

But let us deal with insurance companies first. I want to read the Constitution. I want to read section 4 of the Republican Constitution. Section 4(b) says:

“the right of the individual to equality before the law and the protection of the law;”

Section 4(d) says:

“the right of the individual to equality of treatment from any public authority in the exercise of any functions;”

How can you bring legislation to deal with the rights of citizens and discriminate so blatantly? What is the justification for that? I want to tell you that if the Government is discriminating against the citizens of this country, under section 54(1) of the Constitution, if you are discriminating against the citizens as it relates to (4)(b) and (d), you need two-thirds majority. Section 54(1) says that if you are tampering with sections 4 to 14 of the Constitution of the Republic of Trinidad and Tobago, you need two-thirds majority and not three-fifths. And here the Government is discriminating against citizens of this country!

Why something for the banks and nothing for the insurance companies? Why something for the banks and nothing for the cooperative societies? Are these people not citizens of this republic? Are they not entitled to equality of treatment before a public authority which is the Central Bank in this instance?

I cannot believe that this Government in 2009 would be so insensitive to the needs of other citizens in this country. Do you know what it tells me? It appears that this particular matter that we are dealing with today, that this was apparently engineered! Why would you want to exclude the insurance companies in this?

Let me just address another matter. I think it is in the Financial Institutions Act of 2008. I just want to again quote for my colleagues here what the Government is attempting to do. I would like Members to listen very carefully to the language of this particular provision. It comes directly out of the FIA:

“to provide such financial assistance to companies which carry on the business of banking or business of a financial nature...”

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

I went to the FIA, section 17(2) to understand what the lawmakers and the drafters, and what the Parliament meant by “business of a financial nature”. Let me just share with you what it says. It says:

“‘Business of a financial nature’ means the solicitation and collection of funds in the form of deposits,..”

The insurance companies, as I know it today, collect deposits; they solicit deposits and collect deposits and big private sector institutions—many of them I know—pulled out millions of dollars from Clico before the press conference on the 13th. I have their names; I would not call them.

But do you know what? “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 went on to indicate what they mean.

Is this not a contradiction? Are we not in a conundrum? On the one hand we are told in this amendment that the Governor shall be providing financial assistance to companies which carry on the business of banking or business of a financial nature, but they went on now to say “other than an insurance company”, which is regulated under the Insurance Act, when “business of a financial nature” speaks to premiums and deposits of the very insurance companies.

I do not understand where the Government is coming from. This is complete confusion in the legislation and I call on the Government, Mr. President, through you, to delete this section that excludes the insurance company and the cooperative society. I think that, for instance, you should keep this provision here under the Central Bank Act—I think it is 44D of the Central Bank Act—but we would like the Government to review this particular measure. We want them to review this measure and we shall be circulating an amendment to this particular provision in the Act.

Do you know what I heard last night on television when this matter was being addressed elsewhere? I heard a Minister say that this matter of assistance to insurance companies will be dealt with on a case-by-case basis. How can you tell this country that you are going to deal with financial assistance to insurance companies but you are going to deal with it on a case-by-case basis?

3.35 p.m.

In this case involving Clico, no financial assistance for them. If Guardian Life Holdings were to get into trouble would the Government go to their assistance? Last night, I was told on television that it would be dealt with on a case-by-case basis. Will the Government discriminate against Clico in favour of Guardian Life Holdings because the gentleman there is a friend of the PNM? I do not know. I am asking questions. Suppose Trinre were to collapse tomorrow—I am not talking about my friend here because he is no longer associated with that company—is the Minister saying that they would bail out Trinre? He said it is a case-by-case basis. You are engaging in legislating discrimination which is unconstitutional. It is prohibited under sections 4 and 5 of our Constitution. You cannot institutionalize discrimination.

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

Sen. Enill: Mr. President, in accordance with Standing Order No. 83, I beg to move that Standing Order No. 40(2) be set aside and the speaking time of Sen. Wade Mark be extended by a further 60 minutes.

Question put and agreed to.

Sen. W. Mark: Thanks very much, Mr. President, and my colleagues. I am asking the hon. Senators in this Chamber whether as lawmakers we want to be associated with any legislation that is going to institutionalize discrimination in our country. This particular provision in clause 5(b) in the amended version that has come to us is going to do just that and we cannot support it. I serve notice to the Government that we on this side intend to circulate an appropriate amendment to address this deficiency in the legislation. I do not believe that it was deliberate. It must have been an oversight on the part of the Government. They need to get some advice which is what we are offering, to correct it.

This law that we are passing, if not passed with the requisite constitutional majority would be challenged in court. It would be struck down as null and void and of no effect and the taxpayers of this country would have to pay costs. When you are doing things, you do them right! It requires two-thirds majority, get your two-thirds majority! Do not pass it by three-fifths and it is struck down in the courts of Trinidad and Tobago. I call on the Government to address this particular matter under the Central Bank (Amdt.) Bill that is before us today.

I will now look at the Insurance (Amdt.) Bill. If you can follow me and turn to clause 4 of this Bill, I do not understand the language and drafting of this

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

legislation. May I read for the record and my honourable colleagues what section 6A(1) says:

“Notwithstanding any other written law...”

What is meant by that? What is meant by “notwithstanding any other written law”? Is the Central Bank a power unto itself like Calder Hart? When you say “any other written law”, what is the Government talking about in terms of this section? It goes on to say:

“Notwithstanding any other written law, the Central Bank or a person authorized in writing by the Central Bank may disclose—

(a) any information regarding the business or affairs of a registrant or any of its affiliates;”

I thought that when I enter into a contract with an insurance company, there is a client/company confidential relationship. This is what I would interpret when I take out a contract. I do not expect the insurance company to give my policy information to any third party. How can you do that? How can you take the information governing my policy to a third party? In the insurance industry you have medical insurance. My medical record in terms of my ailment or sickness is being given to a third party without my authorization. How can that be? It cannot be!

This is unconstitutional and you need a specified majority for this. Get your two-thirds majority! You cannot do this with three-fifths. I would like the hon. Minister in the Ministry of Finance to tell this honourable Senate what is meant by “any information”. That is as broad as it is wide. Any information?

That is an invasion of my privacy. I will quote the Constitution for those of you who do not understand it. Section 4(a) deals with the citizens’ and my rights and freedoms. It says:

“the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;”

I am entitled to security of my property, liberty of my property. Therefore, if you are going to invade my rights and tamper with my property—my policy is my property; I am paying for that. If you are tampering with my property and you are going to show it to a third party, the Government requires two-thirds majority and not three-fifths. You need more votes than what you have bargained for.

I go on to section 6A(1)(b) which says:

“any information regarding a policyholder...,”

Imagine this! Is this legislation in 2009? Are we living in a fascist state? I continue:

“any information regarding a policyholder, holder of any annuity contract, holder of any other class of insurance business offered by an insurance company or other person dealing with a registrant,

that is obtained in the official course of duties,...”

The more I read this thing, the more it becomes hilarious, but it is very serious. This is not only going to any local regulatory agency like the Central Bank, it is also going outside the Republic of Trinidad and Tobago. Is the Government taking my private medical information to a foreign regulatory authority without my permission and without the requisite constitutional majority? You are invading my privacy as a citizen of this country and tampering with my property!

Sen. Annette-George: Senator, will you kindly give way? Clause 4 of the Insurance (Amdt.) Bill seeks to provide for information sharing among the regulator and other regulators within and outside of Trinidad and Tobago. The clause says, “Notwithstanding any other written law” because it is provided under the Central Bank Act, Chap. 79:02 in section 56, a specific provision that deals with penalties. It creates an offence if a director, officer, employee or anybody discloses confidential matters, or any matters concerning persons registered as an insurance company under the Insurance Act. That is why it is “Notwithstanding any other written law” which includes this specific provision and any other provision that may exist, if one specified, one may have inadvertently left out.

This Bill has a preamble which states:

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

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

Central Bank (Amdt.) Bill
[SEN. THE HON. B. ANNISSETTE-GEORGE]

Thursday, February 05, 2009

We recognize that clause 4 is inconsistent with sections 4 and 5 and that is why there is a three-fifths majority. It does not seek to alter the Constitution under section 54.

Sen. W. Mark: That is an opinion that would be tested in court. The Attorney General could be totally wrong. It is an opinion of the Attorney General, and I respect the opinion of the Attorney General, but I do not agree with it. I understand what the hon. Attorney General has said. It does not take away from the point that I am making, that when you are tampering with my property and you are going to share it without my consent with a third party, I am suggesting that it is violating section 4 of the Constitution.

If you look at section 54(1) it says that if you want to pass legislation that will violate sections 4 to 14 of the Constitution, you need a two-thirds majority and not a three-fifths majority. Go to section 54(1) of the Constitution and then look at this provision and see if it is not infringing on citizens' property rights in this country. All I am saying to you, Attorney General, is that if you want to pay a heavy price after you pass this Bill with three-fifths—this is a very sensitive issue. This thing might go to court. You see all signs of it heading to court. If you want to get this thing right, I am telling you make sure you get it right. If you want to ignore us as you have done in the other place, that is your freedom.

I go on to clause 5 of this Bill. It is amending section 37 by inserting after subsection (6), the following subsection which reads as follows:

“In addition to the requirements set out in subsection (6), every company registered to carry on long term insurance business or motor vehicle insurance business or both,...

There is an amendment because in the original section 37 we did not have motor vehicle insurance business, but we have now included motor vehicle insurance business or both,

“shall place assets in the Statutory Fund—”

3.50 p.m.

It goes on to say:

- “(a) where the company carries on long term insurance business, assets equal to its liability and contingency reserves; and
- (b) where the company carries on motor vehicle insurance business, assets equal to its liability and reserves less the amount deposited on account of such business,”

I have seen where year in, year out the Governor of the Central Bank has been unable to either audit or report on all the insurance companies in this country. There is evidence to show that there are some 49 insurance companies, but when you look at reports coming from the Central Bank, you see they have only been able to address a few. I do not know why. I do not know if there is delinquency, but that is not my point.

My key point is that the Governor of the Central Bank is on record as saying that this particular insurance company, Colonial Life Insurance Company Limited, was in serious deficit insofar as their statutory fund is concerned. I would like to ask this question of the hon. Minister in the Ministry of Finance: How many more Clicos are there in this republic? Is there only one company that has not satisfied the statutory fund requirement and obligation? I would like to know whether this is discriminatory; whether it targets one insurance company, or if there are many other insurance companies which have not met their statutory fund requirement?

I understand that there are. If there are, let us get the names of those companies and let us understand from the Government what it is doing about it. We are being told that one of the reasons the Government of this country and the Governor of the Central Bank have intervened in the affairs of Clico is to provide them with some lifeline because this particular organization has not been able to satisfy its statutory fund requirement. We do not know the gap. I ask the hon. Minister what is the gap. What is the deficit that the Governor spoke to involving the statutory fund requirement involving Clico?

Could you, at the same time, tell us how many other companies are in a similar situation? What is their deficit? What is the Governor of the Central Bank doing about it? Is he waiting for them to collapse and then to intervene? We would like to know if it is a sweetheart arrangement; if it is discriminatory; if it is engineered, particularly targeting CL Financial and Clico, in particular, as an insurance giant. I am not saying it is. All I ask is for them to tell us.

We are debating a matter today with our hands tied behind our backs and a gun to our heads because we do not have the information to make an intelligent judgment, so that we can come with the best outcome at the end of the day in the interest of the citizens of this country. We do not have the information, so we just have to speculate. Whereas, if we had established a select committee of the Senate, we would have been able to get more information from the Government and more stakeholders and know whether this option is best. Certainly, it is not the only option.

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

My understanding is that Clico, CL Financial, would have preferred a line of credit rather than being stripped of its assets. Did the Government consider that? I was shocked when I read in the *Sunday Express* of February 01, page 5—hear what Lawrence Duprey said to the whole nation. I will just read two paragraphs:

“Business magnate Lawrence Duprey, who crafted scores of deals over two decades to turn his uncle's insurance company into a global financial giant with over \$100 billion in assets knew the silver bullet was coming. He had helped chamber the round himself. But even so, Friday's prescriptive hit still took him by surprise.

All of last week, Duprey was in talks with top Central Bank officials, mapping out a plan for a State bailout for his privately-owned investment bank and insurance company. But when the intervention came, according to him, it ‘came faster than expected’.

In a short telephone interview with the *Sunday Express* moments before he addressed staff late on Friday evening, Duprey said full details of the planned intervention were disclosed to him only that morning, mere hours before he faced the glare of media cameras, flanked by the Central Bank Governor and the Minister of Finance at a joint news conference at the Central Bank...”

In other words, I am the owner of a conglomerate, I have to sign off on this Memorandum of Understanding and I am only made aware of the final details of this particular Memorandum a few hours before the press conference. Mr. President, you get the impression that Lawrence Duprey and his group were ambushed by the Government. From what I have learned, this is why he is saying in this article, that he wanted to get a line of credit—in order to ensure that CIB and Clico are able to live and survive. He never told the Government he wanted them to strip his assets. This is what this Government has done, like a guerrilla.

I never knew that the function of a Central Bank is to strip the assets of a company. I thought they were supposed to help you or, if you are in a really bad state, liquidate you. Who says that CL Financial is in a bad state? It is asset rich but cash poor and all they wanted was a line of credit to survive, but you know what? Politics determines economics in this country. Politics determines the outcome and the action taken by the Government. They had Duprey to hang and they hung him.

I ask the question over and over: Would the same treatment be meted out to Guardian Life Holdings if they had a similar problem? I say no. Would the same treatment be meted out to Trinre if they had a similar problem? I say no. They

would have been given preferential treatment by this administration; but because it is Lawrence Duprey, they said, bury him. Mr. President, you would not believe the haste with which the Government tried to wind up this organization.

In the *Express* today, I saw that the hon. Colm Imbert, Minister of Works and Transport, in response to a question asked by Mr. Chandresh Sharma in the other place, said that the Government, as it relates to the statutory fund requirement, certain assets that were placed by the company in that statutory fund requirement, told the company in April of last year that those assets were not acceptable and that they had until December to address those assets. In other words, whatever Clico had offered the Government through the Governor to stabilize the statutory fund, the Government was asking for more.

Hon. Senators: That is not true.

Sen. W. Mark: I do not know; I saw something in the newspaper. Tell me when you speak. This reveals the half-truths and innuendos; telling the country one thing and doing something else.

Mr. President, could you believe that any ordinary, informed observer in this country, after the Minister of Works and Transport made his statement in the House last night about the April to December deadline, would believe the nancy story given by the Minister of Finance?

Sen. Narace: He did a press conference to clear that up.

Sen. W. Mark: I do not know; I was not at the press conference. I am talking about what is in the newspaper today.

Sen. Enill: Mr. President, I thank the hon. Senator for giving way. That statement that was made is incorrect. The Minister did not say that.

More than that, I just want to correct Sen. Mark on one issue. Sen. Mark is giving the impression, incorrectly so, that there is a discretion in terms of what you can bring to the statutory fund, and that is not correct. It is governed by law and there is a requirement that the assets are put in a specific order. I just want to put that on the record.

Sen. W. Mark: Mr. President, I know about the article in today's *Express*. I know about the press conference; maybe that will be corrected. Any time the Government tells the truth and it is revealed to the country, they back-pedal and try to "mamaguy" the public.

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

This is what was said by the Minister of Works and Transport, Hon. Colm Imbert, yesterday. He said, during the committee stage of the Insurance (Amdt.) Bill, contradicting the Minister of Finance, who was asserting that she had no knowledge of the situation prior to January 14, in answer to a question asked by Mrs. Persad-Bissessar:

“As of April 2008, did Government officials, whether out of the Central Bank or wherever, would have advised Clico that they were in excess of limits for statutory funds and, therefore, the statutory fund was deficient as of April, 2008?”

Hear what the hon. Minister said:

“As I said before, we were advised in April that effective December...”

Sen. Narace: On a point of order.

Mr. President: What is your point of order?

Sen. Narace: Standing Order 35(5), the Senator is imputing improper motives and he is attributing to the Member statements that were corrected today and it is now public knowledge that those statements are incorrect. I therefore wish to bring this to your attention, Mr. President.

4.05 p.m.

Mr. President: With all due respect, he is simply reading from a newspaper and there would be ample opportunity to refute and debate it. Whether the article is true or not, is a matter for Senators to decide, but the fact is that there is an article and what he is reading of the article is true. His representation of the word is accurate, and, therefore, we have to hear it. The imputation is in the article. It is not in the words of the Senator; it is the words of the article. We can leave it there.

Sen. W. Mark: Thank you very much. It goes on. As I said before, we were advised in April that, effective December they would have to remove the assets. I got the impression from this article—because I have not seen any other article and I have not heard about any new news conference denying this. It went on to say:

“effective, as Imbert responded...”

Clico was given notice in April 2008, that it would remove its assets by December 31. This is what is in the article. I am just reading the article. If he has corrected it, I would like to see what he would have said. The reality is whether it was 2004, when this thing started with the Governor of the Central Bank and Clico or whether it is April 2008, where I have identified—the point I am making

is that the Government of this country knew well in advance, the state of health of Clico and all those other subsidiaries that are now in trouble. You knew in advance, but you did nothing about it. You allowed it to continue and when the company was on the brink of collapse, mankind, men and women of high stature who should know better, used their privileged position and information to go and extract moneys as if it was going out of style. What did that do?

Any organization that has a run of the nature that took place at CIB, “bong tuh crash”. The Government knew that. The Government did nothing to really bring that company back to a level where they can become operational and would be able to function and take control of the operation two or three years down the road. Instead, they said: “Listen, ah closing yuh dong. Yuh see CIB, ah get ah chance, ah revoke yuh licence.” What did they do wrong to have their licence revoked? Because NGC had a run on them and because big Ministers of Government went and took out their money and other private sector groups that I know of? Why? Do you know what? They said that they are going to revoke the appointment of CIB. Why? You are not fair. You are very biased and you discriminate against people. I would say a little more on another matter later on, but I want to go on.

In terms of clause 5, the Government needs to clear the air on clause 5, new subsection (7)(a) and (b) and let us know what is the gap between the assets and liabilities of this company, as it relates to the statutory fund requirement. We would like to know how many other insurance companies in this country have not met the statutory fund requirement.

We go to clause 6 of the Insurance Bill:

“50A.(1) The Inspector or any person authorized in writing by the Central Bank or any designated member of staff of the Central Bank may enter into the premises of any registrant to—”

What is a registrant? They did not give a definition, but I assume they are talking about a company.

“‘registrant’, means a person registered pursuant to section 16 of this Act; “

That is the organization in question. Mr. President, we do not like:

“or any designated member of staff of the Central Bank...”

Of certain rank—you cannot have any ordinary policeman coming in to deal with situations. You must have a policeman of a certain rank to deal with this, in the same way you have a policeman of a certain rank to deal with something. Imagine

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

you have a business with people's moneys and you have your books and your records in your organization, your assets, and the Central Bank Financial Inspector—"He cyah come but he sen any designated officer." Who is "any designated officer"? That person must be of a rank to enter my premises. No ordinary employee of the Central Bank could go into a business place like that. "Ah mean tuh say, we mus have respect fuh business." You cannot have a man, an individual, a business organization or an insurance company having a business with 200 or 300 employees and send an ordinary person from the Central Bank to enter. No, no, no. Amend that clause and identify a rank, otherwise we call for its deletion completely. They are coming into your premises to inspect your books. Any designated officer coming? No, no, you cannot do that. Your records, accounts and vouchers—No.

It goes on further in 50A.(2), which says:

"Where the Inspector or any person authorized by the Central Bank..."

What do you mean by "any person"? This is an insurance company you are going into and you are saying "any person"? You move from "designated member of staff" to "any person"? No, we are asking you to say a person of a rank. The person must be of a certain rank to enter. If an ordinary person comes into your workplace or business and you prevent them because you have a right to prevent them from coming in: Who is this ordinary person coming into my place saying that he is representing the Inspector of Banks? If he is:

- "(a) prevented from exercising the powers given to him under subsection (1);
- (b) required to exercise the powers outside of normal working hours; or"

You are coming into my business place outside of normal hours as well.

- "(c) required to exercise the powers urgently,

he may apply for an ex parte order of a Judge of the High Court, which shall constitute the warrant for the Inspector or any person authorized in writing by the Central Bank or any designated member of staff..."

What kind of draconian provision is this? How can you, and how can we as lawmakers who believe in the rule of law, agree to an arrangement where you can go on your own, after sending any person into my business place, and apply for an ex parte order? No, that is property rights. If you are dealing with property rights, there is something called the rule of law? We are saying amend this or delete this if it is necessary and we are going to replace it with the words "by a judge in

chamber”. Go to a judge in chamber, argue your case and get a warrant. Do not go by yourself and get ex parte. We are calling for the deletion or the ex parte injunction and replace it with “by a judge in chamber”.

Sen. Annisette-George: A judge in chamber?

Sen. W. Mark: Yes, a judge. Do not go by yourself. If you are coming for me, you must give me notice, because I have rights. You are coming into my business place and you do not want to give me an opportunity to be heard? Ex parte means that I am not being heard as the businessman; not afterwards, I want it before. “I eh want no afterwards. Ah want it before.” I am suggesting that be deleted and replaced with “by a judge in chamber”. Wherever it states “any person authorized in writing or any designated member of staff” delete or define a rank.

We go on to clause 8:

“65(1) Notwithstanding any other action or remedy available...”

We see that they have moved from “if in the opinion” to “reasonably believes”. I do not know what the difference is. If in the opinion of the Inspector—

“...a registrant, or any controller, officer, other employee or agent of a registrant, including the principal representative of a foreign insurer—”

This came directly out of the FIA, but do you know what is the difference with the FIA? The Government has ulterior motives, so they are going back in times. Do you know about back in times parties? Hear what they are saying:

“(a) has committed,...”

That is in the past. We are going in the past now, retroactive legislation. We are embarking on retroactive legislation.

“(a) has committed, is committing...”

No problem, the FIA has that.

“or is about to commit an act,...or is about to pursue any course of conduct...”

What is this? “Any course of conduct” is too wide. We want this amended. We want “has committed” deleted. That is retroactive legislation. You are on a vindictive mission. You are going back in times. In the FIA, it does not have that provision, but you have introduced it in this amendment. Why? It is the same thing in (b):

“has committed...”

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

That is too wide.

It goes on. Look at (c):

“has violated or is about to violate...”

We are not in favour of that at all. That is vindictiveness.

“(d) has breached any requirement...”

That is in the FIA, I believe. That could probably pass.

“(e) is unlikely to meet the demands of policyholders...”

(f) is likely to continue in business that would result in a loss to policyholders of...”

Who is going to determine this at (e)? Who is going to determine?

“(e) is unlikely to meet the demands of policyholders of the insurer; or

(f) is likely to continue in business that would result in a loss to the policyholders...”

Who is to determine that? There must be an early warning system. We are not happy with (e) of this provision.

“(2) For the purposes of this section, the term ‘unsafe or unsound practices’—hear what it includes—‘shall include, without limitation, ...’”

What is that? You are passing law and you are saying:

“shall include without limitation, ...”

But this is draconian! How do you mean “without limitation”? No, we have to limit Executive tyranny. This is Executive tyranny. We are saying, no, we do not want that. We are amending this section.

It goes on:

“any action...”

Look at this. What is that?

“or omission that is contrary to generally accepted standards or prudent operation and conduct...”

What is that? The Government must define. I know about generally acceptable accounting principles. I know that those things are defined in law. Any professional accountant will know what those principles are and you can go and locate them.

4.20 p.m.

How can you come with legislation without defining this? It says “contrary to generally accepted standards of prudent operation and conduct...” What is that? Where can I locate this? This has to be deleted. What is that? *[Interruption]* I do not want you to tell me, put it in the law. Define what that means, so if I am a businessmen, and you tell me that I have generally accepted standards of prudent operations and conduct, tell me what it means so that I would be advised. Do not leave it up to the opinion of the inspector or the governor. That is tyranny! As lawmakers, we are here to keep the Executive in check, not for them to abuse their power and take advantage of ordinary people including businessmen. So, we do not support that clause. We are calling for the deletion of clause 8(2) or put a proper definition of what you mean by “generally accepted standards of prudent operation and conduct”.

Mr. President, 8(6) says:

“Notwithstanding subsection (3), if in the opinion of the Inspector...”

I do not like this thing about “opinion” of anybody. This is 2009. If the inspector has a subjective opinion and he is acting on behalf of the Executive, he could close down the operation. No, not in 2009! We do not want the opinion of a man or a woman. It does not matter what office he holds. My position here is that when he says:

“...in the opinion of the Inspector...”

it should be more specific, please. This is draconian legislation. *[Interruption]* This is clause 8(6). It says:

“Notwithstanding subsection (3), if in the opinion of the Inspector...”

I say “opinion” is subjective. Not in this law! Maybe in some other law, but not in this law.

Mr. President, clause 10 of the Bill is rather draconian. I have to go through this clause so that you can understand the dangers that are involved here. I want to read this clause very slowly for you. The Government is removing sections 68—75 of the current legislation which deal with judicial management and winding up, and they are now replacing it by the following suspension and winding up provision. Under the current judicial management and winding up provision, there is a more orderly process for disposing of an individual organization if it ends up

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

in trouble or difficulty. In this amendment, where they are deleting sections 68—75, hear what they are proposing and I quote:

“Where the Inspector is satisfied after an on-site or off-site examination of the affairs of an insurer that it is insolvent or unable to meet the minimum capital adequacy requirements or is unlikely to meet the demands of the policyholders...”

holders of any annuity contract or holders of any other class of insurance business—

“...of the insurer or that its continuation in business is likely to involve a loss to the policyholders...”

holders of any annuity contract or holders of any other class of insurance business—

“...of the insurer or to the creditors of the insurer he shall advise the Board accordingly”.

Clause 10(2) says:

“The Board may, after receiving the advice of the Inspector and after considering...”

Remember, the inspector is advising the board that this company cannot do these things. This inspector is operating on opinion here. So, he has an opinion on this matter and he then advises the board of directors of the Central Bank. It goes on:

“...all the relevant facts and circumstances, order the insurer to suspend business forthwith for a period of sixty days...”

The hon. Minister said today that he wants the Bills to be dealt with forthwith. Well, here in this Bill the same language is used. I do not know if the hon. Minister had a part in this.

So, the opinion of the inspector is, based on his submission to the board, if the board agrees with what he says—he is an employee of the board—the board would then order, through the inspector that they suspend your business for 60 days. So, your business is in suspension for 60 days. What is happening during those 60 days your business is suspended? They are not telling you what is going on during those 60 days. Are you running the business? We do not know. The business has been suspended.

It continues:

“...and may direct the Inspector to take charge...”

So, after in the opinion of the inspector, he goes to the board and then the board agrees with him and he suspends your business for 60 days, the board then directs—

“...the Inspector to take charge of all the books, records, other documents, including electronically stored information, and assets of the insurer...”

Mr. President, you are dealing with people’s property. How can you seize people’s assets? That is a violation of my constitutional right. You need a special majority; two-thirds and not three-fifths. You are violating section 4 of the Constitution; property rights. It continues:

“...and to take all such measures as may be necessary to prevent the continuation in business by that insurer during the period of suspension and preserve the assets of the insurer and all costs incurred shall be a first charge on the assets of the insurer.”

Mr. President, they have invaded my place. They had an opinion from the inspector and he took his opinion to the board and the board agreed with his opinion and then they took charge of my business. They are taking charge of my business. They have seized my assets and now they are saying that I have to pay costs. Is that not oppressive? You have seized my assets, but I have a fiduciary responsibility. You knew that when you were inside there. [*Interruption*] You also have a fiduciary responsibility as a director for my money. Is that not so, Minister Browne?

Mr. President, how can we support this? We cannot support this. We do not support this at all. We would like to advise the Government that we on this side would like to revert to the old arrangement. We felt that would work very nicely. There is a procedure in terms of law and order and there is a step-by-step approach, and not this draconian measure that is being proposed here. So, we are serving notice on this Government that we want to revert to the old heading entitled “Judicial Management and Winding Up”. That is what we want to stay with. It is more reasonable and there is more legality to that particular provision in the legislation.

Clause 10(3) says:

“An order made under subsection (2) shall cease to have effect—

- (a) if the Board makes a further order permitting the insurer to resume business either unconditionally...”

Central Bank (Amdt.) Bill
[SEN. MARK]

Thursday, February 05, 2009

Mr. President, look at what clause 10(2) is saying and look at what clause 10(3) is saying. Now, your business is suspended for 60 days, and you are no longer in your business, and the inspector takes charge of your business and they are telling you now:

“if the Board makes a further order permitting the insurer to resume business either unconditionally or subject to such conditions as it may consider necessary in the public interest or in the interests of the policyholders...”

of any annuity contract of holders of any other class of insurance, business—

“...and potential policyholders...”

of any annuity contract or holders of any class of insurance business of the insurer and other creditors of the insurer. That is like something standing on its head. How can you invade my business and suspend my operations for 60 days? After you have suspended my operations, you are saying this oppressive board will now decide if it will permit me to continue business unconditionally or subject to such conditions. I find the sequencing of this is a bit back to front.

I thought you would discuss things with me first, as the businessman, before you suspend me, but you have suspended me and then you are saying that I could continue my business unconditionally. This does not make sense. Logically, it does not make sense.

Clause 10(3(b) says:

“upon the expiration of the period of sixty days from the day on which it is made, unless—

- (i) the Board extends the order for a period not exceeding a further sixty days;
- (ii) in the case of an insurer, an application is made to the Court for the appointment of a receiver or manager on behalf of the policyholders...”

of any annuity contract or holders of any other class of insurance business offered by the insurance company. So, they could extend your order for a further 60 days. So, your business will be in limbo for the next 60 days. So, that is 120 days. It continues:

- (iii) in the case of a local insurer, a petition is made to the Court by the Inspector, on authorization of the Board, for the winding-up of the insurer on behalf of its policyholders.”

Mr. President, this clause 10 is draconian and oppressive, and we want it deleted from the legislation. We are proposing that this entire measure be deleted.

Let us go back to the measure under the Insurance Act entitled “Judicial Management and Winding Up”. There is more law and order and there is a procedure to be followed there. It is not as oppressive as this clause 10. We are telling the Government we would not be in support of this particular provision in this legislation.

4.35 p.m.

It goes on:

- “(4) For the purposes of subsection (3)(b)(iii), the Court may order the winding-up of an insurer in accordance with the Companies Act subject to the modification that a local insurer may be ordered to be wound up on the petition of the Inspector, on behalf of its policyholders, holders of any annuity contract or holders of any other class of insurance...
- (5) Any person who directly or indirectly prevents the Inspector or any person authorized in writing by the Central Bank or a member of staff of the Central Bank from having access—”

Mr. President: Senator, you have one minute of speaking time.

Sen. W. Mark: Are you sure? [*Laughter*] I now started to wax; I could have taken another two hours, Sir. Thank you very much, Mr. President for reminding me; I now started to wax, Sir. In fact, I have several other areas to deal with; I am sorry my colleague cannot move for another suspension.

Mr. President, in winding up, we would like to indicate that we understand the importance of the measures; we note it is in the national interest; we on this side want to maintain financial stability in this economy; we want confidence to be restored, but we are not prepared to support draconian provisions in the legislation that is currently before us.

In fact, I would be circulating very shortly, a slew of amendments for the Government's consideration, and we hope at committee stage, we would be able to make some compromises in the interest of the country, depositors, policyholders, creditors, the workers and holders of instruments of liabilities.

I thank you very much.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I seek leave of the Senate to return to item 11: “Statement by Ministers”, for the Minister of Works and Transport to make a statement.

Procedural Motion

Thursday, February 05, 2009

Mr. President: Hon. Senators, leave is being sought in the Senate to revert to item 11 on the Order Paper, "Statement by Ministers". The Minister of Works and Transport desires to make a statement. What is the wish of the Senate?

Hon. Senators: Aye.

Mr. President: Leave is granted.

STATEMENT BY MINISTER

Inaccuracies Published in the Express Newspaper

The Minister of Works and Transport (Hon. Colm Imbert): Thank you, Mr. President, and I thank hon. Senators for allowing me to make this statement, the purpose of which is to correct inaccuracies in an article published in the *Express* newspaper of February 05, 2009, which erroneously alleged that the Government was aware of the Clico crisis since April 2008. Mr. President, I am authorized to make this statement.

In today's *Express* newspaper, there is a story published on page 4 under the byline of Anna Ramdass, with the headline:

“Imbert contradicts Finance Minister: Government aware of Clico crisis since April '08”

In this story, it is alleged that during the committee stage of the Insurance (Amdt.) Bill, 2009, I contradicted the Minister of Finance by allegedly revealing that the Government was aware of the Clico crisis since April 2008.

I wish to categorically state that this story is false, misleading. I neither said, implied nor even insinuated any such thing in the House of Representatives during the debate and/or the committee stage of the Insurance (Amdt.) Bill, 2009.

A perusal of the *Hansard* record and an examination of the video and audio tapes of yesterday's proceedings in the House of Representatives will confirm this fact, and the truth is the opposite of what was published in the *Express* today.

The reality is that I was asked a question by the Member of Parliament for Fyzabad during the committee stage of the Insurance (Amdt.) Bill, 2009 as to the reasons why the Central Bank had reportedly requested Clico to remove some of its Republic Bank shares from its statutory fund in 2008.

The Inspector of Financial Institutions, a Central Bank official, who was present in the House at the time, and sitting next to me during the committee stage, as is customary with technical matters, clarified the issue by advising that

in April 2008, Clico, among other insurance companies, was requested by way of a circular letter, to implement measures to ensure that they were compliant with the insurance regulations. This was to ensure that liabilities of insurance companies were adequately supported by admissible assets.

The Inspector further clarified that insurance companies were advised that this compliance direction was to take effect on December 31, 2008, and anyone who has even a cursory knowledge of these matters will know that the issue was not a question of liquidity or solvency, but rather, asset allocation.

However, at no time did I say that the Government was aware in April 2008 that Clico was in crisis. Further, the circular sent out by the Central Bank to insurance companies in 2008 was part of its standard regulatory procedure, and circular letters of this nature are sent out by the Inspector on a routine basis, without any consultation whatsoever with the Government.

In summary, there was nothing said by me in the House yesterday, or at any other time, to even remotely indicate that any Member of the Government was aware of the so-called Clico crisis since 2008, nor did I at any time contradict anything said by the Minister of Finance.

The *Express* article is therefore false, misleading, libellous and scandalous, and clearly intended to create confusion and uncertainty in the minds of the general public.

Finally, the Inspector of Financial Institutions at the Central Bank has today reaffirmed in writing that the liquidity problems being faced by Clico were not brought to the attention of the Minister of Finance prior to January 14, 2009.

I thank you, Mr. President.

Mr. President: Hon. Senators, we will now take the tea break; we will resume at 5.15 p.m. This sitting is now suspended until 5.15 p.m.

4.42 p.m.: *Sitting suspended.*

5.15 p.m.: *Sitting resumed.*

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

CENTRAL BANK (AMDT.) BILL

Sen. Subhas Ramkhelawan: Thank you, Mr. Vice-President, for giving me the opportunity to speak on these two Bills relating to the amendments to the Central Bank Act and the Insurance Act, respectively.

Central Bank (Amdt.) Bill
[SEN. RAMKHELAWAN]

Thursday, February 05, 2009

When last I rose in this honourable Senate, just a week ago, two words came to mind, one was "hubris", which spoke to my concern about past and present behaviour; the other was "humility", which I thought should now be appropriate in terms of our current condition, and a third word now comes to me, which is "humiliation", which I hope, we as a nation, would avoid.

I spoke then about the Achilles heel in the financial system and even before we could take another breath, the Achilles heel of the financial system has been pierced and the bloodletting has begun. In more ancient societies, bloodletting was actually a good thing, which it was thought would lead to some health, and the scientists have eventually proven that that is not the case.

So, it is with some level of sadness for prescience that I rise today to make my contribution in a combined way to these two Bills. My most important and critical concern is for the depositor and the policyholder; depositor in terms of short-term savings, and the policyholder in terms of long-term savings of our citizens, and by extension, this country.

Our role, if I may, in this honourable Senate and in the other place, is to ensure that we have timely and effective legislation, such that our citizens, as far as their hard-earned savings are concerned, are well and truly protected. In that sense, we collectively have failed them up to this point in time. It was the now hon. Minister of Energy and Energy Industries, who was then the Minister in the Ministry of Finance, who reminded us some time ago and reminded me that I was a member of a committee to oversee financial sector reform. I say oversee advisedly, because it was to provide advice on financial sector reform, and that was way back in 2002.

5.20 p.m.

One of the measures which would have been recommended and accepted at that point in time was the revamping of the Insurance Act, 1980. That was clear, it was cogent and it was accepted. Going side by side with that, because the oversight authority for the insurance sector was effectively transferred from the Supervisor of Insurance then under the Ministry of Finance to the Central Bank, would have been obviously adjustments and amendments to the Central Bank Act. It is sad for us that it was not done in a timely manner. But we go beyond that because that is now water under the bridge.

So, with the cataclysmic events of last week, we now find that we have to take, what I would call "precipitous action" to try to remedy the horse that has bolted, and so we look for some cathartic approach to a resolution for a long

outstanding problem. Long outstanding, because it would not have come as a surprise to many of our citizens—and I count the Members of this honourable Senate as citizens as well in their own private capacity—that one institution on the other side of the Caroni Bridge would have fallen into difficult times. And it would not have come as a surprise to many citizens that this ubiquitous institution, that is CL Financial, would have fallen on tremendously difficult times which may require that “we”, all of us as taxpayers, dip our hands into our pockets through the central government to make payment, restitution and to essentially plug a very large hole in our financial situation and system.

So, my concern is only this, as I go through both Bills; it is the protection of the depositor and the protection of the policyholder. Numerous are the calls and enquiries which I have received in my various hats as to the safety and the security of the various institutions that now remain standing for depositors, whether they should leave their money in this institution or move it, or what is the situation with their policies and single premium annuities that they would have had in Clico, and deposits that they would have had in Clico Investment Bank and/or British American; and of course in that web is woven also a securities company, CMMB.

And I want to speak to our citizens who have had serious bouts of fear and panic about the financial system. I want to speak to them so that they can understand what is happening around us and try to paint a proper context and picture so that any issues of panic we can assuage, if that is at all possible. But I believe that we should share with our citizens what we know to the greatest extent possible and let them make their decisions, let the chips fall wherever they may, but the only way they could make proper, good decisions is if they have proper information. While that information in the legislation may not go directly to them, I think our regulators—I think that it is a good clause to have in the insurance legislation, the sharing of information with other regulators in other jurisdictions to ensure that there is a clear and full view by our regulators such that they could take timely action as the need arises. So in that sense, I do support that particular clause in the insurance legislation.

When we come to the Central Bank with the kind of quickness of action that is required, I support many of the measures in the Central Bank (Amdt.) Bill which will allow the inspector to take certain actions and to give certain directives, inclusive of cease and desist directives, such that we can keep our insurance companies on even keel. But I have said before that I am not prepared to support the inspector on his own volition and in his opinion only, making

certain judgments which are inimical to the interest of the financial system and the insurance industry at large. Because what we are trying to do is, we are trying to plug a hole in the financial system with regard to one insurance company, but we are putting in legislation that will cover the wide range of the industry, and I do not support the idea of the inspector “in his opinion only”. Whether it is that he reasonably believes, it still remains that it is his opinion only and that is a dangerous situation, because the current inspector may be a decent man, but who knows who will be the next inspector.

We have had situations where this Parliament actually was put under stress, because the Speaker could not be kept in check. I do not want to see that we have situations with “onemanism” where the inspector cannot be kept in check, especially, since the inspector is appointed by the President, but he liaises with the Central Bank Governor for certain things, but it is only the President that could fire the inspector. I would like the Government to consider this matter very carefully and I would like when we go to committee stage, the Government considers an amendment which is, “in consultation with the Governor of the Central Bank.” So that is my one concern with regard to that matter.

I want to address a comment made by our colleague, Sen. Wade Mark, and it has to do with the Central Bank covering, essentially, other financial institutions but excluding insurance companies in its cover. Sen. Mark raised the question, why cover this sector and not cover the other? I think the answer is pretty clear. The answer is that financial institutions make a contribution to their own insurance via the Central Bank, to their own support via the Central Bank if they were to get in trouble, but insurance companies do not. Therefore, we are going to create a contingent liability upon the Central Bank that will not be supported by any revenues or inflows of any kind. So, I do support the idea that the insurance industry, while it is subject to the supervision and oversight of the Central Bank, ought not to be the pocket in which we dig in the event of any deterioration in any one of the insurance companies. That might have to be the remit of the central government or it might have to be the remit of some other institution that would have to be developed to give support to the insurance industry over time.

But I want to get back to the question of the protection of the investor, the protection of the depositor and the protection of the policyholder and to attempt to answer some of the concerns raised by our citizens. The framework that has been painted by the Central Bank and Government for this financial rescue package for the CL Financial Group, is one that requires us to look very closely and see

whether we could get answers for our depositors and policyholders. Because, what it seeks to do in its various parts was first, that CL Financial would sell its 55 per cent shareholding in Republic Bank to, amongst other players, FCB and the NIB.

When you look at the numbers it does not compute. When you look at the fact that the Republic Bank is in capital \$5.5 billion, and you are asking FCB which is already, I think, going to be burdened with CMMB—and I will come to that in a minute—FCB's capital base is \$2.5 billion, less than half the size of Republic Bank. But we just passed legislation in this Senate, the Financial Institutions Act, 2008, which would limit the exposure of any bank's capital base to any one investment. If we were to apply the maximum amount—which will only be allowable in the opinion of the inspector—for investment in the shares of Republic Bank, that would be something about, I think it is about, \$650 million, if FCB's capital base is \$2.5 billion.

Therefore, when you take a company that is Republic Bank—55 per cent of those outstanding shares—the market capitalization of Republic Bank is \$13.75 billion at the current price of \$86 per share, 160 million shares, you have to absorb if it were available, that 55 per cent shareholding, \$7.75 billion. And the first player named, FCB, will not be able to absorb more than about \$.75 billion if it were so minded to do. Why do you have in any event two competitors competing, head on, directly, having shares in one another? FCB might be tempted to ask for a seat on the board or even two. It just does not make a whole lot of good sense, but that is one aspect in terms of absorptive capacity. Let us say you can do it—three quarters of a billion—of the \$7.75 billion that may need to be absorbed. But let us come to NIB.

5.35 p.m.

The last audited financials of NIB, I believe June 30, 2007, showed that the total assets of that institution was about \$14.75 billion, and I believe it was the hon. Minister of Energy and Energy Industries in his older incarnation, who approved that for the NIB, they can have only 30 per cent of their assets in ordinary shares. So by my calculation, the maximum holdings of NIB in ordinary shares can be no more than about \$4.42 billion. I do not think the hon. Minister of Energy, given his long experience in the area, would advocate all your eggs in ordinary shares in one basket, meaning that I will not expect him to come to the citizens of this country, to advocate that the NIB hold only Republic Bank shares in its portfolio of ordinary shares. It does not make sense. It is contrary to

Central Bank (Amdt.) Bill
[SEN. RAMKHELAWAN]

Thursday, February 05, 2009

financial discipline and it is contrary to good investment discipline, and therefore, based on my recent check of the register, I believe that NIB already owns outside of the 55 per cent pot that is owned by Clico, CL Financial, 14 per cent of the shareholding of Republic Bank.

So it seems passing strange to me that anyone, right-minded, forward-looking and conservative in terms of financial and investment management, would want to foist the shares of Republic Bank, provided that they are unencumbered into these institutions that do not have the absorptive capacity and if they did, would be overburdened, in my view, and overweight in the shares of Republic Bank.

Now, Republic Bank constitutes in terms of deposit liabilities in the system, about \$24 billion of the \$50 billion or \$51 odd billion in deposits in the Trinidad and Tobago financial system. That is somewhere between 50 and 40 per cent, and FCB constitutes some, I think it is just under \$10 billion in deposits and liabilities based on their last financial, which is 20 per cent of the deposits in the financial system. I make this point because if you were to do any kind of arithmetic in terms of absorption, it is contrary to a policy of over-concentration in the banking system, if you had any designs about putting them together.

First, it cannot be absorbed. But secondly, why would we seek or consider at a difficult time like this, any kind of over-concentration in our financial system? No, we want to diversify. So, the question of over-concentration comes with these designs about selling the shares of Republic Bank to NIB, FCB and so on. [*Interruption*]

Sen. Enill: Is that so?

Sen. S. Ramkhelawan: If it is that the Government has any designs on bringing the UTC into this equation, it will also raise a number of other concerns. Because the UTC's last financial position was about \$18 billion in assets, and I think its policy has been clearly articulated throughout the country, that it will not hold more than 10 per cent of the issue of any one issuer. So the most it could take if it considers taking its full 10 per cent in the capital of Republic Bank of \$13.7 billion, is about \$1.3 billion.

Mr. Vice-President, I am not good at arithmetic, but I do believe that those three items will not be able to absorb even half of those 55 per cent shareholdings being bandied about. My advice to the Government is to go back to the drawing board and I will like to make some suggestions to them. But before I make those suggestions to them, I want to speak to a common sense aspect which is, on a general principle, if we know someone who is sick coming into this country, we will not take that sick person and put him among healthy operations or people.

The Minister of Health knows it very well. He is going to quarantine that individual. So I think the laws of physics and health and so on do apply in some cases to finance.

What you do not want to do at a time of stress—and I am saying it advisedly, I am not saying we are at a time of distress, but at a time of stress— let us not jump the fence from stress into distress, by infecting the whole financial system. Come up with a new plan, and a new plan should not include infecting the healthy organizations in this country, because you know why, I come back to the depositors. Depositors are scared and if you start infecting the system, they will not know where to put their money.

I am saying to you, let us not infect FCB and NIB, because NIB holds the key to many of our pensions in the long run. We have to collect our money from the NIB down the road and I do not want to think that the Government takes a bet, that this is the best thing since sliced bread because we have seen the best thing since sliced bread toppled in the last six months. Whether that sliced bread was equal to Lehman Brothers, or Bear Stearns, CityGroup, or Wachovia externally, or even the Hindu Credit Union here, the point is that it did not work out. And I am saying, I am not prepared to join with the Government in betting citizens' short-term deposits, nor am I prepared to join with the Government or support them in betting my long-term savings and my pension and the pension of citizens down the road. New plan, unless you can allay the fears of our citizen; come up with a new plan and there are people who will help you.

I would like to suggest as we consider this Bill, that we take into consideration the setting up of a holding company, properly ring-fenced to deal with this question of handling these institutions and companies that are distressed. I see the hon. Minister giving me a little wink there. I will come to him in a minute.

Sen. Browne: For clarity and I think it is important to emphasize, clarity, at no stage today do we have on the table a rescue plan or a bail out. I have seen those terms used in the press, I have heard Sen. Mark refer to it and I heard you talk about it.

What we have on the table today, are two Bills that seek to give the Central Bank the power to intervene in certain circumstances. If you are referring to the Memorandum of Understanding, and perhaps I may have to presage the winding up, what we are talking about here, and I want to make this point, this is not about foreknowledge, this is about an emergency situation that has arisen and an emerging situation that has arisen during the course of this month and because it

Central Bank (Amdt.) Bill
[SEN. THE HON. M. BROWNE]

Thursday, February 05, 2009

is an emergency situation, it requires emergency intervention powers. What we are seeking to deal with here is intervention powers. The details of a rescue package will have to come after the intervention has taken place and the details have been sorted out as to what is the current state of affairs.

Sen. S. Ramkhelawan: But through you, Mr. Vice-President, and with respect, the citizens of this country have before them a Memorandum of Understanding signed on behalf of the Government of Trinidad and Tobago and I believe I recognize this signature, Mrs. Karen Nunez-Tesheira, Minister of Finance, and countersigned by CL Financial Limited, Mr. Lawrence Duprey. So, unless I missed something, these are the bare bone elements of some package that is coming down the pipe. I have the fullest respect for the hon. Minister of Finance.

Sen. Browne: Which is not before us.

Sen. S. Ramkhelawan: Well, I do not know, through you, Mr. Vice-President, that the hon. Minister of Finance is saying that we must ring-fence our thoughts in a situation of stress to a Bill before us, but the Bill that came before us, if I read it correctly—Remarks for the CIB/Clico Media Conference, a press release dated January 30, 2009, and I quote from the Governor of the Central Bank:

"Let me support the point raised by Minister Tesheira on the need to accelerate some aspects of the new Insurance Act, on which we have been working for sometime in collaborating with industry stakeholders."

I think these things are joined at the hip and I cannot see how we could separate them, because the citizens of this country do not see them as separated, not in the least.

In fact, citizens of this country will want to hear through this debate, what it is we are going to do to ensure the protection of the depositors and the policyholders. And if we do not address it here, when this Bill or these Bills are coming, I think we would have failed our citizens. I do not want to be a part of that failure, having already failed them with late legislation for this matter.

So I respectfully disagree with my learned colleague, Minister in the Ministry of Finance, because it comes as part of the package as far as I am aware. Maybe he does not want to discuss it, but the citizens want to hear about it and I look forward to your ruling, Mr. Vice-President, not that of my hon. colleague on the matter.

I spoke to this question of infecting the system and what we have to guard against. I come back to our largest bank in terms of deposit base, which is Republic Bank, and the questions came up which are related to this Bill; what

kind of exposure that this bank has to the CL Financial Group, and what could happen to us in the context of that exposure? I looked at the last quarterly unaudited report, December 31, 2008, to see what was the kind of exposure, because as you know, Mr. Vice-President, these exposures have to be reported.

5.50 p.m.

I saw in the unaudited financial statements that the exposure by Republic to the CL Financial Group was in the amount of \$950 million just about \$950 million; that amount, given that Republic Bank is about \$40 billion, is less than two and a half per cent in terms of exposure. It certainly is less than 15 or 20 per cent of the capital base, which is about \$5.4 billion. So when citizens ask me, "What going to happen with Republic Bank?", I take comfort that these numbers are pretty much within a fairly well-controlled territory and, therefore, in another hat I could say, "I think that your funds are safe." I certainly would like to hear the opinion of others, as far as that is concerned, as citizens would like to hear.

There is another issue that the Government should be mindful of, that is: If you were to end up, through connected parties, holding more than 25 per cent, you would end up with a situation where you trigger the takeover code, and you would have to make an offer to all shareholders for the price at which you acquired Republic Bank. I think it is something that you just need to consider as you go along, in terms of coming up with a seaworthy game plan for what you need to do, when you enter into a memorandum of understanding saying that you are going to sell all the shares of Republic Bank in order to make good the shortfall that is in some of those funds in that grouping, whether it be Clico, CIB and so on. Just some thoughts to share.

I know that the former Minister in the Ministry of Finance, and now the Minister of Energy and Energy Industries, would be very well aware of some of those requirements, because he would have been party to passing some of those regulations and orders. I just wanted to make that clear.

There is another matter that I would like to raise relatedly. I will come back to some of those numbers, because I think I am boring some of my colleagues here with the numbers. I would like to raise the question of equity in the treatment of all our citizens. Mr. Vice-President, I cannot think of a situation where we would want to protect the depositor in one instance and not want to protect the depositor in another.

Central Bank (Amdt.) Bill
[SEN. RAMKHELAWAN]

Thursday, February 05, 2009

I have heard two reasons bandied about—and I speak in this case to the Hindu Credit Union—one was from the Governor of the Central Bank: It is very simple; we do not have to deal with them, because they do not fall under our remit; that is a cooperative society credit union and, therefore, it is not under our remit; we do not deal with cooperative societies and credit unions. The other reason I heard, I think from the other place, was that the Hindu Credit Union did not constitute a systemic risk.

Now, I want you to go and tell the depositors who put their money in good faith expecting that there was a good regulator overseeing that institution, because that is what we are charged to do through legislation, to ensure that there is proper oversight and through regulation to have our regulators execute. So who is to bless and who is to blame? I do not want to go into the blame game, but I want to say that if it is good for the goose, it must be good for the gander.

I am sure that there would have been different levels of personal animosity in terms of management and Government and all those things. That is neither here nor there to me. What is important is: Are we very focused in ensuring that we are protecting the depositor? If the depositor is from Sangre Grande, Lange Park, Fairways or wherever, if he has \$10, \$100,000 or \$1 million, our role as legislators and the role of the Executive is to ensure that the infrastructure is in place to protect the depositor. Therefore, how could anyone say that a depositor who lost his money in a financial institution in one case is not worthy, for the reason that, "It does not fall under our remit", and that depositor does not come under the rubric of systemic risk? How could you say that? I am at a loss to understand that, because I know what my job is as a legislator. My job is to protect the depositor and the policyholders.

It is like saying that you see a beautiful damsel in distress drowning in the middle of the river, and a not so beautiful damsel—I should not use that word; it might be oxymoronic to say a not so beautiful damsel—but seeing another drowning in the same river, and you have the capacity to save both of them, except that you say, "I draw the line; I only save beautiful people, let the ugly ones die and go to hell."? It is a critical policy matter of equity; lest citizens of this country feel that they are being discriminated against, or feel that they are less than the other, just because the management of these companies can speak a better language, can talk a better talk, and the other one might not know how to carry about themselves in terms of government relations and so on. I do not want to feel that.

I believe that this Government is fair. I believe that this government is even-handed. I believe that sometimes this Government might be blindsided, but when the correct facts are put to them, they are not so unfair as to leave the ugly duckling to drown and save the swan, or the so-called swan.

I want to bring it to this Government's attention, that if there is not the perception of equity—not the reality—but the perception, and 150,000 depositors in the Hindu Credit Union are left to sink, for whatever reason, when your duty is to protect those depositors, just as it is your duty to protect the depositors in the current stressful situation that we are in, I would feel, and many citizens would feel, that you have done an injustice.

I think I have belaboured the matter of equity enough. I am sure it would be taken into consideration.

We heard in the other place, and we also heard here through Sen. Mark, that the deficit in terms of CL Financial is \$7 billion or \$8 billion and counting. It is a cause for concern for citizens that as yet we have not communicated the extent of the hole that we are in. [*Interruption*]

Mr. Vice-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*]

Question put and agreed to.

Sen. S. Ramkhelawan: Thank you, Mr. Vice-President, and my colleagues in this honourable Senate.

On the question of what is the hole and what is the deficit, it is very important that we come to some conclusion as to what that number is. We should come to some conclusion, because I do not want to feel that our citizens are being misled by what I see in the press. How could a company or a group ask for relief and its various parts go about in the media saying it is business as usual? It does not add up; it cannot be business as usual. I would expect that if this legislation is passed, that the Central Bank would move to do what it has to do, and put mechanisms in place to ensure that over the period of 60 days that it would have, in the first instance, it gets some clarity as to what the full nature of the problem is.

When you look at the Memorandum of Understanding, which the hon. Minister in the Ministry of Finance does not like me to read from, the point is that there is the request and the requirement that CLF would instruct the boards of Clico and

Central Bank (Amdt.) Bill
[SEN. RAMKHELAWAN]

Thursday, February 05, 2009

BA to cease any new intercompany transactions, any increase in salaries and so on, but it goes on somewhere else to speak about giving—what was the word?—I think it was, truthful exposure and truthful information and so on. Well, if that was the case and that was the concern, I certainly would like to see the matter dealt with, and citizens want to see that the matter is dealt with expeditiously.

That is why, Mr. Vice-President, despite some of my misgivings in terms of the wording of the legislation, I have no misgiving as to the direction that the Government is taking to resolve this most stressful and difficult problem, to ensure that we maintain the highest levels of confidence in the financial system.

As a practitioner myself in some of these areas, I believe that our banks, except those that may now have been exposed, are all strong; our clearing banks are all strong. I think that the Governor said that the capital to asset ratio was in excess of 18 times, when the minimum requirement is eight. It tells you that we are about twice the capital requirement in the rest of the clearing banks; so our banks are strong.

[MR. PRESIDENT *in the Chair*]

Let us not do anything to deflate that confidence within the banking system. Therefore, we need to move quickly, such that some of our standard-bearers in the banking system that have been around for such a long time, and weathered so many storms, would not find that they are in the position where they have to be on the defensive, when their financial balance sheets look very strong.

6.05 p.m.

I want to turn to another area which is of concern to me and this is the area where there are concerns about conflicts and—I would use the word—connectivity. Let me say that we are a small society and we will always run into situations where people may be perceived to be conflicted because of their relationships. It is a small society. The hon. Minister in the Ministry of Finance is known to be a former employee of one of these institutions seeking assistance. The hon. Minister of Finance would have had close relatives who would have worked in high positions. I have received a number of calls—many calls—about concerns that the Governor of the Central Bank was seen some time ago implicitly or explicitly endorsing CMMB on one of that Caribbean Airlines in-flight advertorials.

So there is a lot of connectivity. But going forward as we try to fix this situation, let us not increase any issues of potential conflict by putting parties to the boards of these organizations who may be conflicted and who may have a

very significant interest in what is to happen. Whether it be you are going to put new members on the boards of Clico and so on, you would not want, having made announcements with regard to FCB or NIB or even UTC, as the case may be, to put persons who are directly involved there to oversee the situation in Clico, because that will raise more questions in the hearts and minds of citizens as to how carefully you have planned your programme and also how without conflict, or the perception of conflict, you are going to carry on the business of restoring some of these companies.

So I just want to turn, in the last couple minutes to some matters in the draft legislation. I am sure this would please my colleague, the hon. Minister in the Ministry of Finance. One of the things that I saw in the legislation that I think should come up at committee was the reference to motor vehicle insurance cover only. I think it should be general insurance inclusive of property. I will bring it up in the committee stage. That is one area that I think we need to look at. Also in the legislation there was the use of the word, “registrant” and “insurer” interchangeably and I think there needs to be some clarity on that, because I think there were some misgivings and some misinterpretations, because “insurer” covered underwriter and there was a reason for separating them, and I would ask when we come to the committee stage that we look much more closely as far as that is concerned.

So, in closing, just a couple thoughts: One is infection and quarantine. Let us quarantine this problem for which these two Bills have come here urgently on the management side and not create concerns in the minds of citizens that we are infecting the entire financial system. Two is equity. What is good for the goose should be good for the gander. We cannot afford, in a small society like this, or in any society for that matter, to discriminate between the protection of one set of depositors as opposed to another set of depositors. Three is the question of over-concentration in the banking system must be looked at very carefully as we grapple with the issue of how we are going to make good, the deficit; the issue of over-concentration by putting a good bank into the hands of other banks that might not be appropriate. Four, just as a reminder, that if you go too far in terms of connected parties acquiring Republic Bank shares, you might find that you trigger a takeover code, and instead of having to put out \$7.5 billion, you might have to make an offer for \$13.75 billion.

There were a number of other things I would have liked to say but I could not have been afforded the luxury as my hon. colleague, Sen. Mark, so I will defer those to probably having a quick one-on-one conversation to the Minister in the Ministry of Finance.

Central Bank (Amdt.) Bill
[SEN. RAMKHELAWAN]

Thursday, February 05, 2009

Finally, and going back to Republic Bank, most of those shares, as I understand it, as I look on, are already pledged to a number of loans and so on. So you have a three or four part mechanism that you will have to follow through before you can get to release, and I wonder how much of it would be unencumbered. I suspect that most, if not all of it would be fully encumbered. So if you do not know, for the benefit of our citizens, please know the next time we have this conversation because the last thing you would want is a breakdown in confidence when people are saying they do not know.

Well, you pulled the trigger; you better know what target you are shooting at. If you do not know, I am not standing behind that so I would not know either, and we depend on the Government to give us information in a timely way. Therefore, I will say to you, you have a couple days; you do not have months; you do not have years; you have a week; come back to the citizenry and tell them what the situation is. It cannot be seven and eight and counting. Give an upper limit so the citizens understand the nature of the deficit and how you will make up that deficit. But put a limit and put a figure on it.

With those few thoughts, I thank you and I thank the Members of the Senate.
[*Desk thumping*]

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I had really not planned on intervening at this time but the last 90 seconds of the contribution by Sen. Ramkhelawan created the circumstances in which I had to intervene now. Everything that has been said in this debate about the role of the Central Bank, the role of the Government and all that, is correct. The way it works—and it works for everybody like this—is that there is a set of rules; there is a set of laws that we have passed and these are the laws by which we regulate the business of the companies.

If you looked at the 2007 annual report of the Central Bank in which it talks to the issue of financial systems, surveillance and the supervision of licensed financial institutions, pension plans and so on, you will see that, by and large, companies operate and from time to time, there are difficulties. But I think we need to understand what it is we are talking about in the context of the financial system and, therefore, let me spend some time in trying to just give you what it is we are talking about.

Let me, at the onset, say that the question of using the same words to describe different things, while convenient, is incorrect. Let us deal with this notion, first of all, of deposit and a deposit taking institution and what that means in the

context of the discussion between the Hindu Credit Union, governed as it is under the Cooperative Societies Act, as it is governed under the Financial Institutions Act and Clico, as it is covered under the Insurance Act. There is no such thing as a deposit in a credit union because, by definition, the way a credit union works is as follows: Twelve of us get together and we decide that because of our particular means—that is the law—we will go to the Commissioner of Cooperatives and we will say to the Commissioner of Cooperatives, we have agreed to put our moneys together and to lend it to one another, and he says: “Yes, I have 12 signatures. I authorize that.” And then we start business.

The way those credit unions are set up—and I know them—is that there is no distinction, quite frankly, except for the first share that you buy, between ownership rights and investment rights. So, therefore, in the circumstances a deposit in the credit union system is simply a different type of share, because I own the institution. Therefore, in that context, it is governed by a set of rules. We democratically sit down; we choose the President; we choose the treasurer; we decide what we would do; we would decide how we would do it and all that is required of the State is to do a couple of things.

What is required of the State is that if you want to put an investment into a particular institution, the State must decide that you could do that. If there is a particular issue, the commissioner deals with that. A credit union is not a bank; it has never been. Therefore, what happens is that a credit union collects resources from poor people, pools it together, puts it into a bank and, therefore, it flows from this element of the society into the financial services system.

So when you hear the argument about contagion, understand what you are dealing with. It is not the same thing and, therefore, to give the impression that it is the same thing is not proper; it is different.

What I have seen some credit unions do very craftily is that they have tried, on the basis of competition—the last time I checked there were 514. I do not know if you know the history, but credit unions, certainly in my time, continued to be governed from the agricultural societies legislation, because really the history was—anyhow, that is another debate. But I make the point that credit unions and cooperatives are basically operated in a particular way.

What we saw over time, though, in looking at the evolution of what occurred, is that some very bright and innovative young gentlemen started to develop a business model that exploited the weaknesses in the legislation and when we saw that, we commissioned a study, because we were looking at how the evolution of

Central Bank (Amdt.) Bill
[SEN. THE HON. C. ENILL]

Thursday, February 05, 2009

the financial services were taking place over time. We brought in a consultant and we started the discussion about the future of financial services legislation and in that regard we had two models.

6.20 p.m.

We had the model of a super regulator where you will put everything into one entity and regulate it from there; or you do what is available in other jurisdiction, you maintain the status quo as it is and basically, keep one not talking to the other. For example, right now we have the Central Bank dealing with certain sets of legislation; the Securities and Exchange Commission dealing with another set and the cooperative system dealing with another set. There are three distinct types.

Today, if you want to talk about the risks that we have, they are in mutual funds to a very large extent. You talk about the fact that we take this responsibility and that is true. Hear the issue. When you get to the stage where you have institutions that use a business model that exploits the weaknesses of the legislation, you would have a number of choices to make. The choice that you have to make in the first instance is to intervene. I have been a victim of the intervention. I was there. I understand exactly what has been happening in the context of the institution that we are talking about and being on record, as having to fight all the time with the particular institution and the business model and how it works.

The culmination of all that was that three or four years ago we had a model set of legislation intended to move the legislation from where it was in 1950. You have to be careful about what you are talking. Although the institution was called a particular thing, when you look at the ownership structure much of it had to do with private interests. Therefore, to give the impression without the information about the state of the organization, all that I am going to say to you is that it is incorrect and what is being considered and done now is what has always been the intention. Try to understand what you are talking about. As we speak today that exercise is taking place. We have also said that once we understand the nature of the problem, on the basis of information we would decide what is to take place. That is what is taking place as it relates to that particular institution.

Let me move to the next item which is the question of why we are here. Does it not seem strange that we can move as quickly as we have with an intervention strategy, as we have done in this particular matter? What is the reason for that? The reason is that we have been walking this road for a very long time; we have understood the challenges and difficulties, but what was required in order to deal

with this particular problem—because it is a problem—required legislation that some considered draconian. In our judgment at the time, there was a requirement to be cautious, careful, and ensure that you understood that if you had to deal with this thing in a way that would correct it, we needed to interfere with the rights of people and property. That is not something that the Government does very lightly.

We deferred it until such time that we felt that the organizations would have recognized that it was in their interest. There is a difference in philosophy insofar as the business models are concerned. What causes one business model to be successful in a particular period and what is a strength with one set of strategies can be a weakness in a different set of circumstances.

What occurred according to the remarks of the Governor of the Central Bank who has responsibility for this particular institution is this. I will quote from what he said because I think that it is important. Let me talk about the bank. A bank is an institution that has very specific requirements for coming into being. First of all, if I remember correctly, you must have \$15 million as capital. Let us compare that to the credit union system. In the credit union system all you need to have is \$10. That is what we are talking about. You must have \$15 million and go through a series of interventions by the regulatory body which will determine at the end of the day the skills needed, financial expertise and everything to satisfy the regulator, that you are a fit and proper person to accept money from the population and invest it in a particular way, so that two things would happen. When they want it they would get it and any promise that you made to them will be kept.

There is a whole system that the Central Bank has. On an ongoing basis it looks at seven or eight different criteria; assigns a rating to it and determines on the basis of that whether intervention is required or you need to be dealt with in a particular way. On an ongoing basis the Central Bank monitors, intervenes, gets involved, talks to and has meetings and discussions. I know; I was there.

We had all kinds of issues with those who believe that that was not the way it should happen; the legislation should change and the risk profile was bad. These are normal activities involved in the regulation of the sector. As we see things occurring we attempt to deal with the particular challenge. In this instant case, the Governor said CIB has been facing liquidity challenges over the past few weeks. The challenge came to a head in the last few days when the bank began to face an unusually high level of withdrawal requests which put a strain on their available liquid resources.

Any normal institution in the context of how it manages its portfolio, usually, on the basis of keeping the institution whole is able at any point in time, when you

Central Bank (Amdt.) Bill
[SEN. THE HON. C. ENILL]

Thursday, February 05, 2009

come to the institution and say, “Here I have invested a sum of money for a particular purpose. I have a contract that says it is for 30 years. Today is the 30th day, can I get my money?” Every normal institution that operates on the basis of the principles and laws that we have set down would be able to so do. If they are not able to do that, they are able to deal with the Central Bank in a particular way.

He said:

“Clico also has been facing liquidity problems.”

One company with the group has a challenge and another one in the same group has another challenge. He made the point:

“Given the close integration of the two institutions within the group it is just a matter of time before one starts to come under severe liquidity pressure.

Therefore in those circumstances, the Inspector of Financial Institutions and the Governor of the Central Bank met with the chairman and chief financial officer of the group on January 07, 2009.”

PROCEDURAL MOTION

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

Question put and agreed to.

CENTRAL BANK (AMDT.) BILL

Sen. The Hon. C. Enill: Mr. President, my apologies.

I was making the point that according to the Governor of the Central Bank in a second meeting on January 13, Clico’s chairman formally raised the issue of possible financial assistance from the Central Bank. I think it is important that we understand what we are saying. The impression is being given that there was some strategy to go in to bail out, to take over. That is not the case. On January 13, the institution came to the Government and said, “We need your intervention.” That is a totally different set of circumstances from that being portrayed. Once you are asking for intervention, a couple of things follow.

The Governor continued:

“There is no doubt that the increase in the withdrawals and the nervousness seen at Clico have something to do with depositors’ concern about the impact of the sharp decline in methanol and real estate prices and sales; financial overall contribution.”

Depositors who are associated with the institutions are looking at the global situation. They understand what made the institution good and they are seeing the impact. They are looking at real estate on one hand and the energy sector and seeing what is happening. As a depositor and an individual you would take these things into account and evaluate in your mind what is taking place. You would take action in your personal interest on the basis of what you determine. That creates the circumstances by which confidence starts to become an issue.

The Governor said:

“In the Bank’s view, however, the current financial difficulties being faced have more to do with four things than that. “

It is related perceptively, but the Central Bank said that in its view that is not the case. You had excessive related party transactions which carry significant contagion risks. He made the point that this high level of concentration is not specifically prohibited by the present legislation. It is not prohibited so we have done nothing wrong, but it has consequent effects and you have to deal with that.

He said:

“An aggressive high interest rate resource mobilization strategy to financial equally high investments.”

In this particular business called insurance, the more successful you are the more challenging it is. As you accumulate cash you have to find an outlet so you could make the returns to pay the liabilities. Insurance business is a 50-year business. You take a pool of funds; take a risk and transfer it. If you die the risk passes on. That is the nature of the business. As a result of the nature of the business, there are specific rules by which the business operates. For that reason therefore, in the Statutory Fund—the way the fund works is like this. I have a portfolio business and on a particular date, I determine, if the company went into solvency, that is to say that the company fell apart, what would be the liability that the policyholders have.

6.35 p.m.

When I determine that actuarially, because that is what I have to do, then I ensure that the funds required to support that liability are held to the order of the Supervisor of Insurance and invested. In order to do that, it is based on how you want the money. For example, you cannot put the money in shares if you want it in cash. Therefore, if you want it in cash and you put it in shares, by definition the Central Bank has to say to you: “I want it in cash not in shares”, because it does

Central Bank (Amdt.) Bill
[SEN. THE HON. C. ENILL]

Thursday, February 05, 2009

not follow the rules and it does not meet the requirements for the portfolio you have established. That is true for a series of businesses. It is true for life; it is true for pensions and it is true for a number of institutions.

Sen. Dr. Nanan: So, at some point in time, a company will be technically insolvent. I am not saying the Central Bank did not accept the assets in terms of shares, but if they were holding the shares and for some reason the market fell, that company would be technically insolvent.

Sen. The Hon. C. Enill: Yes, and that happens. Sen. Mark talked about something we did in this Parliament. Here is what happened. You could have found yourself in a situation—and we did—you had a pension fund, the investment rose, suggesting that you met all the liabilities, but you had a surplus, and it could not go anywhere. If you put the surplus in the fund itself, you violate the rules, so we changed the rules.

What do we say? We say, if you are able to support the fact that you took care of all your liabilities, you would add to that 100 per cent of that and whatever else you had, we would allow you to do, I think it was 50 per cent of that. So we attempted to buffer your portfolio, reduce the risk and at the same time change the relationships that you had because there was so much resources in the system and there was no place for it. That is the amendment we talked about as it related to pension plans.

But that is the nature of the business and that is why, on the basis of that, the rules are so strict. A fall in share prices can move your company from one place to the other and you would be required to make that adjustment. That is the nature of the business. All of us know that. That is why, in those circumstances, for example, the Central Bank's regulator would sit with you and go through a process of bringing that back in balance over time.

I was at the stage where you gather based on extremely high, aggressive marketing, these resources and you have to find an avenue for them, so you invest them and that return gives you the cash flows, the returns to pay the policyholder liabilities.

Of course, this is the other observation that the Central Bank made—a very high leveraging of the group's assets. You have assets, you leverage them, you borrow here, use the money here, sometimes you take the same assets and leverage them here because there is no mechanism in the system for you to understand what is taking place. It is a model. Even as you do that—and there is

nothing illegal about it because we do not prohibit it—when you get to the stage that an intervention is now required, what is required by those who must intervene is an understanding of how you have done all this. What is therefore required is that you bring this institution, which is a deposit taking institution, an insurance organization that has depositors, into some kind of order and ring-fence it from the rest of the group.

The way to do that is to go back to basic principles, that is to say that it must stand alone and it must not be taking place within a particular system over which you have no control. In those circumstances and to have that available to you, you had to have a discussion of what might close the gap because you are in a position to see how the resources were used as they went out externally.

When you determine that you had these particular assets used in a particular way, if you reverse the transaction, then you would be able to relieve the pressure temporarily. But you do not have a fire sale. The issue of transfer of sales of assets of this magnitude has a whole set of complex pieces to it. You have to get the valuations right; you have to determine the market price; you have to determine all kinds of things and that takes time. In the interim, there is a situation where depositors are very fearful; they are hearing the rumours; they are seeing the action; there are actions taking place that cause you to wonder if it is safe.

If you look at the profile of the organization—and you are right, the institution has been around for a long time—you see that those individuals who are going to be hurt are my grandmother, mother and those individuals because it is a pension-based institution to a very large extent. We talk about credit unions. My information is that the credit union system has some \$400 million tied up in there because that was the market. They have told me this.

So that what is required is an intervention to understand how one would deal with these issues, but in the interim, the financial system, because of the size of the portfolio, because of what it can do to the entire system, requires stability. That stability will be offered by the Government, but it is not an open-ended cheque, because you are not walking in to bail out. You are seeking to bring order back into the system.

We have heard all kinds of stories, but there is the intention that once the circumstances present themselves, the owners can take back control of the assets. We did not go out strategically as a government with an objective that we are looking for assets. The institution came to us and said they were in trouble and what they would like to do. We said that we understood some of it; we think that

Central Bank (Amdt.) Bill
[SEN. THE HON. C. ENILL]

Thursday, February 05, 2009

this can possibly help us through and in those circumstances, we are prepared to do that. But we need the legislation for us to do that. Because we need the legislation to do that and because we have to interfere with the rights, then this is the way we will be able to do it to achieve that particular purpose. That is what we are seeking to do.

There are those who say, for example, that we need consultation, we need time. What is happening right now to the depositors? What should they do? Until such time that we have the force of law, the discussion cannot begin. We can talk, but the discussion does not have the force of law. It is therefore urgent and important because confidence is an issue.

This morning, I was looking at how the brand is affecting the other 28 territories in which it has resources and you hear of various Central Banks having to intervene. Right now, Trinidad and Tobago is on international investment watch. It is very possible we may be downgraded. They are looking to determine how this issue will play out. There is systemic risk to the financial system if we do not move.

We have something from Standard and Poor's which says that the Republic of Trinidad and Tobago is placed on credit watch after CL Financial intervention. It tells us that Standard and Poor's will resolve the credit watch status of the ratings once it can estimate the potential financial cost to the government, the broader damage to the financial system and any impairment to the island's medium term growth prospects.

If they are telling you this, they are saying there is systemic risk. In those circumstances, if this is not handled in a particular way quickly, you are going to impair your economy. Our concern at this time as a government is to move quickly to get to a stage where we can get this done and, in order to do that, we have to do it in a particular way, in a particular time frame.

Sen. Dr. Nanan: I would like to get some clarification in terms of the share capital. If you are using 55 per cent of the shares, right now it is being traded at \$86 for Republic Bank shares, when the Central Bank values it, it will not be \$86. They could vary between \$40 and \$50.

Sen. The Hon. C. Enill: One of the things that we have to say to you is that once we are able to intervene, then we must take appropriate steps to ensure a couple things. Once you put a director in an institution to do anything, there are a number of responsibilities he has and one of them is to make sure that whatever he does is done in such a way that it can withstand scrutiny and is transparent.

If you are to be guided by these principles—and you have to be because you will have to explain all these things—the way you will arrive at those answers will be based on best practice principles. For example, if you have to value it, you will do it how it is done commercially and you will try as far as possible to make sure you get best value. It is in that that you reduce the extent to which you have to bring resources into the system.

So, I want it to be crystal clear about just three things: This was not a grand design by the Government to go after anybody. This was an intervention in which those who are involved in the business felt that the nature of the challenge was such that it required intervention. They were correct on the basis of what is happening with our ratings; they are right in the context of how it has impacted the system and what is being considered now—this is not the entire set of amendments that we have, it is simply those pieces that require the intent of solving this particular challenge to be met on the basis of an undertaking by the Government to protect the futures of a great set of people who are involved in this.

6.50 p.m.

In 2006, the industry annually wrote 66,000 new policies. In 2006, according to the information that I have, we had something like 53,800 policies and life business only. You have a significant amount of other types of policies and, therefore, other types of products that are being supported by this particular institution.

I do not wish to continue to belabour the point. I simply wish to indicate that these were the circumstances by which this matter came to be where it is today and that as we speak now, there is a requirement for us to move as quickly as we can to decide on how we would resolve this particular issue. It is my hope that we would support what the Government has proposed. We have said that we are not averse to listening to and hearing, but this particular set of amendments is what we understand the Central Bank requires for them to be able to go in and do what they have to do.

Mr. President, there were some other matters that were raised, in terms of quarantining the problem. I think we are doing that at this point in time. Are your funds safe? The answer is yes, because the Government has said that and will continue to say that. What you want to do with this matter? Well, quite frankly, all we are seeking to do is to respond to a situation in which, if we do not deal with it, it is going to affect us. We have ratings that are good. That means that our cost of finances is low. This could impact it. The knock-on effect of that would be

Central Bank (Amdt.) Bill
[SEN. THE HON. C. ENILL]

Thursday, February 05, 2009

contingent. The knock-on effect of that would be higher cost of capital. The knock-on effect of that would be those kinds of things. Therefore, what we do today, or not do today, is really about how much faith we have in the institutions that we have set up and whether or not we believe in ourselves and whether or not we believe that we have the ability to do it.

Now is really not the time for us to lay blame. We take the blame. Okay, let us move on. Now is really the time for us to give direction, if you will, to give guidance, if you will, but more than that, now is the time where we are required to actively support the Central Bank in trying to get us to a place where, at least the transition that we have to make will be as painless as possible.

Thank you.

Sen. Mohammed Faisal Rahman: Thank you, Mr. President. These two amendment Bills: the Central Bank (Amdt.) Bill and the Insurance (Amdt.) Bill may be the most significant items that have been brought to this Senate, which I am going to address tonight, hopefully in a way that may contribute to the thinking of the Senate and the nation.

I would love to believe the assurances given to us by the hon. Minister of Energy and Energy Industries, Sen. The Hon. Enill. He spoke sincerely and I believe that he believes what he said, but we are faced with an intervention of a particular sort that is very different from the interventions that have been undertaken by other governments that have been faced with a similar crisis. All of the governments of the world who have been dealing with these crises have recognized and accepted that the crunch that they are facing has resulted from the financial meltdown that the global village is experiencing. In our particular case, our Minister of Finance has stoutly rejected the idea that the problems and woes of CLF have anything to do with the global meltdown. That Minister has said, to prove her case, how can it be a consequence of the global meltdown when none of the other banks have been affected? That is as disingenuous an argument as I could possibly conceive. None of the other banks that operate here are operating in the same spheres of endeavour in which Clico has been operating globally.

Sen. The Hon. Conrad Enill mentioned 28 other jurisdictions in which Clico has been operating and this is critical to the issue. Clico ran into this problem, because its international investments with regard to methanol and real estate, in particular, suffered a tremendous contraction and reduction in value and as a consequence, they are unable to raise capital in the other countries of the world, notably in Germany where the bank that has partnered them is itself in trouble.

Clico has not been able to access the liquidity that it could otherwise have, had this global crunch not taken place. This whole matter is tied in with the Clico problem and in order to solve the matter, the Government has embarked on this particular course of action, which has brought these two amendments to us today.

It has been disavowed that the Government had anything to do with engineering this situation. Maybe consciously, it did not intend to, but coincidentally many, many, things have conspired to bring about the current situation when, in April 2008, before which time Clico had been permitted to offer its shares in RBL and the Methanol Holdings Company as part of the statutory fund. With the knowledge that I have, which may not be detailed, all of a sudden they were told that must be taken out of the statutory fund and replaced, presumably with cash. That instantly presented a cash problem to Clico and necessitated their having to find something like \$16 billion more to put into the statutory fund. *[Interruption]* Let me hear what you have to say.

Sen. Browne: I thank you very much.

Sen. M. F. Rahman: Make it short, please.

Sen. Browne: I just simply want to point out to you that the assets or admissible assets, which can be introduced as part of the statutory fund and the percentages are written into the law and the regulations. They are part of Chap. 84:01 on page 240 of Chap. 83—84 and it sets out what admissible funds and admissible assets are. The bank can only give instructions or direction in accordance with this schedule. It does not whimsically make up its mind what can be put in or what must be taken out. Thank you.

Sen. M. F. Rahman: Thank you Minister. My position, as I understand it, is that up until that time Clico or CLF had been permitted to use those in the statutory reserve. Therefore, by invoking a law, which you had hitherto disregarded, a development arose. As I said, again, maybe you did not intend it as a strategy, but when you are trying to bring down an elephant to treat, you shoot it with a tranquilizer dart and you can almost tell how many minutes and how many yards down the line it is going to fall and then you are going to attend to it. They did not intend, perhaps, at that time, to sabotage Clico, because I would be imputing improper motives to the Government, but it came about that as the months were passing by and Clico was unable to find the funds, certain people in the know came to realize, unless they were foolish and not thinking what they were doing—and I would not ascribe that to Ministers of Government—they had

Central Bank (Amdt.) Bill
[SEN. RAHMAN]

Thursday, February 05, 2009

to understand that Clico was heading towards a crunch liquidity problem and if any of their deposits were going to mature between that time and the end of December, the wise course was to receive those investments back and invest them elsewhere. Were that thought not operating in the minds of certain people and officials who are in the know, they would not have taken—[*Interruption*]

Sen. Narace: On a point of clarification.

Sen. M. F. Rahman: No, no, please. They would not have taken their money out of Clico, which was paying a higher dividend at that time and receive their matured funds back and put it into another bank or institution that was going to pay a smaller dividend. There had to be a reason in their minds why they were willing to receive mature term deposits. All of these events were conspiring in that direction.

Clico, at that time, while the months were slipping by, would not have been itself aware of the global meltdown, in terms of the ramifications with which they would be confronted. Of course, Clico would have been of the view that it would be facing a sympathetic government as the United States government turned out to be with AIG and so many other corporations. It did not think for one minute that the Government would have devised a plan to dismember it.

The Finance Minister also on record—[*Interruption*]

Sen. Narace: On a point of order; Standing Order 35(5). Mr. President, he is imputing improper motives against the Members of the Government, that “dey planned to do this, dey take an elephant, dey shoot the elephant, dey waiting for de elephant.” He is making up a whole story. It is just unacceptable.

Mr. President: I am inclined to agree with the Minister, because a little bit earlier in the proceedings we had a statement from the Minister of Works and Transport and he made it quite clear as to what transpired. Therefore, it really was action on the part of the Central Bank. The Minister made it very clear that the Government, per se, was not involved with what you are suggesting. Therefore, whether you are just saying what is not true, is not correct, or whether it is misleading, one way or the other, quite frankly, I do not think you should go there. You should go on to some other issue.

7.05 p.m.

Sen. M. F. Rahman: Mr. President, when the Minister of Works and Transport made the statement today, he did not give us the circular that the Central Bank sent out. I thought that is what was going to be circulated today. The

Minister came here to deny the report in the *Express* by reporter Anna Ramdass where she claimed that the Minister of Works and Transport contradicted the Minister of Finance. If I am permitted to comment on his declamation—

Mr. President: Senator, I have just indicated to you that the Minister made it perfectly clear that it was the action of the Central Bank that has changed any circumstances. If at all there were any changes in the circumstances, the Government had nothing to do with it. I think you need to move on from that, because if you do not it is going to suggest that the Minister was misleading this Senate and that would be completely out of order. That is what you cannot do. So, what you were saying is that the Minister stood here and told us something that is not true—he lied or misled this Senate. Do not go there unless you have evidence to the contrary. There are many other things that you can talk about. I think that you should move on.

Sen. M. F. Rahman: Mr. President, at no point did I attempt to say that the Minister was lying. I was not even going to suggest it. He could have genuinely presented something and then believed it as he thinks it is. It is not a matter of my challenging his statement. It is possible that I may differ with his interpretation, but I am not going to say that he lied or misled the Senate.

Mr. President, governments of the world have taken the approach of funding businesses in distress. In some cases, they have been a little disappointed in the way the funds were used. Our Minister of Finance said that they did not want to give money to Clico that way, because of similar thinking. I believe the question of Clico's mismanagement came into the picture, but this is very contradictory. Here is the Minister not trusting Clico's management capability and, yet, is prepared to leave Clico in a position to manage its insurance business; British American as well as Clico insurance business.

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

Now, how can you say on one hand that you do not want to go through the course of financing them, when you prefer the route of dismembering them and then allowing them to continue to manage in the areas dealing with insurance policies—53 per cent of the policyholders in this country?

My point is that the Government claimed that it would not go that route and it preferred the route where CL Financial would be dismembered of its prime, choice, plum assets. They are going to be deprived of their banking operations which would have given them access to funds to be able to invest overseas to promote their profits and to be able to service those pensions.

As Sen. The Hon. Conrad Enill pointed out, the question of insurance is very ticklish in that you have to take those funds and invest them in order to generate profits to be able to pay your policyholders. It is very clear that the course of action on which the Government has embarked—the first choice for this rescue operation was not, in fact, the best choice that the Government could have proceeded with.

Quite apart from the fact that by its selective remedies, it is denying the HCU and other similar bodies from getting the assistance that they all deserve as equal citizens with equal rights, it seems to me that the course of action that the Government is taking is going to result ineluctably in jeopardizing the very policyholders that it claims it wants to protect.

The last day we had a debate in this Chamber, Sen. Prof. Ramesh Deosaran made a very clear statement which was not challenged by Mr. President. He suggested that had Mr. Duprey not ventured out so openly and identified himself politically, there may have been a different resolution to this matter and not a Senator disagreed with that position, even those who spoke after him. The matter has been clearly established by that contribution that there are political overtones to this Clico matter. As he said, there would have been a different resolution.

Now, one of the things that Sen. The Hon. Conrad Enill said here this evening and which raises some interesting questions, is that everybody was surprised at the speed with which this package has been put up. He said that they have been “walking this road for a long time” and it was heading in a particular direction, and that is why they could have made so swift an intervention. The intervention that is now being made is an intervention that was clearly preconceived and it has come about now in a flash.

Everybody knows that Clico was running into a cash problem and the Government was preparing for an eventuality, and it came up with its proposals. Mr. Duprey was taken by such a bewildering response that he, himself, could not believe that the matter was resolved so quickly. Mr. Duprey is having second thoughts, because from all accounts from the newspaper, he has brought in two senior counsels from London and he is about to take some action.

Now, the interesting thing is that the MOU which can only be triggered by the passage of these amendments is a memorandum that does not carry any company seal. I do not know what is the legal implication of that. There is no company seal and one man signs without any official authority, and the MOU provides for the board’s resolution to legitimize this agreement. So, as we speak, the MOU is really

a hopeful document which awaits its consummation with events that are anticipated. Now, I would be very concerned if I were the Government that this matter is going to be consummated because of the recent development.

Let me say that the disadvantaged position in which CL Financial has found itself where its major local prizes have been shorn from its embrace and is being left with only the insurance to manage—in the eyes of the Minister in the Ministry of Finance, it was not being managed well. I cannot understand the logic. There is a distinct contradiction there. Clico is now going to have second thoughts, and I do not know where we are heading with all of this.

There has been an awakening and a stirring on the part of Clico. Apparently, this matter is not going to proceed, in my view, with the nice straightforward ordered manner in which the MOU appears to anticipate. Now, I am really quite anxious to see how the matter plays out. We are going to see how it plays out in the next several months.

Now, Clico having found itself in this position—Sen. The Hon. Conrad Enill made reference to this matter, and by the action which the Government has taken by not advancing working capital and rather go to the course of dismembering it—savaging the companies and taking the plum parts—what has happened is that the brand Clico internationally has suddenly run into a credibility problem. If Clico cannot manage its affairs in its domestic home turf, how can it manage its affairs in the international markets? How can it compete? How can it be trusted? Which bank in the world is going to give Clico any support in any of its international endeavours? It is operating in Saudi Arabia and Germany. There is a list of companies and enterprises in which this organization is participating. What has occurred as a result of the Government's intervention is that it is almost as if a hand grenade or a bomb was dropped on the CL Financial organization and its self-contained world of business.

Mr. Vice-President, we have a situation where without intending, the Government's actions has exploded in the face of Clico, and destroyed the foundation of its credibility internationally. The report that was mentioned by Sen. The Hon. Conrad Enill supports that—reassessment of creditworthiness and so forth.

Now, we have been hearing that CL Financial had a run on its money to the tune of \$250 million a week. That is what the Prime Minister is reported to have said in the press and I heard it on the television. Now, the interesting thing is, that is the exact amount of money that NGC was asking Clico for. Now, these deposits

Central Bank (Amdt.) Bill
[SEN. RAHMAN]

Thursday, February 05, 2009

have statutory requirements for release. When you demand your money back, you have to wait six months and there has to be Central Bank approval. So, in the interim, if you ask every day for you money—about 20 times—you have to wait six months to be able to get it. This run on the bank did not take very long, because everybody in the know knew that with the removal of Republic Bank shares and the Methanol Company shares Clico was going to run into this problem, and so the vultures started to take over.

Sen. Narace: Mr. Vice-President, on a point of order.

Sen. M. F. Rahman: I am not referring to the Government.

Sen. Narace: Mr. Vice-President, Standing Order 35(5). Not only is the Senator imputing improper motives against the Government by referring to them as people trying to shoot elephants and as vultures, but the Senator does not understand the entire scenario and, therefore, he is not relevant. He is misrepresenting the entire matter. We need to bring him back to the Bill. *[Interruption]*

Mr. Vice-President: Senator, please refrain from making accusations about the Government and calling them vultures. Please try to be a little relevant, because you have been drifting off a little. Try to be relevant.

7.20 p.m.

Sen. M. F. Rahman: Sir, I have not been naming the Government as being this and that; I am exculpating them all along the way. Enill would agree with me.

Hon. Senators: Enill? Enill?

Mr. Vice-President: Please, and it is the Minister of Energy and Energy Industries, okay. Senator, please move on and do not question the rulings.

Sen. M. F. Rahman: I did not intend to question the ruling, Sir. I am sorry if I gave you that impression.

It is always very interesting, whenever I come close to the nerve, the bone, I get static from the Government Benches. Actually, it is a credit to what I am saying here, because of the fact that what I am saying is touching nerves, they are getting anxious. This is going to be reported in the press; it is being seen on television and people are going to be wondering whether he is really hitting the mark. The Minister of Energy and Energy Industries, Sen. Conrad Enill, was nodding in agreement with what I am saying, unless I am misreading him.

[MR. PRESIDENT *in the Chair*]

You must rein in your colleagues here, they are trying to shoot me down; I shoot the elephant with a tranquillizer dart; they are throwing machete at me. *[Interruption]* You would watch the house for "meh"? Okay.

If the Government does not want to connect this problem with the global meltdown, additional companies in Trinidad and Tobago are going to be in dire trouble in a very short time, if we do not recognize that this is a reality. We have billionaires who reside in Trinidad; Trinidadians who have international interest, and I do not think I should call names here, but you know who they are. All of these people have bottling plants, factories, properties; investments overseas and all sorts of different things. Every one of them is going to be affected as Clico has been. Clico more so, because of its illiquidity problem locally, because of the allocation of the resources away from the statutory reserve.

One of the things the Minister of Finance said was, we were insulated from the global meltdown. I want to tell you that this is not part of the global meltdown. In effect, we are still insulated from the global meltdown; that is the position that the Minister of Finance has taken with regard to the calamity that has befallen Clico.

So, when we continue to deny that the global meltdown has arrived in its consequences to the shores of Trinidad and Tobago, and unless we acknowledge that, we are going to run around like headless chickens. The very interesting thing is this, the mismanagement that the Minister of Finance has accused Clico of was borrowing to invest. You know something? The policy of this Government is deficit spending; to borrow to continue to do development of the country.

So, what it is criticizing in Clico and branding as irresponsible or mismanagement, is what the Government is doing now. This Government is going to run into trouble, and when it runs into trouble, it will not have any recourse to be bailed out of its problems.

I understand that the IMF has allocated a few billion dollars to be made accessible to companies and corporations that have suffered as a consequence of the global meltdown. So, this Government does not even have to risk any of its funds. All it has to do is to advance it to Clico; collect it back from the IMF, and let Clico be responsible for it.

There is something called a "doctor operation" that the banks do when a company that is given credit is running into trouble. It sends in a couple of people to help with the management of the company. Part of the plan is that a similar

Central Bank (Amdt.) Bill
[SEN. RAHMAN]

Thursday, February 05, 2009

thing is going to happen to Clico here. There is no reason why the Government cannot rethink this approach and go back to the original approach, which is even used in the Clico operation in Barbados. It has been used in America, Britain, in so many nations of the world.

I am recommending, Sir, that the Government withdraw these amendments and go back to Clico, because this Memorandum of Understanding is going to the courts. I am certain this is going to the courts, and all the Government is doing right now with this exercise, is going to be in vain. Let it go back and re-approach the matter, rather than take the matter in the way that it has been warped by the last Minister's words, "they have been walking this road for a long time". They have to review the decision that they have made to go this route of dismemberment while they are leaving the management of the most critical sectors in the hands of Clico.

My recommendation and my invitation to the Independent Senators is that we recognize that these amendments have given rise to a tremendous loss of confidence in the public's mind with regard to the banking sector. Not only was there a run on CIB; a run has been started at Republic Bank; there will be a run on First Citizens Bank (FCB) soon, and many people are saying—[*Interruption*] because they are going to have the liabilities of Clico. This is my personal view; this is my personal understanding; this is my personal assessment of the matter, and many people are saying better they take their money out of the bank; one "fella" said, better he bury it by the outhouse, where nobody will go.

Mr. President, this is a serious matter that we are dealing with. This Government has triggered a response; they have pressed the panic button in the minds of the people.

Sen. Enill: Will you give way?

Sen. M. F. Rahman: Yes, please, you are a reasonable man, I have no problem. [*Laughter*]

Sen. Enill: Mr. President, I do this with the greatest of respect. May I request, Senator, that if we have to talk about the institutions we do not name an institution. I know what you are saying, but it has consequences, because it is easy for you to be misunderstood. Therefore, I would suggest that if you want to say it you could refer to the generic institution, rather than naming an institution, because I think that could have some unintended consequences.

Sen. M. F. Rahman: My colleague, I am guided and I do take your point.

Mr. President: Senator, I would just like to add my comment to that. You are in a very high place; we have a great deal of privilege here; people listen to what is said here, and things that are said in the heat of the moment, the cut and thrust of politics and so on, are not earnestly intended or believed can do a significant amount of damage to the society, and we are a very small society. With great privilege comes great responsibility, and you must recognize that. I ask all Senators this evening to recognize the privilege that you have here and to speak with that level of responsibility.

Thank you.

Sen. M. F. Rahman: Mr. President, I concur, I agree, I am willing to submit absolutely in that regard, but my concern here is the irresponsibility that has resulted in this present situation and what I consider to be the Government having chosen the wrong route as a solution. We have been examining these amendments in the Lower House and now this House, as if these two amendments are to be fine-tuned, rather than to be questioned for their original intent and purpose, and the genesis from which they have sprung.

I humbly submit, Mr. President, this entire crisis in this nation today, can be cancelled, voided and nullified were the Government to say—because we have a mess that is going to hit this country, this Memorandum of Understanding—to the parties, we would go the route of conventional bail outs; we would have to have a doctor operation in your businesses; we must oversee where you are going to put that and how you are going to use it; help you with your management; do a hand clasp arrangement, and not these amendments that are seeking to implement a memorandum of understanding that has become the rape of an institution that is 68 years or 78 years old. It is an institution that is an icon in this country; one of our flagship operations—if that is the right word—and it is known globally in so many areas of enterprise, and the damage has already been done.

I am not causing damage here tonight, Mr. President, with all due respect, I am trying to contain this damage and to invite the Independent Senators to understand that there is another route that this Government can still take short of shearing all of these things from Clico and leaving them in the lurch. You see, the organization that Clico has become, has become an interlocking support system. It is like you have 10 stanchions to hold up a building and the building is termite infested, you do not pull away three of the stanchions, you are going to drop the whole building. What has happened is that every one of the organizations that the Clico empire was comprised had its role to play in the holistic organization that they turned out to be.

Central Bank (Amdt.) Bill
[SEN. RAHMAN]

Thursday, February 05, 2009

It is important. What has occurred is, an infection has taken place of Clico and the surgery that is required is a change of approach. The entire modus of assisting these people must be reviewed. While the Government is about it, they have to review also their position with organizations like the Hindu Credit Union, where national people's deposits are jumping up and in danger of being lost.

One of the very regrettable things is that when a company goes into receivership or has to be taken over by a bank, everything is liquidated on the basis of 25 per cent of market value; that is the yardstick a bank manager told me once. I do not think there is a single person in the Hindu Credit Union who, in the present circumstances, can expect to get back a single cent of what they put in.

If the Government were to step in, refinance and make a doctor operation again there, they can resuscitate the Hindu Credit Union under new management, and all of the thousands of depositors could become satisfied. This Government will become the entrenched government—for, I do not know how many decades again—if they look after the interest of the people who have been almost mortally wounded by the inaction of the Government on the Hindu Credit Union and by the devastating course of action that is being undertaken right now in respect of the Clico operation, which the Minister has said, it is not a bail out operation, and I agree, it is an acquisition operation.

These two Bills should be called the "Financial Institutions Acquisition Bill", because what it seeks to do is to acquire, and as my colleague mentioned, what is the value the Government is going to place on the Republic Bank shares when they are transferred, in order to determine what credit to give to the selling company, Clico. So, we have a situation here where what has occurred is that the Government has come in when they knew because of the impending situation where Clico did not have funds from April; they knew this and they prepared in the way that they thought was best.

We have an international template that has been followed by so many governments that they have discarded without any—in my view—just cause. They have simply gone the route of a different approach, and this different approach has caused plenty spillover problems to Trinidad and Tobago, even as we speak. You know something, Mr. President? This matter of Clico has overshadowed the UDeCott commission in terms of front page news.

7.35 p.m.

Now, I am sure the Government did not engineer this to move that to the back pages, because that is still being televised and the consequences of that are going

to follow. There is no way they can stop that. We have a new crisis that has come centre stage and elbowed out all the other crises and this crisis is not a seven-day wonder. This crisis is a crisis that is going to continue and grow worse the longer the Government pursues this Memorandum of Understanding and if the signatory to this MOU reneges, as he seems to be heading with his senior counsels, we have a serious situation. Because there is no—*[Interruption]*—all right, we would see how that develops. The Government has to rethink its intervention. In my view, I am recommending, it should inject capital into the organization and go the route of the conventional bail out operations.

Mr. President, it is very unfortunate that at the time that Clico—oh yes, one of the issues that was given as an explanation for the \$125 million that was requested of CIB is that the Government wanted to pay PAYE to the Board of Inland Revenue. Now, that sparked a few letters in the press and I am also appalled to hear—you know when an employer deducts PAYE deductions from his employees he is supposed to pay that into the Board of Inland Revenue immediately. It is not allowed for us to use those funds to invest for our purposes. What has happened is that on national television, the whole country heard, that what has occurred is that some of the state enterprises had in fact taken their PAYE deductions and put it in Clico to be able to generate a profit. Now that is a very bad example, you are going to make everybody in business now come and withhold their PAYE deductions, use it for a few months and then go and pay it to the Board of Inland Revenue and get the benefit of that as an investment. As a matter of fact, some businessmen are even going to use it in their own businesses rather than invest it elsewhere because in their own businesses they are going to make a bigger profit because they know how to run their businesses. So, Mr. President, I thought that that is a very regrettable situation.

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. Dr. A. Nanan*]

Mr. President: Before I put the question, allow me to say that when we met in my chamber we had an understanding that Senators would try to confine their contributions to within the first 45 minutes, but I will put the question.

Question put and negatived.

Sen. Helen Drayton: Thank you, Mr. President. I open my contribution by stating my full support for these Bills to amend the Insurance Act, Chap. 84:01 and the Central Bank Act, Chap. 79:02. In so doing, I will make a few observations

Central Bank (Amdt.) Bill
[SEN. DRAYTON]

Thursday, February 05, 2009

with respect to how these Bills were brought to Parliament. I think it is important that if there are weaknesses that these be pointed out and we will take the necessary measures to ensure that the situation is not repeated. Also a very few comments on the overall economic climate impacting our financial institutions.

Now, in listening to the debate thus far, at times I get the impression that some Senators believe or see this Insurance (Amdt.) Bill as a Bill to govern Clico. This is a Bill that deals with the insurance industry. It is legislation governing the insurance industry and it is absolutely necessary that the Central Bank has the necessary legal tools to maintain confidence in the system and to exercise effective governance over the insurance industry. It is unfortunate that events which precipitated bringing this legislation to the Senate have seemed to cloud the issue as to what this legislation is about. This legislation is not about putting some gun to Clico's head.

Now, it is not last week that the Central Bank and the Government recognized the need for reform of the financial services sector. This was clearly stated in the White Paper on financial services reform and at that time three basic objectives were stated and that was to maintain confidence in the system, to ensure efficiency and fairness, and most importantly to protect the interest of depositors. This is why I find it very difficult to fathom that why since 2004, action was not taken with respect to legislation governing the insurance industry. This is particularly so because the governance profile of Clico was known. The risk profile of Clico was well known and it is very difficult to accept that the Government was not aware of this. Let us just say that that is the case, then it begs a question as to whether the Government has a robust investment policy in place that guides all of its state agencies, which means that there will be systems, there would be analysts, there would be people looking at annual reports and anyone who—if you examine the Clico's Annual Report for 2007, the situation is quite revealing.

So that it is more so very pointed since the Central Bank did take action with respect to two other insurance companies, granted these insurance companies were not the size and scope of a conglomerate such as Clico. So, even though the Central Bank did not have the specific legal authority with respect to the holding company, I feel that it is not correct, it is not proper to imply that no action could have been taken with respect to signalling the risk profile of such a large conglomerate that controls 50 per cent of the insurance industry and 25 per cent of the financial assets of the country and you have your state agencies investing in this institution, it is the taxpayers money, so that it would appear to me that there is a serious weakness both on the part of the Government and the Central Bank and it needs to be addressed.

The Central Bank did have jurisdiction over Clico's subsidiary and you have waited until there is a crisis. The same way that it took you a week to bring two pieces of legislation governing the insurance industry, certainly you could have done that within eight years. I do not think that we would be going through the pain we are going through at this point in time, and I do not think that that could be disputed. As I said, whilst the situation with respect to the liquidity of the institution might not have been known, the risk profile would have been known by Central Bank. In any event, the company was in breach on more than one occasion of the laws governing it; it did not meet its statutory reserve requirement. And you know what makes this very interesting, is that both the Governor of the Central Bank and the Minister of Finance indicated that they were not the ones who called in Clico, Clico came to it. So that puts a different texture, a different complexion on the whole situation to me. What it would suggest is that the company—yes it is illiquid, it needs to mitigate a crisis and Clico made a business decision, the only business decision that it could make at this point in time.

So, I think it is really arrant nonsense to say that someone is holding a gun to Clico's head or someone wants to get at Clico. We are trying to get around a situation that is real. We need this legislation and quite frankly, I believe that in having a duty of care to all depositors and policyholders out there, that I am obligated to support this legislation.

When we were debating last year the Financial Institutions Act, 2008, I made an observation then and it was an observation with respect to the capacity of the Central Bank to effectively supervise all of these financial institutions. And let me say from the outset that I have a great deal of confidence in the Governor of the Central Bank, I have a great deal of confidence in the Central Bank, it has served this country well for generations, it has an excellent cadre of staff who are committed, they are dedicated and they are loyal, so I have full confidence in the institution, but I do want to remind the Government and the Central Bank that what has brought about this world financial crisis, it was not oil, it was not war, it is not a natural event, but it had to do with oversight of the financial system. It had to do with the lack of effective regulation and the regulations that exist, the models that exist, there are many loopholes and there is a very important lesson in this, because members of Caricom or Cariforum, we have been signatories to the EPA agreement and if my memory serves me correct, there are one or two clauses in that particular agreement that might very well restrict members of Caricom from adopting financial models that would be in our best interest to mitigate cross border risks.

So there are many lessons to be learned from this situation. Be that as it may, this piece of legislation, the Insurance Act now gives the Central Bank emergency powers over insurance companies and that is absolutely necessary. Importantly, it can share information with other regulators; that is, most important. And I think there is one that has been overlooked thus far and that is, that insurance companies must now maintain their statutory fund on an ongoing basis. It now eliminates the “top up” situation which poses a lot of risks to the policyholders. Of course, the regular reporting gives the Central Bank the tools to examine financial reports, to go in, make investigation and take the necessary action. I have to say as well, that I fully endorse all the powers given to the Inspector of the Central Bank. [*Desk thumping*] I would hate that when this Bill goes to a committee stage there are attempts to water down legislation that is absolutely necessary to maintain confidence and the stability of our financial system. And of course the punitive sanctions—\$500,000, five years in jail, quite frankly, that is absolutely nothing if you have executives who are going to put the entire country's financial system at risk, the pension funds and all the savings of every citizen, they probably should go there for life.

7.50 p.m.

Just getting back to the outer context of all this. There is no question as to the threats posed by the international crisis for Trinidad and Tobago, and I think that there is consensus that no economy can be isolated in an integrated global marketplace. Whilst we are not in a recession, I would like to urge the Government to give very serious consideration to convening a committee of business, labour and finance to come up with strategies to be proactive. This situation is going to get worse. It is not going to get better. It has to get worse before it can get better. That is the path of all recessions.

As a matter of fact, in some instances, it is a phase where you enter into the depression. I cannot stand here and speculate about that, but we need to be proactive and we cannot prevaricate with something like that, as we have done with this piece of legislation. I would urge the Government as well, not to place all their emphasis on the language that our fundamentals are sound. The reality of the situation is, we have a world crisis, a financial crisis, we have our GDP going one way, we have the current account surplus going one way, we have the productivity ratio going one way and we have loans going the other way. So that the whole notion of an enviable debt service ratio does not make sense. This situation is volatile and worse, if we enter into a situation where the contribution to GDP of your private sector is going to be eroded, you are now entering the

realm of unemployment—not of your CEPEP and your URP, but your taxpayers, your broad middle income group and the consequences there will be default on mortgages, default on insurance premiums and default on loans.

So I want to urge the Government to be very proactive in this situation. I do not buy the Moody's of this world anymore or any of the international rating agencies. If they were doing their jobs, we would have known about AIC, we would have know about Bear Stearns, we would have known about the entire Wall Street and we would have known how bad the situation was in the United States. So they only seem to come to developing countries to pontificate. I do not buy Moody's and the lot of them. [*Desk thumping*]

Before closing there are three matters. First, I raise the question as to whether the Central Bank should not be giving consideration to a legislative framework to examine, only examine, legislation with respect to any one company in a strategic sector, controlling as much as 50 per cent of the assets of that sector. The sheer size alone of Clico, the ripple effect throughout the Caribbean ought to have sent clues and messages, and I am saying it is only to consider it. I do not know how practical it is, but it is something that we ought to look at.

The second is with respect to the stewardship of our financial institutions. Mr. President, the National Insurance Board controls \$14.5 billion or thereabouts of the country's financial—[*Interruption*]

Sen. Browne: Seventeen billion dollars.

Sen. H. Drayton: Seventeen billion dollars of the country's financial assets, all of our pension funds, all of the pensioners out there. It is a financial institution. It might be a social financial institution, but it is an important and strategic financial institution. I would like to recommend to the Government, and I would like to put it in some more strong language and that is in keeping faith, good faith with the people of Trinidad and Tobago, in the interest of the welfare of the people of Trinidad and Tobago, that the same fit and proper guidelines that you have established for the boards of your other financial institutions, you ought to be applying the same guidelines to that institution. I would hate to think that it has my pension in Clico, and I think that you get the message.

With respect to credit unions, the matter of up-to-date legislation for credit unions is important, and I hope that you are not waiting for another crisis. Those institutions control, I think it is about \$6 billion or \$8 billion of the depositors, many of our small savers, and I think we need to get that legislation in place without delay.

Central Bank (Amdt.) Bill
[SEN. DRAYTON]

Thursday, February 05, 2009

So in closing, I want to recommend that the Government be proactive with respect to the climate that we are entering. I want to recommend that the Central Bank be given all the tools: the legal tools, the technical tools, the staffing tools, in order to do the job that it must do, and there should be absolutely no compromise on that. I want to recommend that the Government push aside all those Bills like tobacco and so on and bring the financial legislation. [*Laughter*]

With that, I thank you. [*Desk thumping*]

Sen. Lyndira Oudit: Good evening, honourable Senate. Mr. President, my contribution this evening seeks to address statements made by the Governor of the Central Bank, published in the *Guardian* on Monday, February 02, 2009, where he sought to clear the air where it comes to the Central Bank's role in dealing with CL Financial and explain, and I quote:

"...inadequacies in the legislative framework which did not give the bank the authority to demand these changes"—he—"made it clear that...the true source of the problem lay in the way CL Financial Group was being managed."

But section 50 of the Insurance Act, Chap: 84:01, clearly identifies the power of the inspector or any person authorized in writing by the Central Bank that gives certain jurisdiction and authority to the Central Bank, inspector or any person so authorized, to directly deal with practices that threaten the welfare of stakeholders. Mr. President, the Act points out a step by step procedural stage to deal with compliance procedure against unsound or unsafe practices.

On November 22, 2008, Governor Williams in addressing the Grenada Chamber of Industry and Commerce, made this statement and I quote:

"...while the roots of the turmoil may have been in the sub-prime crisis, this was by no means the only factor. Excessive risk-taking...over-leveraging (meaning taking risk with borrowed money) greed, and a disdain for prudential regulation also played substantial parts in a very complex mosaic."

If this comprehensive understanding by the Central Bank was stated then, was any compliance procedure as outlined in section 65 instituted against the CL Financial? Were guidelines given by the Central Bank to CL Financial's board of directors, or was it as Sen. Mark indicated, a knee-jerk reaction as a result of negligence, when certainly legislation existed that could have dealt with issues as they were presented? Certainly legislation did not allow for or even cover a takeover or a bail out of this nature. But as Sen. Browne indicated, even without the

approval of the Senate, \$600 billion in one case could have been injected to assist in a particular corporation. Not here. But why was this CL Financial situation allowed to reach this stage?

The Central Bank has for quite some time held regulatory authority over the insurance sector of Trinidad and Tobago. The Insurance Act of 1980, and amended in 2007, clearly identifies even from start to finish, how much legislative authority the Central Bank and its agents have to better deal with issues relating to things or institutions such as the CL Financial Group. I will ask you to bear with me, because I am going to go through and show you exactly how much legislative authority was in place that could have been better utilized before the crisis proportion. I am using the word "crisis".

Section 65—the compliance direction. It says here that in the opinion of the inspector or any other agent of the registrant, any matter that constitutes unsafe or unsound principle, directly or indirectly prejudicial to the interest of policyholders—further—any continuation in business that is likely to involve a loss to the policyholders of the insurer, the Inspector may direct to cease and refrain from committing the act, to perform such acts which in the opinion of the Inspector are necessary to remedy the situation or minimize the prejudice.

In section 50(A), in the powers of the inspector it says:

"The inspector or any person authorized in writing by the Central Bank..."

And it gives the framework.

Section 67 identifies very, very clearly intervention procedures. Intervention procedures dealt with: refraining from effecting contracts; limit aggregate amounts of premiums to be written; refrain from making investments of a specified class; and to request with greater frequency, documents outlined under section 56 and submitted to the Central Bank under 61(2). It also indicated as part of the intervention procedure, that the Central Bank was able to assign an actuary or other person to investigate the financial position and report back to the Central Bank.

In section 68, the Central Bank may apply for judicial management of a company which then has one month to give notice, stating its intention to apply to the court, it or any part of its business—and I repeat, it or any part of its business—to be placed under judicial management. The judicial manager then liaises between the Central Bank, the court and the company, and files a report and I quote:

"...as soon as possible after the appointment with the court outlining steps for prudential intervention strategies."

After this, it further states in section 75, that there is a cancellation order when this judicial management is no longer desirable because, one, it is no longer needed, or two, its purpose has been fulfilled. So clearly the statement that legislative framework was not in place, seems to be a little bit of a discrepancy as regulations are clearly dealt with in the Insurance Act. Why were unsafe and unsound practices allowed to continue for such a length of time as to reach critical point? Mr. President, why was there no regulatory intervention instituted?

8.05 p.m.

Where was the injunctive relief as outlined in section 66 which identifies that:

"...The Central Bank may in addition to or in lieu of any other actions authorized under this Act—

- (a) seek a restraining order or other injunctive or equitable relief...; or
- (b) pursue any other remedy which may be provided by law."

Where was the need to protect the interest of the depositors, shareholders and related stakeholders then? Now there is this seeming rush to ensure that obligations to policyholders and depositors are met. The Central Bank should have made use of existing authority under existing legislation to address the issues as they were unfolding; this certainly would have minimized the conclusion we have reached today.

According to the US Library of Congress, and I quote:

"Nonbanking financial institutions, encompassing finance houses, trust and mortgage companies, insurance companies, and other business services..."—since 1985, contained a significant percentage of this country's assets.

It further noted that:

"After the 1984 collapse of International Trust...the Central Bank increased regulation of these services."

It is my belief that the mandate of financial regulatory bodies must be understood in terms of pre-emptive action and the implementation of existing legislation in the active promotion of stability and restructuring as needed.

Were any alternatives presented to the CL Financial board? Sen. Browne indicated that the Central Bank—[*Interruption*] the Minister in the Ministry of Finance—indicated that the Central Bank found that the intervention process was time-consuming, costly and slow. I ask this honourable House: How could time-

consuming, costly and slow be the reason you could not deal with compliance or get into the intervention, at the cost of what, at the cost of a complete breakdown or meltdown of a privately owned conglomerate, of which the Caribbean must certainly be proud?

This cease and desist or perform, is what the new legislation seeks to address. On December 19, 2008, the then President-elect Obama told reporters in Chicago that he was committed to remaking the nation's financial regulatory system. He said very clearly:

"We have been asleep at the switch, not just some of the regulatory agencies, but some of the...committees that might have been taking a look at this stuff."

I would like to say, at this time, that I believe in our country our regulatory bodies have also been asleep at the switch; committees and other regulatory bodies have been sleeping on the job.

In India, according to the *Hindustan Times*, dated October 10, 2008, the Finance Minister put together a group of bankers and financial experts from throughout the country, to investigate the issue of liquidity and consumer confidence. Ladies and gentlemen and, Mr. President, this group was given one week to present its first report; one week to present its first report. Such action, reflecting prompt mediation and pre-emptive consultation, may very well ensure that a country of some one billion people does not succumb to such a crippling meltdown as other large economies throughout the world have been doing in the last weeks and months.

Why then in a country with just over one million people, could there not have been a more timely and effective intervention by those so authorized in law to reduce what must certainly be seen as a nightmare for our country? If the compliance direction in section 65 of the Insurance Act is clear about the steps to be taken before a critical stage is reached, why then is there such an urgency to amend legislation to ensure a bail out of CL Financial? Why this hurried legislation? Why amend legislation when, certainly, implementation was the issue and not the existing, albeit limited, legislation?

In fact, in July 2007, a full service credit rating international organization, AM Best, identified Clico Trinidad; their financial strength rating and their issuer credit rating were both considered stable. They did point, however, to some concerns. I would ask this House to please understand the five points that were

raised by AM Best in 2007. For those of you who are following, it was what the Central Bank Governor identified in his news release this week. In 2007, AM Best indicated their issues with Clico Trinidad:

- i) significantly high concentrations in investments with affiliated companies and intercompany transactions;
- ii) levels of investments in affiliates were well outside of the international industry norm;
- iii) some of these affiliated investments were not quoted on any stock exchange;
- iv) the unavailability of CL Financial's audited accounts at the time of the review; and
- v) higher debt liabilities as a result of collateralized borrowings.

Those five issues for the country would be very familiar, but only in recent times, but this was the report of AM Best in July of 2007. Overall, however, the rating showed the company as viable, sound and stable.

In the *Nassau Guardian* on January 20, 2009, again, AM Best noted that Clico Bahamas benefited:

"...from its ownership by parent company CL Financial...overall premium growth and profitability."

My question this evening is: Are these indications of a failed company? Do the words "sound, stable, profitability and growth" apply to a company that needs the complete bail out of this Government, through the Central Bank? Could the five areas of weaknesses identified not have been dealt with one by one in a timely fashion, so that a better conclusion of this scenario would have unfolded?

In light of these findings and reports, certainly greater interaction between the Central Bank, the Inspector of Financial Institutions, the Minister of Finance and CL Financial board should have been ongoing, with a view to reshaping and restructuring as needed. At that time, certainly compliance procedures would have dictated measures to more adequately deal with these issues. At that time alternative measures would have been possible: interim financing and lines of credit, as so many others discussed here tonight. Lines of credit could have been explored.

On January 15, 2009, Governor Williams, again, at the Couva/Point Lisas Chamber of Commerce, indicated what he saw as the central issue in today's financial crisis, and I quote:

"...what we are witnessing now is not so much a crisis in the financial system but a crisis of confidence..."

Certainly, if the areas of weakness were dealt with, then the issue of confidence, which he saw as so paramount, would have been dealt with. He went on to further point out in that same address to sins:

"...prolonged build-up of structural imbalances; inadequate financial sector regulation; excessive risk taking and a fair amount of greed."

We keep hearing the word "greed". These statements of the Governor point clearly to the failure, in this case, of the Central Bank, in this issue, as the leading financial regulator of the country; inadequate financial sector regulation; non-implementation of existing procedures.

In section 65, compliance directions were identified: direct or indirect prejudice to the interest of the policyholder; breach in the requirement of the Central Bank in accordance with the Act, and unlikely to meet the demands of policyholders. The areas of noncompliance were very clearly outlined.

The Minister of Finance, Hon. Karen Nunez-Tesheira, on Tuesday, December 02, 2008, explained to this very Senate that if the Inspector of Financial Institutions has to restrict a financial institution as a check and balance, and I quote:

"...the inspector would first have to refer the matter to the Central Bank's board of directors chaired by the governor."

She further explained that:

"...any resultant action must then be taken by the Central Bank board...under clause 62(5) of the bill."

The powers of the Central Bank are far-reaching and very well documented. Why then, if even before 2007, specific weaknesses were reported and were known to the Central Bank, was the hands-off approach adopted: watch but do not touch?

The Governor indicated that CL Financial was merely under review. What was the expected outcome of this approach? Was it a question then of digging your own grave before I push you in?

Central Bank (Amdt.) Bill
[SEN. OUDIT]

Thursday, February 05, 2009

The Association of Trinidad and Tobago Insurance Companies (ATTIC) President, Rani Lakhan-Narace, as reported in the *Newsday* of February 02, 2009, indicated satisfaction:

“...that a comprehensive approach was taken for the quick aversion of a potentially calamitous situation...”

She gave assurances that ATTIC remained committed:

“...for the development of a more robust regulatory framework...”—and has confidence in the Central Bank as responsible regulators.

My question this evening is: How could the association continue to have this level of confidence in a State organ that, as a testament to inadequate implementation of existing regulation, must now hurriedly seek to get new amended legislation to cover a complete takeover of a private company?

Mr. President, in light of the need for a more thorough and comprehensive framework of legislation to deal with this and any other similar situation, I would like to suggest that the policy framers include amendments similar to the US Chapter 11 restructuring policy. This allows companies to reorganize and still remain, "debtor in possession", subject to jurisdiction of appointed courts. These policies engender more confidence in the minds of the investor by extending lines of credit. You would then empower the owner of businesses during the restructuring process. During the restructuring process debtors remain with the exclusive rights to propose a plan of reorganization for a period of time, and this proposal is then taken to the creditors who vote to approve it.

8.20 p.m.

At this time in Trinidad and Tobago a tremendous amount of collaboration and consultation is absolutely necessary. There is certainly the need for greater involvement of major public stakeholders, financial experts, legal advisers and shareholders who should be able to come together in consultation to accommodate the greatest good for the greatest number. Too much is at stake if this is not done. The question we asked earlier, how many more Clicos' are there? Are there other institutions that are not also at risk?

Sen. Drayton indicated that it should not be legislation for one company—

Sen. Dr. Dick-Forde: She said it is not legislation for one company.

Sen. L. Oudit:—it should be for the entire gamut of one industry.

In conclusion, while better late than never may work for some situations at some levels, “late” in this current scenario spells confusion, mistrust and the very greed so often referred to by the Central Bank Governor. The question is whose greed? In this entire picture, who does this country see as most greedy? The perception this greed rules does little to foster confidence and a healthy investment climate. At this time, as I close, I would like to indicate that political kingdoms are not the only thing being created and we have to be careful that we do not create economic kingdoms in this one little country of ours.

I thank you. [*Desk thumping*]

Sen. Dana Seetahal SC: Mr. President, my contribution really comprises a series of questions to which I have not had answers and I would have expected the Minister in the Ministry of Finance to explain these things to us before he sat down, but perhaps he will do it at the end.

The first question is, really, do we need these pieces of legislation to give effect to the Memorandum of Understanding? [*Interruption*]

Sen. Browne: No.

Sen. D. Seetahal SC: Thank you for that now at this stage. I could have saved a whole 90 seconds by having you indicate that to us.

I understand that this Memorandum of Understanding which was challenged, I believe, by one of the parties signing it, has been declared to be valid by his own lawyers, according to the news that I heard earlier on today, which was something that I had actually indicated to my friend earlier on prior to that news. So that is just one matter out of the way.

The second question was—before I got that information—is the MOU binding? Once the Government of Trinidad and Tobago carries out its side of the agreement, the MOU is obviously binding; it is a contract.

The third point then is, why do we need this legislation? I have to say that I appreciate—the first time, I think, this has happened—the provision by Parliament of Comparative Analysis of the Insurance Act and the amendments and the Analysis of the Central Bank Act and the amendments; the provisions that exist and the provisions that are being put forward and why the need. My grasp of it after having looked at it myself—despite the explanation I still looked at it—is that the Central Bank amendment is to allow the Central Bank to step in under its special emergency powers of the bank in a situation which involves insurance companies, because the Central Bank has already stepped in, in respect of the

Clico Investment Bank Limited by notice dated January 31, 2009. So they already had that power. It is in respect of the other three institutions that this legislation was needed to give the Central Bank that power.

In respect of the Insurance Act amendment, what I gather from looking at legislation and reading the proposed new sections, is that previously the Central Bank only had authority to intervene and give specific directions in writing, and so on. Now, under the proposed amendment, the Central Bank would be able to force compliance and if there is no compliance, there is an offence committed for which you can be prosecuted and a penalty of \$5 million and/or five years imprisonment, presumably to the secretary or directors of the company.

Usually I would say for the Magistrates' Court to have the power to impose a penalty of \$5 million is really much too much, but since you are dealing with an insurance company, \$5 million is not an outrageous sum and in such an instance, I think that it will be an exceptional case to give a summary court that power. So in the special circumstances of such a case, then I would say that that penalty is understandable.

So really and truly, that is the summary of my understanding of this legislation; this is what it is about and unless there is something more and the Government can tell me further, then I would think that it would have been a good idea to explain it in those simple terms to the populace of the country, because for the past few days we have been hearing so many things about who is doing what and what is happening there; a whole lot of different things which spell misinformation to me.

If the Government is saying that it cannot tell the amount involved now, because you need to go in there and see whether or not assets have been mortgaged to the hilt and what is happening, then explain that and say what could have been done, so we can have a reasonable understanding of what is going on. But as it is, there has been this \$8 billion floating around and the next question that I want to ask is: Where is the \$8 billion coming from to pay that \$8 billion? Nobody has told me. I am saying that you heard that. If you read the MOU, somewhere in there is an understanding by the Government to make good to the persons who own these things and give them back. That is my understanding. Therefore, there must be somewhere that this money is going to be sourced. You might be selling out Republic Bank shares wisely at some point. I guess the intention will be to hold it, because you do not want to drop so many shares in the market; the next thing you know, Republic Bank's shares might go down and my money that I have in Republic Bank might be of little value. Therefore, I would never, never want that to happen and so too, many people in Trinidad and Tobago because that is the largest bank.

The point I am making, through you, Mr. President, is that we want some enlightenment, clarity, in terms of what is happening. Is the Government going to advance moneys to meet these expected withdrawals from the institution because people are going to run and try and get their money? You see, when we hear on the news today that First Citizens said: “Monday we cannot start handing out the money”, then it creates that kind of havoc; it creates that fear. Any reasonable persons could have told them that they need at least two weeks to be able to start giving out the money. But then you say: “No, Monday, come out and get your money.” Now you have to say, “Wait a week”.

You see that kind of thing? Really, we do not want to have a country where people are stressed out; you do not want to create this kind of instability where everybody is talking: “What yuh thinking about Clico, boy? What yuh think is going to happen?” And nobody knows what they are talking about. Everywhere you go, in every little rum shop; people buying bread down the corner; somebody is passing you on the street who happens to know you, for one minute, you know, they expect you to tell them what you think, and that is going to inform their decision in that 30 seconds. Your opinion becomes of that value. I have never heard such value attributed to my 30-second comment from people that I know as in the last week, and I knew so little until I read over this package about three or four times.

So my concern, really, is, in this kind of atmosphere where people are talking about whether the Minister of Finance knew and when the Minister said things were in the public domain, why is it everybody did not know? All these kinds of rumours; all these kinds of name-calling; all these matters that could affect the reputation of people—probably rightly so in some cases, or wrongly so—the thing is, we need some clarity; we need some good statements; we need some short statements, not any kind of involved jargon that has been happening all the time.

I have actually managed to finally understand this thing. I think I have a reasonable amount of brain cells but it took me a while. I am hoping that those who know more about these things and who understand it better, could just make it clearer.

My final point is this: Do we need a special two-thirds majority or a three-quarter majority, as Sen. Mark said? As I was explaining to him outside the Chamber, we do not. Section 54 of the Constitution deals with entrenched provisions of the Constitution and it is only if you are going to amend sections of the Constitution itself, do you need that extra majority. So that if you want to amend, say, section 102 or section 110, or section 19 that deals with the Director of Public Prosecutions, for instance, you need to maybe have two-thirds or three-

quarters. But we are not doing that; what we are doing is we are passing law which is in conflict or inconsistent with your rights and, therefore, section 13 prevails, meaning you just need three-fifths; not three-quarters; not two-thirds, as stated in section 13 of the Constitution.

I was just asked to comment on the judge in chambers point. There is a section in the legislation which talks about making an application *ex parte* for injunctive relief or going to a judge in chambers. As I was indicating earlier, too, outside of the Chamber again, going to a judge in chambers would be making a, sort of, secret—outside of the public—application which would not be open to being published. People would not know what is going on, and I do not think that is an advantage. What we are talking about here is an *ex parte* application. The other side would not be heard at that point in time, but you will have a return date.

You get the injunction right away, yes, and you need that to stop immediate problems, but it is returnable usually within a week or 10 days for the most, and on that day if the inspector does not give good reasons, or whoever it is, then it would be discharged, meaning that the insurance company would be able to carry out their business.

So it is a much better position to be in than to have a secret order made in chambers such as happens in other quiet matters. You do not want to have that here.

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

Sen. Dr. Carson Charles: Mr. President, let me try to get on the point here as quickly as I can. I think it was on Friday at FCB in San Fernando or somewhere there trying to get some money out of a fast service—just a few dollars—and I met two gentlemen inside there, some Petrotrin guys, trying to get their money and some guy who could not operate the machine properly; he was having some trouble so he got no money. I start at this point because of what Sen. Seetahal SC said. You see, I had to then spend some time assuring these people, as though I were, in fact, in possession of information and as though I were a member of the Executive myself. I had to spend some time in assuring these people of how stable the financial sector was. I had to do that because these people were panicking, just because one guy could not operate the machine properly and, therefore, he could not get his money, and this is not even Republic Bank; this is FCB, but FCB is involved because FCB is taking over, and so on. So he is worried right away; he cannot get his money. I spent time explaining to him how stable it is: “Do not worry. This is all going to work out.”

That is the situation we find ourselves in, that you really have to take every opportunity to reassure the nation that we are in a stable situation, because we all lose if this place becomes unstable. We will all lose and we know that.

8.35 p.m.

Nonetheless, it is our duty in the Opposition to point out where the Government went wrong and what should be done. I do not think that is because any one on this side will like to see anything but financial stability in Trinidad and Tobago. [*Desk thumping*] Do not misunderstand that. All that means is that we will have to criticize you for anything that you do that does not stabilize the environment. We do not only have to live here but we do not want to inherit the country in a sorry state. [*Laughter*]

We all remember CL Financial growing over the years. I remember meeting Mr. Duprey in 1989. They had a nice big function for him when he came and took over the whole thing. It was only Colonial Life then and it grew from strength to strength. It was a great success story as far as all of us were concerned. In this country all Trinidadians and Tobagonians were so proud of this conglomerate that we looked at growing and growing. We have our differences. Some of us felt that more attention should be paid to various things. We have our comments to make from time to time. Trinidadians and Tobagonians were proud of the fact that we had this large institution that is out there with big guns in the world. It is very sad that this has happened.

I have to criticize the Government for this crisis management approach to things. Some things need to be explained. It is a crisis management situation. We have had criticisms of financial institutions all over the world that did clearly the wrong thing that created or triggered the crisis. I say it is a crisis of the system. Others exposed themselves to the crisis, but I have not heard anyone say that CL Financial was doing anything wrong. From various commentators including the Government, what I have heard suggests that they were exposing themselves too much here or there. There has been no accusation of mismanagement or some terrible action on their part.

It bothered me that the approach is a crisis management approach and so little of what appears to be a collaborative approach to this thing and so much of the takeover style. That is how it comes over. If these managers were able to do so much over the past decades to build this great empire, one would think that they are in possession of some skill, expertise, financial intelligence, relations,

connections and business associates. If there were problems over the past few years you cannot come with a hammer and slam down the place because the institution was not following the rules to the letter.

Clearly, the Governor of the Central Bank was not happy for quite some time. He complained that they were not following rules to the letter and he was not using the big hammer. When the bubble burst last year with the world financial crisis, we had this denial: “We are not affected; everything is okay and this will not touch us.” You cannot have that. That is one of the reasons we find ourselves in this situation. There was this denial of what was happening outside and that it will not have any effect on us.

When we spoke about it here you thought something was wrong with us for raising it. We cannot do anything about it; we could only raise it and ask you to attend to it. One has to ask: Where was the planning? If for four years CL Financial was not obeying the rules to the letter; you were monitoring them; the Central Bank was not happy and clearly, the Minister in the Ministry of Finance must have been aware. He cannot tell us that he was not aware of things that bothered the Governor of the Central Bank. We do not buy that. Do not tell us that. You must be aware of things that bothered the Governor of the Central Bank because he will tell you. If we are aware that he was bothered over the years, you must know.

When the crisis came last year, was it not your duty then in collaboration with the Governor to look more closely at those institutions in the country that might really be at risk, especially one so large as CL Financial? It would have been your duty then, immediately, without waiting on a crisis to reach this stage to look at it and see what had to be done at that stage. The attitude was that we are not in any trouble and nothing could happen to us. I imagine that that attitude would have militated against any attempt to pre-empt this situation; look at it in advance to see where we are going to get into trouble.

Are there other institutions that could still get into trouble? There must be others. No planning was done last year. We have no information or reason to believe that any pre-emptive action was done—given what was happening all over the world—to look at our vulnerable institutions in Trinidad and Tobago, especially one like CL Financial which you knew was having some difficulty for years. You come with this action and we have to ask many questions. People are asking all kinds of things.

I do not want to cast any aspersions. I do not know who triggered what. I ask whether it was considered normal for NGC to request so much money over a short period of time. Is that normal?

Sen. Browne: Yes.

Sen. Dr. C. Charles: They would have been in the process of withdrawing those sums of money all the time. That should not be an issue, but it was made an issue by none other than the hon. Prime Minister who is a high office holder and should be educated. I have said before that in the business of financial management there is no room for bacchanal. I listened to the contribution of the hon. Prime Minister until I could not take it anymore. I tried to listen to all of them but I could not take it anymore. It got down into bacchanal about London account and all kinds of nonsense. When you go down that road and introduce the bacchanal element, what do you think would happen? You bacchanal the entire thing. The entire nation saw that and of course, the Opposition would respond. You will get into this kind of partisan approach to everything because you introduced a bacchanal element.

The nation deserves better than that. I had a problem when I listened to the contribution of the hon. Prime Minister. He got down into bacchanal. I was expecting to get some education, information and guidance not bacchanal from him. He has to do better than that, I keep insisting. Sometimes the Minister in the Ministry of Finance and the Minister of Energy and Energy Industries tend to give us more sober contributions, so we benefit from that level in the Senate. Do you not think that the nation is deserving of this generally? I cannot let that pass without talking about it because it is important.

I have not heard anything to suggest that it was not possible to work out this with CL Financial. I need to be told that. Someone should say. People said that you could have had a line of credit or worked some arrangement of assistance. No one got up on the Government side to say that that could not be done or they tried it but it did not work. We are not hearing anything about that. Things were so bad that there was no time for that. We had to step in this way. Of course, now it is late. Now, we are in a position where what you have done for whatever reason, whether good, bad or otherwise, is fait accompli. You stepped in and have taken charge. Having stepped in and taken charge, you must take charge in a decisive way. I agree with that. Having chosen that course for the stability of the financial sector, it must be decisive. It is unfortunate.

We deserve an explanation as to why that had to be the strategy and why a collaborative strategy which is what is in operation now all over the world—take note. All over the world governments are not trying to move in and take over huge enterprises because that is difficult to manage. Do you think that people have

Central Bank (Amdt.) Bill
[SEN. DR. CHARLES]

Thursday, February 05, 2009

more confidence in the Government than they have in a big entrepreneur like Duprey in this particular situation? Generally, do you think that people have more confidence in politicians to manage their finances than they have in private entrepreneurs? You have to be very careful in stepping in there.

Having stepped in there people want to know what you are going to do with it. Would it be government enterprises? I am telling you about what the average man is wondering. Are they going to be state enterprises in the hands of the PNM for some time to come? You have to say what is your next step. Since you did not do pre-planning when the crisis hit, you did not prepare for this; you did not do anything about what was obviously a problem, we have crisis management continuing to shut the doors after the horses have bolted.

In my last contribution I spoke about that. Do some advanced planning and let the nation feel confident about the plan now that you are taking it over with or without our support. You seem adamant that you are going to do this.

Sen. Hadeed: You said that if the Government intervened with a line of credit. Do you believe that if the Government had given Clico a line of credit the run on Clico would have stopped?

Sen. Dr. C. Charles: I do not have the foggiest idea. That is exactly my point and neither does the man on the street have the foggiest idea. The Government does not think that it is its duty to explain to the population. That is why I started by making my first point about two guys in a fast service enclosure; what happens to the average man outside there and from where he gets his level of confidence. Confidence is everything. In finance confidence is everything. What is money? Money is all based on confidence. [*Interruption*] In marriage. [*Laughter*] Thank you, Minister.

My point was you have not explained why a more collaborative approach was not possible. People look at the news and read papers and what they are seeing happening throughout the world is a collaborative approach in which even though there are captains of industries that have to take the dive, governments are stretching— The big debate is why are you taking taxpayers' dollars and putting it in the hands of these fat cats? That is what people are complaining about.

The Government finds it necessary to extend financial assistance to prop up companies all over the world, knowing that the only model we still have working is the free enterprise system model in which you rely on private entrepreneurs and industrialists to run most of the industries. The Government is more involved with regulations and as a helping hand it has to stretch. That is the model with which

we are working. As long as you are working with that model people expect you to reach out and try to support and assist even if it means that it is taxpayers' dollars that they would step up about.

Taxpayers' dollars have to be used to try to prop up an enterprise like that. That is the model they see all around. In this case that is not the model you have used. The model is one in which you step in. You have the resources to contain the situation; you step in and take over. You take control of it. When you listen to the comments on the other side it appears that it is not collaborative but one of using authority; stepping in and all the accusation and innuendo follow about the Government's plan, whether it was a deliberate set up and you are seeking political power. That is where it comes from.

8.50 p.m.

That is where it comes from because you are not using the same model people are observing all over the world. You owe us an explanation as to why you chose this model and where you are going with this. We are trying to re-establish confidence and stability in the financial sector and you owe us some more reasoned, sober comments from high officials, especially the Prime Minister, on these matters.

In the Bill, there are many things that make us wonder why you need to have what appears to be draconian provisions in terms of the power you are giving the Central Bank in relation to people's information. I cannot see why you need to have the power to collect this information and to share it with whomsoever you choose. Why does my policy information have to be shared?

Sen. Browne: Thank you for giving way. The provision here is not to share individual policy information. It is to share information on the company. I think it was alluded to in one of the contributions from the other Senators that we find ourselves in a situation where the CL Financial Group has subsidiaries in multiple jurisdictions. There exist no provisions at the moment for us to share information on the financial health/stability or actions being taken with the insurer with other regulators. That is point one.

It was never meant to go to the level of detail. I pointed out that, under the Act and under common law, there are requirements with regard to confidentiality and treatment of information. The issue is not with regard to sharing individual points of details or to delve in medical records, but to issues that deal with financial health.

That principle is well established in the Balla Court, which applies to banks, Bal 1, Bal 2, where we have established right sub-action by what we consider to be the host country regulator and, in such circumstances, the relevant example would be the case of BCCI. It established multi-jurisdictional approaches to the business of regulation and winding up.

BCCI's headquarters was in Luxembourg under a relevant jurisdiction, but its main operating headquarters was in the UK and hence the UK government took that type of action.

Under the Balla Court, because of the growth in globalization and the fact that financial institutions operate in multiple jurisdictions, wherever there is regulatory action there is also the capacity for the exchange of information with regard to what you are going to do and how it will affect your individual country.

Sen. Dr. C. Charles: Mr. President, I have a colleague who said her contribution consisted of a number of questions. I am sure she would have been happy to be here to get an answer to one more. This is exactly the point. You are in a situation where you need to explain what is happening to get the cooperation of the nation and the stability required.

What happens if the principals of Clico decide to engage the Government in terms of what resources it can bring to the table? Is this an ongoing matter? Are the doors now closed and the Government moving forward beyond the original owners into a different environment in which we divest shares elsewhere? There is some lack of clarity on that.

I would like to know what is next for Trinidad and Tobago. Is there now a plan to deal with the fallout from the world economic crisis? I asked recently whether there was a Caribbean-wide plan; whether you had taken the opportunity to engage our Caribbean colleagues.

Sen. Browne: In respect of that particular comment, I can answer that the COFAM, which is the Caricom Organization of Finance Ministers, has commissioned a team, with a reporting date by the end of March, to review a common Caricom position with respect to the externalities which are currently visiting our arrangements. It is a multi-jurisdictional as well as a multilateral approach. The committee is headed by the Governor of the CDB and contains representatives from all the Ministries of Finance as well as UWI and other relevant institutions, including Caricom, so that they can have a broad-based approach to understanding the modalities by which the various Caribbean countries and various Caribbean economies would be affected and to consider joint action in terms of staving off any negative impact.

Sen. Dr. C. Charles: I am more interested in hearing the contributions of the hon. Minister than in speaking myself. I hope you get my point.

The world economic environment requires patience and collaboration. We will not get through otherwise. With the financial storm that has hit everybody—for a long time this has not happened—we have a common experience and maybe that is entirely the point, that if we start looking at that as a common experience, we have perhaps a better chance of getting through it than with the old adversarial system. The economic and political system with which we work is adversarial. It is each man for himself and you are supposed, as an economic giant, to grow at the expense of your competition and everybody else around you. You are supposed to snap up, gobble up and buy out and do everything possible for your own growth and the destruction of everything else around. That is the model we have been working with.

It was considered a great model, but it is not anymore. It has not worked. It is causing so much trouble that we need a new model. I think everybody is trying to come to terms with that worldwide and we in Trinidad and Tobago have to as well. You can only get so far with the adversarial system and we need to find models that are not so adversarial, both in the political sphere and the economic sphere.

In the economic sphere, we have to work out what is next for us and that requires more collaboration between players, including the different sides of the political bench and even apart from that, the different players in the economic scene in the country today. We need to see that happen.

I am happy to see that something is happening on the Caribbean stage because there is nothing happening that we could see on the national stage. We are not seeing anything and we need to see something like that on the national stage involving the major players in the local economy.

We have fights in certain spheres; at the UDeCott enquiry there is a big fight going on and there is more happening on that side among themselves. That is all wonderful. *[Interruption]* I am sorry. You fix up everything. So Lindquist gone, then?

I am making a more serious point that I believe that the model that will work in the economic storm we face today has to be a much more collaborative one because, if anything was wrong with the model before, it was the absence of collaboration; each man for himself, which goes beyond the economic sphere into all aspects of life in which each man tries to outdo and destroy the other one. You have to be careful when trying to do that even in politics, where you do not think it enough to defeat your opponent, but you want to destroy him.

Central Bank (Amdt.) Bill
[SEN. DR. CHARLES]

Thursday, February 05, 2009

You have to see the connection. That model in politics is not good for the country. Stop practising it, those who do and the persons who do perhaps are not sitting in this Chamber. Stop practising it! That model cannot work in the economic sphere; we have to get past it. So start the collaborative process before you find everyone fighting for himself while we all go down.

Mr. President, except for the details in committee stage, I do not want really to add very much at this stage. This matter is one that requires a certain level of seriousness. We questioned certain things and I questioned especially the choice of the takeover model as opposed to the collaborative model. I am not convinced that it was not possible. You are dealing with persons who built and ran CL Financial. I do not think that they could not bring anything to the table to help us get out of a situation that we are all in. This comes across as if the only persons with the solutions were the Government people. They were the problem and the Government had the solution and, therefore, they stepped in and fixed it and that they were just helpless. That cannot be so. I cannot accept that so I am waiting for some kind of understanding if that were an error, or it was not considered, is it too late for you to have that kind of approach to deal with a matter of this kind? You do not build business all over the world without collaborations and expertise of all kinds.

If you have to rescue business, that must be of some importance. People do not have confidence if the Government holds on to anything in business too long. You must take certain actions and if you have already done it, there is no point our making too much noise about that. Surely you must realize that you cannot hold it because that will cause you to lose confidence as well.

With those points, Mr. President, I thank you.

Sen. Basharat Ali: Thank you very much, Mr. President. I will make a very short intervention. I would like to speak on two matters that involve CL Financial, the sale of shares in Republic Bank Limited and the sale of the shares in Methanol Holdings (Trinidad) Limited.

Before I do so, I believe it will be prudent of me to make a declaration that my family and I have interests in this matter. Firstly, in the case of Republic Bank, they have been our bankers for over 45 years. They are also the corporate bankers of Joyce E. Ali & Co., our joint company, and they are our mortgagees—we are near the end of the mortgage on our building on Frederick Street. We are also shareholders in Republic Bank Limited and we hold investment via other instruments. That is a brief outline of my wife's interest and mine in Republic Bank.

There are other interests I would like to bring to the attention of this Senate—and it is probably more critical and I am doing it in the expectation that nobody will say that Sen. Ali was voting for his wife's interest in CL Financial. I stand here in pursuance of the oath I have taken and for no other reason.

[MR. PRESIDENT *in the Chair*]

Let me say that my wife is one of the few shareholders of CL Financial by inheritance. It is not a substantial shareholding, but quite a few shares. Clico pays me a small pension—my friend, Sen. Mark, would say, not a living pension—as a fund manager for the NGC/NEC Pension Fund. I would be embarrassed if someone asks me. I declare that also.

9.05 p.m.

My wife has insurance and other investments with Clico. That is the situation with her involvement. Our company also has health plans with Clico. We have in those three companies, that I am talking about: Republic Bank, CL Financial Limited and Clico Holdings, which I say is prudent for me to declare today, so that everybody will know and nobody will think whatever I say here today—I am not going to say much—is not in conscience with respect to the oath I have taken in this country.

Mr. President, this is not the first time we have had a similar kind of situation in this country. Some of you will know that at the end of the 1980s into 1990, three of our banks went through. I do not know whether some of you will remember that. They were the National Commercial Bank, Co-operative Bank and Workers Bank. All three of them went through. Some of us lost money. I was one of those who lost money; a few pennies. But, nonetheless, I lost money. I have just as a museum piece, a share certificate of National Commercial Bank. I never bothered to cash it in because it was being listed at \$1.30 per share and you were given \$0.10 per share when you went there to cash it. I always say it would have been more expensive for me to come down to Independence Square and pay my parking fees, than to cash in this. My wife had Co-operative Bank shares. That also, we did not bother to cash. As a matter of fact, there was a group then who wanted to raise the matter to see whether they were really entitled to something better than the \$1.00 which Co-operative Bank was paying and the \$0.10 which National Commercial Bank paid at the time.

That was a basic meltdown. Many people lost their jobs. There were many jobs involved. Out of that came First Citizens Bank, First Citizens Bank was incorporated in 1993, to takeover whatever assets they could and develop that

Central Bank (Amdt.) Bill
[SEN. ALI]

Thursday, February 05, 2009

sector of the business as a state bank. I believe they have been quite successful, but I do not know. I have never done business with FCB. Sometimes when you get burnt, you want to stay away. You have a plaster for it, but sometimes you do not want to.

Interestingly, 1993 was also the year in which CL Financial found its life as a holding company. Many may not know that CL Financial was set up as a holding company for Clico. The shares were all held by Clico. I remember going across at Clico's office with a proxy to vote for the formation of CL Financial. The deal was one Clico \$5 share for 5 CL Financial shares. That was the arrangement at the time and I voted for it. Today, I still think that CL Financial can be a viable entity as Clico can be, in due course.

There was a lot of talk about Clico and the situation in which they have found themselves with a new board. I think my colleagues here were saying that really, the Government should come out and say what it is. In the case of Clico, last night I heard the new board announced for Clico. I think everybody would be pleased to hear that. With Dr. Euric Bobb as the Chairman; Mr. Claude Musaib-Ali who, I think was a Chief Executive Officer of Clico at one time; and Caroline John is on the board, who is also from Clico. My friend here will know Marlon Holder, who is Executive Director of UTC and Anthony Watkins who is the management consultant to probably do what he was doing to you all in Salybia. I do not know; I believe he was the guy who was there.

I have often attended AGMs of CL Financial with my wife's proxy, but it was always a very low-key matter; a place where you learnt very little. At the end of it, you got some nice snacks. It is now at the Oval. The last time I attended was three years ago, with a good lunch and everything else. There was very little interface between the board who sat at the table and the attendees. The attendees were mainly guys who were pensioners or former salespeople and they did not like to hear anybody like me come there to ask questions. It was still a very private company. I am sure my friend over there would know that you cannot trade in the shares of CL Financial at all. If you want to sell the shares the first thing they say is: "Come back and we will see if we can buy it from you." I know, I have heard it said. That is the position with CL Financial; this big conglomerate as a private company.

I think the auditors took everybody for granted when they went there. I went there for the last time, three years ago as I said. The auditors, PricewaterhouseCoopers, were people who were and still are the auditors. I have the 2007 annual report, which was at the AGM on January 23, just a week before

the big thing happened. I did not go this time. I went there once and the PricewaterhouseCoopers person was reading the document and he did not realize that they changed some pages. I waited until he was finished and I said: "That information you have, those pages are not the pages." He was totally shocked. I think he had a draft and he read purely from that and nobody ever questioned him. This is why I always say I do not believe too much in public auditors like those, when it comes to state enterprise. I know they said that a lot of our state enterprises have their books done by these public auditors, but it is not the same as when they get to the Auditor General. I think everybody knows that their way of doing things is different.

Let me, with that preamble, get to the meat of the matter. First of all, the sale of the Republic Bank shares—I think the concern of many was about what was going to happen to the board of Republic Bank. I have heard, I do not know whether—I understand that the board will be retained. I think the Government must come out and say loud and clear that the board of Republic Bank and its management will remain in place. I think right now, CL Financial still has three nominees on the board. It is either two or three, but two for certain and possibly three. I expect that situation will continue to hold good.

I do not know where the shares will go. That is another concern. I do not have too much confidence in shares like that going to NIB for more reasons than one; not only the reasons which some bring forward, but for other reasons. I do not know whether they can go readily to a competitor who has still not gone through the process of being listed and maybe getting close to that. I do not know if they can go there at First Citizens or Unit Trust Corporation. Once again, wherever it goes, it will be going there and held in trust on behalf of the State, I hope, without having any real say in the management of that bank, which is a well run bank; the largest bank in our country and a very profitable bank. You always get a good dividend from them at the end of the year. We are happy with Republic Bank.

The other company I want to talk about that is listed is Methanol Holdings (Trinidad) Limited, which is also listed as one company in which the shares will be sold with a provision for an option to buy back. I think it is somewhere in the MOU. I want to make a big plea today that, with the present position of MHTL, we must ensure that they complete what they are doing right now. MHTL is putting on the ground, the biggest project in Trinidad and Tobago. They have put out a press release. I think that is pretty factual. I have often spoken on this particular project, the AUM Project. I think it is a very good project. The important thing is that they have pretty well drawn down all the funds for this project. What are you going to

do, just stop it? I think the prudent thing to do will be to continue. I think the prospects are good. I have been following some prices after this very sad period of downturn and, strange enough, ammonia, urea and urea ammonium nitrate have all gone up. Up to today, I looked at the prices. They are not \$300 and \$400, but when your UAN is selling in New Orleans at \$240 per metric ton, that is a good price, because that is only 32 per cent nitrogen. These products are valued on the basis of their nitrogen content. I think we have a good opportunity, with that project, to start earning.

Agriculture is going to be there, so they will need the fertilizers. Let us face it, they are not going to make fertilizers in the United States. If they have to bring it from YUZNY or the Middle East, it is going to cost them more and the freight is a shorter haul from here. I am pleading that we look for those people who have to sit down with CL Financial to decide the fate of the MHTL shares that they will continue. These people are extremely capable people. They run a big complex of methanol plants. There is also an ammonia plant with slightly different shareholding, but they have that competence. They are the people who have been to Oman to start up a methanol plant. MHTL has also been doing some research work on the ground with UTT on the use of methanol for power generation. Let us make sure that they continue.

I am saying the same thing, not only for that project. I am saying the same thing for Petrotrin. Petrotrin has gone so far on their gasoline optimization programme that you should not stop Petrotrin. I have always said that is a survival project and it must have it to survive. Do not stop it. I cannot see it being stopped. I am comparing this new project, the AUM, with this. I have spoken to my friend, the hon. Minister of Energy and Energy Industries about Alutrint. I think we may be in a very good position too, if we decide to continue with the Alutrint project, because there is one school of thought that you must invest in aluminium when the prices are down. That is where they are; half of where they were six or eight months ago. We have the benefit. We have gotten funds and negotiated with the Chinese for the plant. The plant will be here, hopefully.

9.20 p.m.

So, you do not have a choice, because you are already committed to buying that plant and it is probably on the way from China. So, let us continue to put it in place. We expect that it will prove to be an economic venture in the long run rather than bring it down here and mothball it. That is the worst thing you could do, because you will still have to service the debt. As far as I know, you are the finance people.

My friend, the Minister of Energy and Energy Industries has just come in and he would be pleased to hear that I say to do Alutrint. We have talked about it, and all you have to do is to find the other shareholders.

Sen. Enill: It is on the table.

Sen. B. Ali: I know it is on the table. You should do the Petrotrin Gasoline Optimization and forget the rest for the time being. You should also do the Methanol Holdings (Trinidad) Limited project and I will be happy. I think in the long run the country is going to benefit. Mr. Vice-President, that is all I wanted to say on this particular subject.

I am going to support the Bill. I have looked and listened to the debate in the other place, and my friends here have clarified the other areas, and I believe I am here to give a positive vote.

Thank you. [*Desk thumping*]

Sen. Dr. Jennifer Kernahan: Mr. Vice-President, thank you for the opportunity to contribute to the Bills before us, namely the Insurance (Amdt.) Bill, 2009 and the Central Bank (Amdt.) Bill, 2009. Mr. Vice-President, the Minister in the Ministry of Finance declared here this afternoon in one breath that we are only here to facilitate the powers of intervention in the financial market in an emergency situation and, in the same breath, the Minister pronounces quite inexplicably that the issue of a bail out of any financial institution is not before us in the Senate this evening. Mr. Vice-President, we are totally mystified by this statement by the hon. Minister. The Minister went so far to say that Sen. Mark talked about the issue of a bail out and Sen. Subhas Ramkhelawan talked about the issue of a bail out, but it is not before us.

The question is: What is the emergency situation that the Minister alluded to? If this MOU between the Minister of Finance and the chairperson of CL Financial is not before us and it has nothing to do with the amendments to the Central Bank Act and the Insurance Act, what are we doing here on a Thursday evening?

Last Saturday, whilst we were busy preparing for Private Members' Day, we got notification that we have to debate these Bills as long as they were finished in the other place. The Bills were completed in the other place on Wednesday, February 04, 2009 and we are here today, Thursday, in a rush to pass this legislation.

Mr. Vice-President, this remark and this inexplicable position taken by the Minister in the Ministry of Finance this evening is a clear case of, as we Trinidadians would say, "playing smart with foolishness". It is also a display of

gross disrespect and indifference to the fears and uncertainty that hundreds of thousands of people in our country are facing today as we speak. Sen. Dr. Carson Charles alluded to some of the questions and anxieties that people are facing. The officials at the banks have been talking about unusual withdrawals and so on.

Sen. Seetahal SC spoke to a number of questions that she has answered. People are literally in fear. Policyholders are wondering what is going to happen; depositors are wondering what is going to happen with their deposits; and workers are terrorized. They are in fear for their jobs and their livelihood and how are they going to survive.

Mr. Vice-President, we know that every time you have this kind of scenario that people are going to lose jobs. So, for the Minister to come here this evening and purport that we are here just to amend the Central Bank Act and to intervene in an emergency situation, and it has nothing to do with what is happening in the country, is callous.

The population is looking at the Senate for clarification of all the burning questions that they have in the context of the emergency situation that the Minister referred to. Apparently, we cannot talk about CL Financial and bail out and so forth, because it is not before us. What is going to happen? Tomorrow morning, people are going to be as much in the dark as they are at present. Is that what the Minister wants? Fortunately, Senators have raised all the issues and asked the relevant questions and, therefore, some of the issues are going to be ventilated properly.

It is widely acknowledged that the globalization of the financial markets and so forth has compelled developed and underdeveloped countries to pursue regulatory reform of their financial markets. That is clear. It is also clear that the agents of reform must pursue certain goals. What you want to do is to ensure the safety and soundness of your system which includes the promotion of consumer protection and this is what we are very much concerned about—the protection of our depositors and our policyholders and so forth. You want to foster the growth and development of your financial markets.

There was a very interesting research paper produced by Eric J. Pan called: Structural Reform of Financial Regulations in Canada, a research study prepared for the expert panel on securities regulation. Mr. Pan said in this document that in the current global financial environment where financial market participants are increasingly mobile, governments must be careful that in achieving one objective that it is not at the expense of the other which is regulation but, at the same time,

maintaining stability and confidence in the markets. He said that satisfaction of both goals would have great benefit for a country including, among other things, lower cost of capital for business; greater opportunities for investors; tax revenue for the government and job creation in the financial and related industries.

In the contribution of the Minister of Energy and Energy Industries, he rejected the argument that the legislation before us is draconian. He said that the Government wanted to bring this legislation earlier, but it was deferred until the organizations themselves that are involved in the financial sector see the necessity for this type of legislation.

In dealing with the issues of the new powers and authority of the Central Bank, the role of the inspector and the powers of the inspector and/or agents of the Central Bank—I believe that Sen. Ramkhelawan made the point that the powers of the inspector are very wide in terms of what the inspector is authorized to do as an individual to inspect, for example, to enter any premises, to inspect books, records, accounts and so forth to determine whether there is compliance. Where the inspector, in his opinion believes a registrant or any other employee or agent of a registrant has committed or is about to commit an act and so on, the inspector can intervene in a very specific way—in a way that was not envisaged in the original Act in terms of the notice period and the judicial review that was formerly available to the registrants. The inspector can direct that the registrant, the person under review, cease from committing the act and perform such acts, and the inspector can also give notice if he feels that the situation is urgent enough, in terms of the notice for compliance to cease activity and so on. The inspector also has flexibility in determining the notice period that he would give to a particular organization. So, these are very wide powers that Sen. Ramkhelawan noted.

So, we understand that an inspector must have certain powers in order to deal with emergency situations and so forth, but when we look at other jurisdictions we see that these powers are not restrained and that the interventions that we are being asked to sanction this evening are anything but normal, as the Minister of Energy and Energy Industries would have us believe, because although other jurisdictions have given their inspectors and regulatory agencies a wide scope, they have built into their legislation systems of checks and balances which we do not have in our legislation, and that is the problem.

Mr. Vice-President, it has been recognized that it is not enough to set up a regulatory system and say to the stakeholders, this is what you have to comply with and that is what you have to do. What Mr. Eric Pan in his document outlined

Central Bank (Amdt.) Bill
[SEN. DR. KERNAHAN]

Thursday, February 05, 2009

is that the whole issue of regulatory systems and so forth has to do with confidence and legitimacy. He said that the regulatory system should be legitimate. He said that while regulatory agencies may have legitimacy, by virtue of their legal authority, regulatory agencies are more effective when their actions and their decisions are viewed as substantively correct by market participants producing confidence in the competence of the regulators.

So, it is not enough, as this expert said, to just lay down the law and say this is what you have to comply with. He said that you have to earn the trust and confidence of the market participants and so forth and, therefore, what you are trying to do is to be more effective in what you are trying to do. This is the problem that plagues the national community tonight.

9.35 p.m.

There is a crisis of confidence in the purported regulator in terms of the legislation we have here. There are plenty questions that many Senators have asked here tonight about who knew what, when and how the MOU was arrived at; there is a lack of information on what assets of the group we are dealing with; what their liabilities are; if there is a history of insolvency, and the fact that action should have been taken by the Central Bank—and the Senator spoke to that.

Since 2004, these companies would have been under the supervisory aegis of the Central Bank, nothing was done. There are concerns about the lack of consideration of other options that would have maintained market stability; would not have caused so much panic and insecurities in the market, which is the reason for regulation in the first place.

So, it is counterproductive to say you want to regulate and bring the regulations, new amendments, and so on, to give the Central Bank wider powers, but at the same time you do it in such a way that you destabilize the market and you cause a crisis of confidence, when it is confidence you are trying to engender in the market. So, this Government always has it upside down, wrong side, back to front, they never accomplish what they set out to do. You know why, Mr. Vice-President? Too much politics.

Mr. Pan mentioned in his document three factors that can help a regulatory system earn and retain legitimacy. I would like to draw your attention in this Senate to the fact that he mentioned "earn". He said a regulatory system has to "earn" that legitimacy and confidence. This is not a question of just dropping a Bill, calling us out Saturday for Monday and say, this is how it is going to be.

There are three factors that he mentioned; all have been violated by this administration in purporting to regulate the industry and bring confidence in the hearts and minds of the shareholders, depositors and so on. He says you must have independence of political interests; you must have accountability to the public and to the market opinion; you must have transparency; you must clearly not have any political interest; you must have accountability, you must have transparency to earn the legitimacy and trust.

Even as the Minister of Energy and Energy Industries said this afternoon in his contribution that this intervention by the Central Bank and these amendments are not part of some grand design, we are saying here that it is suspect, because this intervention does not meet those three criteria. Let us take a quick look at the criteria of independence from political interest.

I think Sen. Ramkhelawan mentioned that there is this lack of equal treatment of our constituency, of the populace in this country; 100,000 depositors with the Hindu Credit Union; they were not treated equally by this administration and the credibility clearly of this intervention process is undermined by that; that there is no equality of treatment with respect to our different sectors of our population.

Another more disturbing issue that arose with respect to the lack of any political interest—and Sen. Dr. Carson Charles mentioned that—is that in the debate on this Bill in the other place, you had no less a person than the Prime Minister referring to the fact that the Leader of the Opposition does not want this piece of legislation, because he is wondering now about if an apartment in Kensington, London is included in the assets of Colonial Life Insurance Company.

The Prime Minister stood there in Parliament—it is there in the *Hansard*—and said:

"We are talking Kensington, London right now. It is not far; it is about \$10 million away."

Sen. Dr. Carson Charles made the point. When a Prime Minister no less, stands in a Parliament and makes these kinds of statements in the context of our international financial meltdown; in the context of the contagion which has obviously reached these shores concerning one of our largest conglomerates; in the context of hundreds of thousands of people who are fearful for their lives, for their future, for their children, for their deposits, annuities, it is a most horrific scenario that you could imagine, and you could wish on any population. I do not know what we in Trinidad and Tobago have done to deserve this. This total disrespect, cynicism and callous approach to the way this country is being run.

Central Bank (Amdt.) Bill
[SEN. DR. KERNAHAN]

Thursday, February 05, 2009

Mr. Vice-President, this administration has failed in the first criteria that would earn them legitimacy with respect to the fact that you must not seem to have any political interest.

[MR. PRESIDENT *in the Chair*]

Accountability is the second criteria that Mr. Pan mentioned. He said for you to regulate your markets, not just the legal aspect, you must have this accountability to the public and to market opinion.

Right away, just looking at the issues that the stakeholders and informed persons and persons who want more information are raising in the public, we would understand that there is no accountability to the public and to market opinion. I would like to raise some of the issues of accountability that are being raised in the public, in which up to this point, there have been no answers on the part of the Minister of Finance or the Minister in the Ministry of Finance.

I would like to quote from an article in the Business section of the *Guardian*, of February 05, 2009, by Anthony Wilson. These are the issues he raised with respect to the accountability of the issue before us and the so-called intervention to bail out supposedly, the CL Financial Group. He said:

"Ever since I started getting strong hints last week Wednesday that the Government was planning some form of intervention to save the financial arm of the CL Financial Group, I have been concerned about the cost of such a move to the people of T&T."

So, one of the issues of accountability that the Government has not addressed and has not addressed even in this Senate tonight, this afternoon or this evening, is the question of what is going to be the cost to the people of Trinidad and Tobago. He said:

"The issue of the cost of the bailout would also be something that is closely followed by hundreds of thousands of people right across the Caribbean and throughout the Caribbean Diaspora as there is concern about the extent of exposure by the countries in which CL Financial operates and concern, too, about personal exposure.

Unfortunately, but understandably, neither the Central Bank Governor Ewart Williams nor the Minister of Finance, Karen Nunez-Tesheira were able to throw any light on the issue of the size of the bailout at the news conference on Friday or in the round of interviews that they have both given in the period since."

So, people are concerned about accountability. What is going to be the cost to us, because we are the ones, the taxpayers of this country who are going to stand the brunt of whatever the consequences are, and we are entitled to know upfront. Be frank with the people and tell us what the cost is, because that is the only way your intervention is going to be seen as legitimate.

The article goes on to say:

"This issue of the size of the bailout is also of high interest as it has an impact on T&T's foreign and local currency sovereign credit ratings... according to the Standard & Poor's Ratings Services.

If the cost of the bailout is sizeable and the Government has to borrow more money in order to finance it, it is very likely that the credit rating agencies will downgrade both T&T's foreign and local currency sovereign credit ratings."

Of course, we all know that Standard & Poor's have us on a negative credit watch as they seek to understand what will happen to the liabilities of this administration and this country. What is interesting about this lack of accountability is what the writer goes on to say next: "If we get a negative credit rating or a lower credit rating, it will automatically mean that the cost of the Government borrowing on the foreign and local capital markets will increase."

This increase will hit state-owned companies like Petrotrin and the National Gas Company, and it will mean increase in interest rates and so on. It is going to have a ripple effect in our economy apparently. Therefore, we have a right to know and have some sort of understanding of what is going to happen. That is why Sen. Dr. Carson Charles, I believe, asked the question: "What is the plan?" How does the Government plan to deal with the contagion effect, which obviously has hit us through the CL Financial conglomerate?

What is the plan? If you do X, what will happen? If you do Y, what will happen? If you do nothing, what will happen? That is the sort of dialogue and conversation I would have expected the Government to come with to this Parliament, to the highest legislative body in the land, so that at least we would be in the picture, we would be in the know; we would have an idea of what this country needs to do to tighten its belt; what we can expect, as responsible citizens, to happen and what we can do to help.

I would have expected that is what the Government would have wanted from its citizenry, but first you have to tell us the truth; you have to give us the scenario; you have to let us know what is going to happen; do not just bring the

Central Bank (Amdt.) Bill
[SEN. DR. KERNAHAN]

Thursday, February 05, 2009

legislation and say, we are going to intervene; you are going to do this; you are going to bail out; you are going to dismember, and you are going to sell out. What is that going to mean? It is going to mean something, not just for CL Financial but the whole country. Every single person in Trinidad and Tobago will be affected financially, socially, politically in ways that perhaps we cannot even imagine right now as we stand here discussing this afternoon.

Mr. President, in the absence of this sort of accounting scenario, planning and dialogue with the country, the Government has failed the second criteria for legitimacy, which is accountability.

The other issue is that, despite the fact they have been asked repeatedly, they have not presented any alternative options that could work, that might be better, that would not involve dismemberment of the organization, which from all accounts is not an insolvent organization, but it is just suffering from a lack of liquidity and in the context of the global financial crisis has found itself in a situation where it was not able to have the level of liquidity to deal with its debts. In addition to the fact, as so many Senators here said this afternoon, that you had this virtual run on the organization in terms of large sums of money being taken out at very short intervals.

So, this lack of information, scenario planning, presenting options and alternatives, and explaining why option A would not work, but option B would work, speaks to a lack of accountability, transparency and it is totally in violation of our right to know.

The other issue was this lack of transparency that arose when apparently the chairman of the CL Financial Group, according to newspaper reports, said that he did not expect the situation to accelerate so quickly; that he came to sign this MOU in the absence really of full knowledge of what the Government was proposing.

9.50 p.m.

So, Mr. President, it is not just the shareholders of that huge conglomerate who are going to be affected by this lack of transparency, lack of accountability and lack of legitimacy of this so-called intervention. Every single citizen of this country will be affected and we are very upset that this Government has chosen to deal with this issue in such a cavalier way, with overtones of political spite and with a total lack of respect for hundreds of thousands of other citizens who are in need of bail out arrangements. I am talking about the depositors, the poor people, the ex-Caroni workers, the ordinary workers across the board in this country who have deposits with the Hindu Credit Union.

The Governor of the Central Bank made certain statements in terms of the statutory requirements that were violated by CL Financial over the years and my concern is that the Governor made certain observations, that there was a lot of inter-company transactions which would have affected the real value of the statutory requirements that this company was expected to have and therefore, they were looking at this situation since 2004 and they were working with the company to try to resolve this but these things were not resolved.

I would really like to know, I see that in the Bill before us we have a requirement for quarterly reports with respect to the statutory reserves that the company should have. I am not sure, but I would like to ask the Minister in the Ministry of Finance. In the previous legislation the companies were required to report on their statutory reserves yearly, they are now being asked to report quarterly, but if the basic problem is a question of the high level of inter-company transactions which would have affected the levels of the statutory reserve, the real value of the statutory reserve, then I do not understand really how reporting quarterly is going to be different from reporting yearly and I would like, in my ignorance of these issues to be enlightened with respect to that.

Now, Sen. Drayton made the point that she is very much in favour of the controls that are being put in place with respect to the inspectors and their role and how they are going to operate, but as I said before, in developed countries you do not just put these strong measures in place without having checks and balances. I was looking at the UK regulations and I am reading from a document here, “Centre for Financial Studies Seminar, 05th December, 2001. Integrated Financial Regulation: lessons from the UK’s Financial Services Authority” and in this document they were talking about the financial services authority instituted in the UK and they did say that this authority has a wide range of disciplinary powers; the authority may levy fines which may in principle be unlimited, may suspend authorizations or revoke them permanently, and may ban individuals from operating in regulated financial markets for indefinite periods, it is also a prosecutor and so on. But when you look at the wide powers given to the authority, they went on to say what we do not in our legislation and I quote:

“It goes without saying that there are rigorous disciplines on the exercise of these powers.”

And this is our problem. We are saying now because the situation is so dire we need to act now and we need to sit until it is finished because we are in this crisis and emergency, and we are presented with regulations that give the Central Bank inspector all of these wide powers and so on. But we omit—like in more

Central Bank (Amdt.) Bill
[SEN. DR. KERNAHAN]

Thursday, February 05, 2009

“developed countries” is a status to which, apparently, we aspire by 2020—to institute the checks and balances that the developed countries have in their systems for the control of the work of the regulators.

They say here in this document and I quote:

“The significant enforcement powers must be exercised by a Regulatory Decisions Committee, appointed independently of the Executive of the Authority, and the Executive of the Authority are rigorously excluded from decisions on the penalties to be imposed in individual cases.”

So, what the UK legislation has done is that the Regulatory Authority has the financial authority but the executive of the authority are not part of the imposing penalties and they have an independent regulatory body to deal with the issues of the decisions that they have to make. So, there are some checks and balances within that system although the authority as a whole has wide powers and so on. They have checks and balances within that system.

The UK legislation was interesting also in the light of the type of intervention that this administration is going to take with respect to CL Financial. It said that this Financial Services Authority of the UK does not regulate takeovers. There is a separate takeover panel with that responsibility and although the work of that takeover panel must sit within their regulatory framework, they, as a body—the financial services authority—do not deal with takeovers. So, if you are dealing with a takeover of the assets and the liabilities and so on, that is a different issue altogether.

In fact, Mr. President, in the advanced countries, they talked about different agencies for prudential conduct, for market stability, there is a different agency dealing with whole issues of market stability and prudential conduct. There are about three different agencies dealing with different aspects, so you do not have that one agency dealing with all of these aspects from whom there is very little redress unless you go to the High Court and so on.

In fact, what is happening here, while you are in the High Court your business, as Sen. Mark said, can be suspended by the regulator for 20 days. So, while you are trying to get redress in the High Court, what is happening to your business, what is happening to the confidence of your clientele, what is happening to the confidence of the depositors and so on? So, it is really counterproductive.

These are the issues that arise in more developed countries. When we are dealing with a conglomerate in this country, what I find inexplicable is that this Government can deal with this in such a cavalier manner with nuances of political

overtone, because you are dealing as the Minister said with an insurance market share of 56 per cent, you are not dealing with a little parlour here, you know. The Minister himself said that you are dealing with a group that has a premium income of 75 per cent of the industry. So, how can you deal with it in this cavalier, antisocial manner with no respect for the history of the organization, for the expertise of the organization, for the international contacts, as Sen. Dr. Carson Charles has said, for their ability to deal with what is happening? As has been said in the newspapers, from the information we can gather—we do not get any information here—it was not necessarily a question of insolvency but a lack of liquidity at a particular point in time, a snapshot point in time, in the history of the organization.

In the European Union—I want to just draw as a last point—they have dealt with these issues very differently to what we are seeing here this evening. It says that in dealing with these issues of financial meltdown and so on, that the European Council has ensured that the governments agreed to ensuring appropriate liquidity conditions for financial institutions, providing financial institutions with additional capital resources and allow efficient recapitalization of banks, adopting changes to account for standards to mitigate the consequences of the exceptional recent turbulence in financial market.

So, people understand the importance of their financial markets and they understand the importance of recapitalizing, of maintaining stability and so on. What we understand here is how to mash it up, how to talk about politics, Kensington Park and land and so on. Ridiculous, Mr. President! What the Minister describes here as normal, is normal for a “banana republic”. This is the only conclusion that I can come to.

So, Mr. President, I would like to wrap up my contribution this evening by saying that this Government has violated, again, the trust of the people of Trinidad and Tobago; they have violated the confidence of the people of Trinidad and Tobago; they have displayed a tendency to unequal treatment to different sectors of the population based on different political constituencies, and they have violated all the tenets of the legitimacy of regulation with transparency, accountability and absence of political interest.

I thank you, Mr. President.

Sen. Prof. Ramesh Doesaran: Let me assure you and my colleagues that I will pay regard to the hour and prevailing circumstances and I will truncate my intended contribution very severely.

I would like to express my appreciation to the Minister of Energy and Energy Industries for his clear and concise explanation on some of the very important points, and all speakers so far have indeed contributed something of substance for us to consider, mainly because we have never had such a momentous event in the economics of this country as we have been having in this instance.

What I would do in this debate is to respond to some of the issues raised as I see it, and in so doing see how helpful I could be. But, as all the speakers made their contributions, something kept circulating in my mind, that is, when the barbarians are at your gate you really do not have time to set up a committee. Because, what has been said here most of the time has to do with process in normal circumstances, consultations, stakeholders and so on.

The Central Bank in my respectful view, the Government itself, and the inspector have all found themselves on the horns of a dilemma, between the devil and the deep blue sea, between a rock and a hard place. Because on one hand if you interfere too severely with the financial establishment you can cause rupture, haemorrhages unexpectedly. If you stay at a distance and allow free enterprise to roll on its own way it might be seen as a lack of responsibility.

So, the Government, really, to me, had to look at the lesser evil, and with respect again, I believe if you have to compare giving a line of credit with what the Government has done in the way it has done it, it is not a perfect solution. I think the Government has chosen the lesser evil, and I say "lesser evil" because we could not expect a perfect solution to a very imperfectly defined situation.

10.05 p.m.

First of all, we do not know the exact amount of money involved to some extent, thereby justifying some element of the Government's intervention by making the legislation to have that reach into the holding company for example, so as to justify the next step it will make. It would have been very irresponsible for the Government to move any slower than it has done. Very irresponsible, because the question of the confidence and trust about which so much has been said, are the vital instruments of any financial world. You would be surprised to know how rumours can accelerate the breakdown of financial institutions or a particular financial house.

To delay action by the Government, Mr. President, would have been the most undesirable alternative out of all as far as I can see it, and I need to make that point because while there are gaps here and there in terms of the way that the Government has moved, I do not think those gaps are entirely the fault of the Government per se.

It might have been, and I wish to point that out, but I think the Central Bank, its Governor and the inspectorate have been too lax over the years, even before 2004. And I hope, without saying more, I could itemize each occasion when there was some irresponsibility or laissez-faire attitude, pussyfooting and hoping that the agency or the institution would reform itself voluntarily. That will not happen. Sen. Dr. Charles is right; there is a great amount of self-interest and even greed in the exercise. So the Government had to take the bull by its horns and I believe it was—let me repeat—the lesser of all the evils.

One of the points raised was: whether the crisis that faced CL Financial was globally generated or whether it was largely through incompetence, bad management and the harbouring of high interest liabilities: 10 per cent within two years and 8 per cent within one year. I have seen some of the offerings and I do not think that was the best way to go with other people's money. I do not believe that that crisis was globally generated. It was too early to see the effects of any global meltdown on the CL Financial establishment. The global meltdown might show its effects soon enough, but I do not think it was manifested in the case of CL Financial. The alternative explanations to me are too obvious, but as I say, I would not belabour the point, Sir, I want to proceed.

The second point is whether the Government set out to hit CL Financial maliciously, and I do not see any evidence of that allegation. I do not see any evidence that the Government had any malicious intention in the way it acted with CL Financial, for several reasons, one being, it was carefully documented and verified by the Central Bank Inspector and the Governor that CL Financial came to the Central Bank in a final turn of events on January 07 and then January 13. But before that, for many years as I understand it, the Governor of the Central Bank was trying to have CL Financial reform itself.

So when one looks at all these circumstances, I think it is a bit far-fetched to say that the Government acted maliciously. I think the realistic conclusion would have to be that this financial group found itself in difficulty with a little excessive financial adventurism, some of which I know: Miami Housing Development, real estate investment and if you spread your wings too far, you must have the financial energy to keep afloat and that was not the case. It got too top-heavy for the assets at the base to manage.

As regards the question of takeover, in a long time I have not seen a situation facing the Senate with so many different interpretations. I wish to give mine. This thing about a takeover; the existing laws, both in the Insurance Act and the Financial Institutions Act already provide for takeovers. In fact, that is one of the

Central Bank (Amdt.) Bill
[SEN. PROF. DEOSARAN]

Thursday, February 05, 2009

reasons I think the Central Bank, the Governor and the inspectorate did not act as well as they should because there are already a great deal of provisions. If they could not act with the extremity the present amendments seek to provide, there was room for proactive intervention which they did not do, as effectively, as I thought they should have done. But I will not belabour the point because of the hour.

The question of public confidence; I want to say as an Independent Senator having perused the documents and from what I know, the citizens should not rush to withdraw their money from any bank in the country. I do not think there is any justification for that and we must not establish, wittingly or unwittingly, a self-fulfilling prophecy which will merely aggravate the situation and against the widespread public interest. I speak from no side, but I speak from an Independent Bench on my own behalf.

I do not think there should be a rush to withdraw any money from any bank at the present time, and I am not here to advertise any particular bank. I will not call names, but the whole banking industry—as I know them and the major banks very well—I do not think there is any need. On the contrary, I believe the move that the Government has made will help restore some stability, but there are other things they will do and I will say so in a few minutes, if the vital link in the whole thing is the securing or the reestablishment of public confidence in the system. And as the Governor of the Central Bank said, "These amendments"—and I hope I understood him correctly, Sir—"are supposed to be temporary."

We, the Government, will have to move into a more consolidated form of legislation and if they are found wanting in these respects—because while the Bills are financial in nature, there are political consequences and if, perhaps, Government is not doing what it is supposed to be doing, it should also recognize there will be political consequences which the Opposition will be well aware of.

Sometimes I wonder who really speaks for poor people in this country. When I say who speaks for poor people, I am talking about the poor depositors and I have several clippings here which I will not use to show you, how so many people are suffering at the hands of insurance companies which do not pay on time, which refuse to pay and send the people through litigation to the courts, enabling them to pay much more than they should pay for what is deserving of them.

I refer to the famous Suraj Mattadeen case of 1996, where the gentleman being a victim of an accident, after being awarded a certain sum by the court, the court and the insurance company kept him dragging, till he decided to fast and he died from fasting and other complications. That was a celebrated case that earned

the editorial commentary in many of the newspapers. The *Guardian* said that should never happen again in this country, but I do not believe the insurance companies have taken that message and these experiences to heart because it seems to me they are more interested in profiteering, which is their right. But the word "insurance" also has to do with the welfare of the poor people.

When I say poor people, I do not mean seeing them only as a political constituency, I see them as people genuinely in need and suffering at the hands of insurance companies and many other institutions of the country, some of which I have mentioned before. It is the Government's responsibility now in the search for the consolidated pieces of legislation that I mentioned, to see that those gaps are healed and the inspectorate should be much more vigilant with regular checks and utilizing all the powers at its disposal.

So the question is who is responsible and I told you before, Mr. President, I believe some of the responsibility should be at the doorsteps of the Central Bank, the Governor and the inspectorate, if only in moving too slowly. There was an incident in 2001, which I will not elaborate on, but I cannot resist the temptation to refer to it, because it traces the genesis of irresponsibility issue.

In 2001, the then Attorney General, Ramesh Lawrence Maharaj, produced to his Government at the time as Attorney General, a balance sheet and a document showing that CL Financial was insolvent to some extent—"Clico owning too much money, says Ramesh." This was on October 13, 2001, page 5 in the *Trinidad Express*. So you see it tells you something about the political culture and governance in the country from which no single party could extricate itself, and we are not here to blame the Government or to subvert the Opposition, but to try and change the political culture of the country. And by these examples, we should learn something.

We should learn something because he went on to say in the story, that he took the issue to his Cabinet and his Finance Minister, Gerald Yetming, and they turned him down, and he made a point in the story that even his own party turned him down when he was seeking, if not to rehabilitate, but to put a stop to the haemorrhaging in that particular institution. So now it has reached greater proportions, the question is again, who is responsible? And when we are carving out, we are allocating blame, it should be, to use a word, more "holistic" in my respectful view.

You say give loans, but I come back again; this is the issue. As I said, the Government had to choose the lesser evil and not having all the facts as it were, and you could not get all the facts as you would like because the legislation does

Central Bank (Amdt.) Bill
[SEN. PROF. DEOSARAN]

Thursday, February 05, 2009

not enable you with that reach, so it produced a dilemma for the Government. But you could not set up a committee because the question of public confidence would be aggravated and people, as they have started to do already, will run to the bank and pull out their money and I do not know where they will put it. The days for putting money under mattresses are far gone. Where would you put it? So as I said earlier on, there is no reason for citizens of this country to rush to the banks to withdraw their money. Let things stabilize and let, as you say, the correct devices be put in place.

But this question of a line of credit, if there is so much doubt, scepticism, at least about the management capability of the institutions involved, why would you want to take taxpayers' money and put it in that scenario when you have such doubts? Unless you can convince me to the contrary, but from what I know, what I have heard and what I have seen, I think you will be putting the taxpayers' money at greater risk as compared to what the Government has done.

I am telling you I am no genius in these matters, my qualification is I am a very vigilant citizen, I read *The Economist*, I have a pet subject, the psychology of economics, that is why I speak about inflation the way I do. Things are not leniar in economics; orthodox economics has fallen by the wayside. It is not merely a dismal science; it is much more than now.

So there is no realm of scholarship and precedents that the Government can draw upon, but that is a story for another time. In fact, I might as well say that like my colleagues, I have a small deposit in Republic Bank and I will not go and withdraw my money. I will leave my money there in order to help promote stability in the financial system. We have a saying now: "Where the money gone?" [*Laughter*] That has become a very popular saying, but in this case I want to ask, if you want to give a loan, a credit line and so on, I would want to ask: "Where the money coming from?"

People tend to forget that it is not Government's money, and when you are talking about giving money here and giving money there, it is the moneys from poor people like ourselves here on the Independent Bench. I use the word "poor" metaphorically [*Interruption*]—

So what I would suggest before I close—I want to suggest to the Government that there are some things that it should do in terms of educating the public.

I think my colleague, Sen. Seetahal SC was right, let the public know in a full page ad for which you have become quite famous now—put in something, let

them differentiate between a bank as Republic and an investment bank; what is a merchant bank; what is a trust fund; what are equity bonds; what are mutual funds; what is a credit union; and what is an insurance company.

10.20 p.m.

They should give some definitions, put it out, because I do not think people really understand what the legislation is all about in terms of differentiating between financial houses and credit unions, under the Cooperative Societies Act. You have a literacy programme going on with the Central Bank; maybe that could be conjoined. We really need to do this with haste, because what we are experiencing here is a sort of corporate striptease, where we are stripping down the corporate structures, but people do not understand what they are seeing. We need to give them a fuller measure of understanding.

When the Central Bank Governor spoke in the last few days, he made a statement which will go down in the history books. He said, "Clico has perfected the art of straddling the law." That impressed me; "Clico has perfected the art of straddling the law"; I know what he means and, I guess, we all know what he meant, which is why the legislation has come forward and, I believe, the other will come forward.

Then they asked him, "Why did you not report certain matters to the police?" He said, "Well, if I report these matters to the police, they will become public and the police will take so long to reach the prosecution stage; by the time they reach that stage, the system would very well be adversely affected." That is what I mean by the Government is in the horns of a dilemma.

He told us again on February 04 on TV6, early morning, that when he tried to rough up Clico and advised them to do something in a more robust manner, Clico threatened litigation against the Central Bank. So the delinquency was even recalcitrant, as it were. He said, "For example, people ask us to take action against insurance companies"; they took action against one insurance company, but it took two years to wind up the company. From the time the litigation started and from the time the company got wound up, two years. So he was saying that the legislation was cumbersome. That company was not paying its claims and it had no assets, but it was existing. It had no assets, not paying claims, but it took two years. So you could see that we do not have the legislative infrastructure in place yet, even with these two amendments. We need some work; I hope all concerned learn the lesson.

There are provisions, section 44D in the Central Bank Act particularly, the Insurance Act too, sections 38(7), 8, 17, 29, in terms of reporting, vigilance, monitoring, but those things have not been fulfilled as they should have been. But you know what bothers me, and it should bother the Senate and, perhaps, it should sit at the conscience of this honourable House? We have Standing Order 72(1), which calls for the establishment of a select committee on banking and finance. If you were really acting out your Standing Orders properly, this matter could have come quickly in Chambers to the particular select committee, and other such matters, so you would not have to extend yourself so far and into such controversy, because you have been having a bipartisan approach to such matters.

The last comment I want to make is in reference to the inspector himself. This is the last point, Sir. The inspector gave a speech to the Rotary Club, Port of Spain, and on January 22 this year, page 16 in the *Newsday* reported that he said:

"Supervising financial institutions today is an art not a science."

I think we should know what he meant by that: The facts are not quite evident; you have to make judgments on very tangible circumstances.

This is the more telling point; he said:

"As a regulator our job is not to prevent the failure of financial institutions."

I find that very interesting. He said that his job was to build public confidence in financial houses, but not to save them. But, of course, I would tell him, if I had more time, that there is a connection between saving financial houses and building public confidence. But it was important to hear him say that supervising financial institutions today, in any part of the world, is an art, not a science.

Mr. President, of course, I cannot leave without a reference to somebody with whom so much of our population identifies. Two days ago, American President Barack Obama said this: "Nothing upsets taxpayers more than when executives get rewarded for failure, especially when taxpayers have to pay for such failures."

Thank you very much, Sir. [*Interruption*]

Sen. Enill: Mr. President, I thank the hon. Senator for giving way.

Mr. President, I want to make a particular comment at this point in time. Sen. Dr. Nanan is the last speaker on the Opposition Benches. Earlier on we had a situation with Sen. Rahman where we acted in a particular way, based on what we understood to be a matter we had settled on.

I want to put on record that it was a miscommunication, not what we had intended. The intention was not, in any way, to interfere with the entitlements, but on the basis of where we are, what we have done. I want to put it on the record. Clearly from the response, you were not aware of what was discussed, what we thought we had agreed to. If it caused you any discomfort, that was never our intention.

We want to put that on the record, and thank you for how you have been able to carry this debate in a manner that we are certainly proud of.

Sen. Dr. Adesh Nanan: Mr. President, I rise to make a few observations and to correct a few, what I call, erroneous statements, as I begin my contribution on the Insurance (Amdt.) Bill and the Central Bank (Amdt.) Bill before the House today.

Earlier on, in fact, we had an interruption in the debate for a statement in the House; I just want to go quickly to that particular area. The statement said at paragraph 2:

“A perusal of the *Hansard* record and an examination of the video and audio tapes of the yesterday's proceedings in the House of Representatives will confirm this fact, and the truth is the opposite of what was published in the *Express* today.”

Mr. President, permit me to go to the *Hansard*, and this is in the other place when they were in the committee stage:

“**Mr. Sharma:** Thank you, Mr. Chairman. As it relates to 5(7), can the Chairman indicate what is meant by "to place assets"? I want to use an example. I looked at the Clico Financial Report for 2007, and I see in it that the shares of Republic Bank and Methanol were used as assets for the statutory fund. In 2008, I noted that the Central Bank has asked Clico to remove the Republic Bank shares and the Methanol shares, could you say what is the understanding there?”

Mr. Imbert: Mr. Chairman, I wish to reiterate, we are at committee stage and this is a clause by clause examination of the Bill. If the Member has a specific amendment, we would be most willing to listen to that amendment.

Mr. Sharma: To place assets in the statutory fund, would it include bank shares and shares of the holding company?

Mr. Imbert: Any approved asset is available to go into the statutory fund. Any approved asset: cash, shares, et cetera.

Mr. Sharma: Well, I asked that in the context to make sure that we have a clear understanding and I indicated in the Clico Financial Report of 2007, the Republic Bank shares and the Methanol shares were included, and in 2008, the Central Bank advised Clico to remove those shares. One year it was approved shares and the second year something happened?

Mr. Imbert: I am advised that that occurred because some of these items were in excess of the allowable limits for those particular items, because you would have different categories of asset and limits on the various categories.

Mrs. Persad-Bissessar: So each category has a quota?

Mr. Imbert: Two and a half per cent and 5 per cent limit in terms of how we go into the fund.

Mrs. Persad-Bissessar: Can you tell us when it is that they were advised that they could not use those shares as part of the statutory fund?

Mr. Imbert: April 2008, I am advised.

Mrs. Persad-Bissessar: April 2008?

Mr. Imbert: I am advised this was done in April 2008.

Mrs. Persad-Bissessar: Fine. So as at April—[*Interruption*]

Mr. Imbert: To take effect on December 31, 2008.

Mrs. Persad-Bissessar: So at April 2008, the company would have been advised by Central Bank officials, that this money was not probably in the statutory fund?

Mr. Imbert: Complete the question.

Mrs. Persad-Bissessar: As at April 2008, Government officials whether out of the Central Bank or whoever, if I am to understand you, would have advised Clico that these are in excess of limits for the statutory fund, and therefore, your statutory fund is deficient as at April 2008?

Mr. Imbert: As I said before, they were advised in April that effective December, they would have to remove the assets.

Mrs. Persad-Bissessar: Effective when, I am sorry?

Mr. Imbert: December 31, 2008.

Mrs. Persad-Bissessar: Effective December 2008.

Mr. Imbert: They were given notice in April, that by December 31, 2008, they would have to take out—*[Interruption]*

Mrs. Persad-Bissessar: Their fund would go deficient? These could not be kept in the fund?

Mr. Imbert: Not at all.”

I thank you, Mr. President.

I do not want to go into it to compare and contrast the two, but I wanted to put that on the record.

Mr. President: It was already on the record. *[Laughter]*

Sen. Dr. A. Nanan: I just wanted to utilize the *Hansard* to correct the misleading statement—well, the so-called misleading statement before the House this afternoon.

Mr. President: No, that is not in order, to suggest that what the Minister said— I did not hear anything from what you read that what the Minister said was misleading. That was not my interpretation of what you said at all, and to suggest that what the Minister said was misleading, is out of order. You must withdraw that.

Sen. Dr. A. Nanan: Mr. President, I withdraw it.

As we are dealing with the statutory fund requirement, permit me to go to the parent Act. I will deal with 44D of the parent Act, Chap. 79:02, Central Bank. This particular section is under “Special Emergency Powers” of the bank.

10.35 p.m.

Subsection (1) reads:

“Where the bank is of the opinion—

- (a) that the interest of depositors or creditors of an institution are threatened; and
- (b) that an institution is likely to become unable to meet its obligations or is about to suspend or has suspended payment; or
- (c) that an institution is not maintaining high standards of financial probity or sound business practices, the bank shall, in addition to any other powers conferred on it by any other law, have power—

- (i) to investigate the affairs of the institution concerned and any of its affiliated institutions and to appoint a person or persons for that purpose;
- (ii) to such extent as it thinks fit to assume control of and carry on the affairs of the institution and if necessary to take over the property and undertaking of the institution;
- (iii) to take all steps it considers necessary to protect the interests and to preserve the rights of depositors and creditors of the institution;
- (iv) to restructure the business or undertaking of the institution or to reconstruct its capital base;
- (v) to provide such financial assistance to the institution as it considers necessary to prevent the collapse of the institution;
- (vi) to acquire or sell or otherwise deal with the property, assets or undertaking of or any shareholding in the institution, at a price to be determined by an independent valuer;
- (vii) to appoint such persons as it considers necessary to assist in the performance of the functions conferred by (those) paragraphs...

Subsection (2) states:

“The powers of the Bank under subsection (1) shall not be exercised unless the Bank is also of the opinion that the financial system of Trinidad and Tobago is in danger of disruption, substantial damage, injury or impairment as a result of the circumstances giving rise to the exercise of such powers.”

So it is clear that the Central Bank acted under this particular section in terms of special emergency powers of the bank. There is also another area in this particular Act that deals with the depositors. I want to make reference to that because that is important because we are dealing with a situation where a bank is now being taken over by the Central Bank and there are concerns, especially by the persons who have deposits in that bank. The reason I go to this particular section of the Act is because it deals with deposit insurance and the deposit insurance coverage. I know the Minister in the Ministry of Finance might correct me if this particular figure is wrong. Section 44N(2) reads as follows:

“Deposit Insurance coverage is limited to fifty thousand dollars or such other amount as the Minister may prescribe by Order save that where a depositor

maintains deposits in more than one institution or in different capacities and rights, the limit shall apply to the total amount maintained on deposit in each institution in each capacity and right.

(3) A depositor is protected by deposit insurance only when the member institution in which he has a deposit is closed by or with the approval of the Bank as a result of financial difficulties.”

This particular clause goes on in subclause (8):

“Payments to depositors of closed institutions shall commence not later than three months after the closure of the member institution.”

Of course, there is a procedure with respect to the depositors trying to have this particular insurance coverage.

So my question to the Minister in the Ministry of Finance in terms of the Order, is there a new figure with respect to the deposit insurance coverage, or is it still \$50,000; or has it increased, especially with the Clico Investment Bank? That is important because we have the Central Bank taking over the Clico Investment Bank and there is a particular section here, 44F which states:

“Where the Bank has under section 44D assumed control of an institution, it may terminate or retain the services of any or all of the directors, officers and employees of the institution and the directors so retained shall manage the affairs of the institution subject, however, to any directions of the Bank;”

But we have seen in the newspapers—I do not know if it is accurate in terms of when the employees turned up, the doors were shut and there was no activity taking place. So we are under the impression that the services of these people in this particular bank were terminated. That is the Clico Investment Bank. But this Act makes allowances. And what section 44G talks about is as follows:

“(1) Where the Bank has under section 44D assumed control of an institution...”

Let us say, Clico Investment Bank:

“the Bank shall, subject to subsection (2), remain in control of, and may continue to carry on the business of that institution until such time as the Bank publishes in the *Gazette* and in such newspapers as it thinks appropriate a notification that it has ceased to be in control of the institution.

(2) The Bank shall relinquish control and shall not continue to carry on the business of an institution where—

- (a) the circumstances on the basis of which the Bank assumed control of the institution under section 44D have ceased to exist;
- (b) the Bank is of the opinion that it is no longer necessary for it to remain in control of the business of the institution; or
- (c) the Bank has sold or otherwise disposed of the property, assets and undertakings of the institution.”

Why have we gone to utilize 44G(2)(c)? Because as far as I understand it—and I am sure the Minister in the Ministry of Finance will correct—the Central Bank Governor said that the bank will be closed and the licence revoked. Under this particular section you had other alternatives where the bank could have been run and once it becomes financially viable, in the opinion of the Central Bank, it does not have to remain in control anymore and the business could be returned. That is what this particular section talks about. But to go to (c), I do not know if the bank will be sold, but what is happening now is the balance is being transferred to the First Citizens Bank.

I do not know if it is coming under 44G in terms of that particular approach by the Government, of dealing with Clico Investment Bank and why is it they are operating in that particular way and not letting the bank have a chance to become viable once more. Why is it that the licence is being revoked at this point in time and the deposits are being transferred to the First Citizens Bank and the National Insurance Board? Just like you put a new board in place, why can they not do that with respect to the bank and let the bank operate because there are depositors?

My intervention in this debate is to rebuild the confidence that the Prime Minister has caused to deteriorate since his statement in the other place with respect to the witch-hunting aspect. Do you know something? When the Central Bank Governor held his press conference, there were alarm bells ringing, but as the hours passed by and more and more of the plan came forward, people were building their confidence, but when the debate took place in the Lower House and they saw the approach by the Prime Minister in terms of the witch-hunting, public confidence deteriorated considerably and I intervened in this debate to rebuild public confidence. [*Desk thumping*] It is my hope that after my contribution here, that it will build confidence once more in our financial system. So we need some answers with respect to the Clico Investment Bank.

The Minister of Energy and Energy Industries gave a sober contribution in the Chamber this afternoon. He gave us a chronological sequence in terms of events. He was almost very convincing and I will tell you why. Because if we are dealing

with a statutory fund requirement and he talked about the actuarial review, what it means is that if you are an insurance company, at a point in time, if you are dealing with your statutory fund requirement, you will have those liabilities and you must know what is your liability.

So if somebody is covering for fire and you have a certain value, you have to calculate, like if the fire took place and you have to pay out right away at that point in time, and you have to do that for all the policies. I am sure the Minister of Energy and Energy Industries will correct me if I am wrong. That is how you are going to calculate your statutory requirement, because you must be covering that particular amount of deposits in that particular insurance company. In simple terms, that is how it is supposed to operate. That is why you have the auditing statements so at a point in time, you will know exactly how much money the company must be putting forward in terms of the statutory requirement.

The statutory requirement in terms of the Clico Investment Bank and the statutory requirement of Clico, what apparently is happening is that they were utilizing the same kind of assets in their various companies. But the question still has to be asked—and we heard from the Minister of Energy and Energy Industries in terms of crosstalk, that it was a normal procedure for NGC to have these substantial withdrawals. But what I cannot understand is the Prime Minister making a statement in the other place, that under the United National Congress administration—the Ministry of Energy and Energy Industries will correct me—a substantial amount of money was placed by NGC in Clico utilizing a councillor, and talked about commission of \$1 million. We had my colleague, Sen. Wade Mark refuting that particular statement made by the Prime Minister. In fact, not him; it was the chairman of NGC that refuted those claims.

That is why I talked about the lack of public confidence after the Prime Minister's contribution, and we are seeing the Prime Minister building a case against the Opposition. How could you have in the Lower House—you are asking for consensus and you are attacking the Opposition. The Opposition must retaliate. That is why I said the Minister of Energy and Energy Industries' contribution was a sober one in this House; very sober and very clear in terms of his contribution. It gave the information to the House that we required, but we still have those unanswered questions with respect to the large withdrawal of NGC. We also have to ask certain questions in terms of the statutory requirement. And when I made reference to the *Hansard*, it would have shown that in April 2008—I just

want to get the dates correct because I do not want to mislead the population—we had that situation where, in terms of the Schedule in the Insurance Act; the Schedule gave a breakdown and the Minister in the Ministry of Finance pointed to that in terms of clarification.

10.50 p.m.

We are still questioning if the assets were held before as bona fide assets contributing to the statutory requirements of the investment bank, as well as some of Clico's statutory requirement, why the sudden change? Why these large withdrawals coming down in this particular period from April 2008 to December 31, 2008? There are many unanswered questions. We still have to ask the question.

I know that an explanation was given with respect to the Governor of the Central Bank and the withdrawal, but we still have to ask the question of the Governor of the Central Bank. Was it normal for these deposits to roll over? The Governor of the Central Bank never said if he had allowed his deposit to roll over previously. If the deposits were maturing and he had the tendency to let them roll over, why the withdrawal now? He has not answered that particular question. I do not know if it was asked of him, but it should be asked. Was it a process where you had the deposit maturing? Many depositors do that. The deposits will mature and they would let them go over for a next period. Was it like that or did it mature for the first time and he withdrew it? If there was a tendency for it to roll over, why that withdrawal? It had to be some kind of insider information that had been transmitted.

Do you know what is also surprising? When the Minister of Finance had to make a statement and said that a small sum was withdrawn, it is rumoured that that small sum ran into the million. We have to level with the population. You have to level with the population to gain confidence.

I do not know how true that is but the Minister in the Ministry of Finance could say if there were large withdrawals by contractors. We have to ask those questions. When you put two and two together, if you see this large withdrawal by NGC and substantial withdrawals by companies and contractors, the question has to be asked: Was this a definite attempt at a run on CL Financial? That question must be asked. It does not add up.

Sen. Enill: I thank the Senator for giving way. I want to understand what the Senator is saying. He is saying that the withdrawal of large sums of money represent a run. I am aware that any other financial institution involved in the business of deposit taking at any point in time, on maturity, large deposits are withdrawn. Yet, there is no consequence for the institution.

In those circumstances, there must be something beyond simply the withdrawal. I am not sure about what you are saying. The withdrawal of itself does not constitute the point that you are making because this is normal withdrawing activity on the basis of the information available. It is not only for this institution but also all normal deposit-taking institutions. I am trying to understand the point that you are making.

Sen. Dr. A. Nanan: The point that I am putting forward is that the statutory requirement was the shareholding. Suddenly, from April to December, 2008 they changed the rules. Therefore, they had to put something else to have that requirement if they wanted to comply. Because of that situation with the April to December time frame, and so-called insider trading and information passing back and forth, when they went to get that large sum of money and they knew that they could not come up with it—I do not think that NGC got their money when they went for the withdrawal. That sent a signal. That could have been the whole trigger mechanism for the Governor of the Central Bank to intervene. There are two areas we are debating. One is the large request for withdrawal and the other one is the withdrawal of money by the Governor of the Central Bank and the Minister of Finance.

The other area I will deal with in respect of the matter before us is that of UDeCott and Nipdec. We have these two state-owned companies spending billions of dollars without any regulatory framework. We have seen that a contract to the amount of \$386 million was given out without any documentation by a state agency. That is the question we ask. That is why Sen. Mark spoke about a two-thirds majority in this particular situation. Because of that particular situation with unregulated billions of dollars being spent, here we have this draconian legislation would encompass all insurance companies. I will go even further because this could have been the Clico (Amdt.) Bill. What is happening here is specifically for Clico. Why put this draconian piece of legislation for other insurance companies? Why have this particular situation and give the same kind of powers to the Central Bank for these insurance companies?

We think that with this particular entry into the private sector, we have to be extremely careful with the Government's tentacular approach. We are seeing the Government spreading its tentacles in all different directions. We are seeing this octopus-like approach by the Government would have far-reaching consequences. They are not only controlling the shares of Republic Bank but they also have interest in the *Express*. What is surprising—I do not know what will happen. This particular report was in the *Express* with respect to the situation of the matter with the Leader of Government Business in the other House.

We have to be extremely careful. Is this not a diabolical plan in terms of getting control of the media as well as the financial institutions? The Government has to send a clear signal that there will be no intervention in Republic Bank. The Minister in the Ministry of Finance has to send a clear message to allay the fears of the public. In all the different branches of Republic Bank people are withdrawing their money. I am not saying that to panic the population. Of course, a spokesman for the Republic Bank said that they have to be careful and very guarded when taking cash. They are even afraid to take a manager's cheque because they want their money in cash.

There are many depositors with respect to Clico and they too know that every month these people expect an interest cheque from their deposits. This is February and I think that they have not received that particular cheque in terms of interest from those deposits. The Minister in the Ministry of Finance needs to say something. We heard from Sen. Ramkhelawan in terms of business as usual. Clico's depositors need to be reassured so that they would leave their money rather than take it out. If you intend to return Clico to its pristine glory days, you have to assure the depositors that they would get their interest like before.

If not, you would have to tell them that if they break their deposits they would lose interest. You need to clear the air. Many people are not sure if they break their fixed deposits if they would have to pay back interest which they have received. They need to know if they break the deposit if they would get back their capital or a reduced figure. If that information is given then they would be able to have the opportunity to leave their deposits with Clico. The Minister in the Ministry of Finance needs to say if it is correct that their interest would continue as normal at the end of every month. Many people depend on their interest from these deposits to survive.

The other area is in terms of the pension plan. Sen. Prof. Ramesh Deosaran spoke about straddling the law. We heard from the Minister of Energy and Energy Industries that what Clico was doing is not illegal.

The area I want you to clarify is with respect to Sen. Prof. Ramesh Deosaran when he made reference to October 2001. He made reference to the situation at Clico in terms of insolvency. For a few minutes, I want to explain what happened at that time. I make reference to a particular phrase that has been coined "technical insolvency".

11.05 p.m.

What is strange is technical insolvency. The Central Bank can call in an insurance company and say that its assets in terms of its statutory requirement are

not good enough. I made reference to shareholding and the fluctuation in shares and they want something else. If the particular situation develops where the Central Bank says they do not have enough assets for their statutory fund and the company has to find assets and bring to Central Bank, Central Bank can report that they are technically insolvent. That is what happened in October 2001—the technical insolvency of Clico.

That is why, when the former Attorney General went to Cabinet and told them about this technical insolvency, the then Minister of Finance referred the matter to the Central Bank. The Governor at the time, Mr. Winston Dookeran, investigated the matter and found nothing culpable. I want to clear the air on that particular area with respect to technical insolvency.

I want to go into detail on what the Minister of Energy and Energy Enterprises talked about—best practices. When we speak about best practices in terms of what value the Central Bank will place on these shares, it is all subject to the market value. I drew reference to Republic Bank shares at \$86 per share and hypothetically, to Central Bank giving a value at \$40 or \$45. The calculation would have been based on that \$86, so it is not actually going to be \$86 if someone is calculating that because the Central Bank will determine that at a lower value. You can correct me if I am wrong.

In terms of the banks, 17 cents on every dollar goes to the Central Bank as a reserve, so a bank would be giving 6 per cent of 83 cents. That is why I made the reference to this situation. The Minister of Energy and Energy Industries made reference to these shares being encumbered. While we are calculating at 55 per cent in terms of a number of millions of shares, they may not be and that is why you have to do a survey to find out what is happening.

Sen. Ali spoke about the price of ammonia and urea which is going up. We still have to ask that question in terms of methanol shares. The Minister in the Ministry of Finance always speaks about cycles and fluctuations. If the Minister is looking at cycles, he could not say that methanol shares, although falling at one point in time, would not be going back up.

If you look at the shares in April and they are falling and in January the price is going back up in value, then the company could still have negotiated, but you have shut the door for any negotiation. You have signed a Memorandum of Understanding and this goes further than just the shares in methanol and Republic Bank. If the liability increases, you can take Angostura if you have to. You can go to any one of the parent companies and sell assets to meet the liability.

Central Bank (Amdt.) Bill
[SEN. DR. NANAN]

Thursday, February 05, 2009

I do not know if there is some agreement with the Government and CL Financial in terms of preservation of certain companies. You have Angostura, which is very profitable. I do not know if there is that agreement to hold Angostura or the Government will leave Angostura in quarantine. We have to be very careful. If, as we speak, the liability is increasing, then CL could be losing more and more of its assets, which have to be utilized to match the liability.

I conclude by saying that I hope that my contribution and that of all my colleagues have made a difference; that they have given the public confidence in our financial system and that there will be no runs on any of the banks. I hope the Government will reconsider because under 44G, there are different approaches you can use in this particular Central Bank Act.

I thank you.

Sen. Annette Nicholson-Alfred: Thank you very much, Mr. President. I must say at this time, even though it is pretty late, I must express thanks for the opportunity I have got in preparing for these two Bills. I am no expert in finance and maths, but I gained a lot by trying to prepare myself.

However, I would like to ask—and I am pleading again—that I get my Order Paper earlier than I do so that I can do more research and prepare myself better.

I see this occasion as one in which Members of the Senate should come together quickly to discuss with all seriousness, with urgency and in detail the impact that these Bills can have on the entire community of Trinidad and Tobago.

It is a pity that there was not greater participation by a wider cross section of the country or even the region. The Bills need to be given the attention they deserve and I can say that I have seen that happening here. I do not know that I can say it happened in the other place from what I saw on television. I commend the Senators for their performance and the way contributions have been presented.

The urgency of these Bills has come about, to me, as a result of the decline of CL Financial as a finance giant. This conglomerate is in deep trouble. It is of very great importance to the country of Trinidad and Tobago. It is significant within the financial system of the country and is involved in nearly every aspect of life in Trinidad and Tobago. I believe that if CL financial falls, Trinidad and Tobago falls. When Clico goes down, all its depositors, shareholders and even workers will go down. Can we in Trinidad and Tobago afford that? My answer is no.

Mr. President, I am concerned that it has been stated that since 2004, the Central Bank saw “bad things” happening with CL Financial and it seems that nothing

was done. If the Central Bank did not have the authority, as it claims, to act, could the Government not have been alerted? Or was the Government alerted and did not respond? I do not know. Someone did not act responsibly and that was not good enough. That is why we are in this crisis. Even as late as April 2008, it is said that signs of the decline were clear, yet nothing was done. One must ask why.

It is concerning that we are called upon to support what I call a buyout without knowing how much money is involved and not being told where the money or the funding will come from. I think it is necessary for us to know these facts rather than asking us to sign a blank cheque. Could it be \$8 billion today, \$10 billion next week and so on?

I listened to an officer from one of our workers' trade unions as he asked for amendments to the Retrenchment and Severance Benefits Act. He touched me. He sought social justice for our workers—the people with whom I interact daily. Those are the ones who will be earliest and hardest hit. They may suffer job loss as a result of the present scenario. These are the same workers who have contributed greatly to the building of the institutions we now debate and seek to save.

Another concern to a great number of citizens is that they are worried about the One Caribbean Media (OCM). A lot of people are showing concern because they believe this may be an opportunity for government, not the present one only, to take control of the media and we know the effect that can have on the citizens. If government dictates what happens in the media there is trouble in the land. It is hoped that in that area good sense may prevail so that press freedom could be maintained.

According to Wayne Dass of CariCRIS, there is an urgent need for stronger, more risk sensitive capital standards for financial institutions, particularly for the non-bank financial institutions and for the brokerage houses. It is felt that the new Financial Institutions Bill recently passed does nothing to address that situation.

11.20 p.m.

Our country and the citizenry need to be reassured that the Government will be quick in implementing the necessary regulatory upgrades. Depositors are crying. We need to prevent the tears from flowing. They need to be reassured that their savings are secured; or else there could be mayhem in this beautiful land of ours. To me, the strength of any country rests in trust and confidence. The Government at this time, when I say government, I think I mean everybody, has work to do in reassuring or encouraging the general population, so that confidence in our systems, especially our financial systems, could be rebuilt. The Governor

Central Bank (Amdt.) Bill
[SEN. NICHOLSON-ALFRED]

Thursday, February 05, 2009

of the Central Bank and the Minister of Finance, some earlier time said that our financial sector is on good footing and that we should not be fearful. Let us hope that information could be sent out there and that our people would feel some sense of satisfaction.

I have never heard anybody—I should not say that. I want to remind you of some of the goodness of CL Financial and Clico. I have looked at them through the years—although I did not know many of their subsidiaries; I am now learning—and they have been very helpful to this entire country. As someone in the performing arts, I know that they have helped a number of groups to develop and to keep afloat, to travel and to take the culture to different places. I know they have been helping social groups. I think, now that they are in trouble, this is something that would give me a reason to say I must support the Bills because I would like to see them stay afloat.

In closing, I remind all of us that it is the duty, as I think Sen. Dr. Charles did, of all of us to let the people out there know that they need not worry or they need not fear. We are supposed to try to help calm them and put them in a state of understanding, so that their fears can be allayed and when we go out there we would see smiling faces, rather than people who would rush to the bank, as they have been doing the last few days, to take their moneys out. I am worried about that aspect of it, because I can see the predators out there lining up to see the older folks. Especially as you go to the bank, they may think you have money with you because you did not want your money to be in the bank and you know what they can do.

Let us all help in allaying the fears of the population and I ask the Government to work feverishly and ardently on the issue of having the confidence regained.

In ending, I want to say that I do support the two Bills.

Sen. Michael Annisette: Thank you, Mr. President. First, let me declare an interest in this matter. I represent two companies that have over \$200 million in pension funds as I speak, so you would appreciate the kind of concerns I would have as President of the National Trade Union Centre and also President of the Seamen and Waterfront Workers Trade Union.

Additionally, in terms of pension funds, as it relates to the members we represent in NATUC, we are talking about over two billion and more dollars. When I stand here, one will appreciate my concerns and the fact that I am standing here, not afraid, given the fact that I am quite aware that there is no better guarantee, with respect to Trinidad and Tobago dollars, than a government guarantee. One must understand that.

What is before us here today is that the Government has taken, in my estimation, a bold step by giving the assurance to people who would have pensions, third party depositors and all the groups of people that we, as the Government, will guarantee your deposit. I think that is a progressive step and it is something that should be lauded and applauded in Trinidad and Tobago. It is one of the safest and best ways of guaranteeing assurances of moneys that are deposited in the different institutions. That is my mantra to the general public. We have so much to lose. Let me add too that my annuity is also invested there, so you can understand my concern.

When we look at what is happening internationally, we need to start to contextualize and situate. We need to start to understand that in this august body, which is the highest decision-making forum, if we do not or cannot represent the possibilities of change or hope to the citizens of Trinidad and Tobago at this moment, as we face this particular situation, which is not unique to Trinidad and Tobago and is a global phenomenon, which I would deal with after, we in this Senate would be failing in our sacred responsibilities as parliamentarians and to the people of Trinidad and Tobago. One must understand that the financial institution is the brain of any economy and if that fails, your whole economy fails.

We cannot continue to play the kind of mind games that I am seeing here. While people say that we want to work, we talk about hostile takeover. We talk about run and something that was precipitated that caused the run. You are sending mixed signals to the population when we should not be doing that. This is not an easy matter. One has to understand. One must remember what happened with Enron with all the pension funds that people lost. The Government of America did not do anything. They did not intervene. Because of that, thousands of workers lost their livelihood and life savings, but this Government and the Central Bank to—also CL Financial.

I want to compliment Mr. Duprey. I was at the press conference. I went there. Although the media was invited, I thought it my sacred responsibility as representative of the workers to hear what was being said. I heard Mr. Duprey praising the Government and the Central Bank for the collaborative approach and the way they handled the matter to avoid what would have been a nightmare, if the situation was allowed to get out of hand, given the percentage of the GDP that is superintended by CL Financial and all the other groups that are represented.

Sometimes, I wonder—because research will tell you that in England, in terms of the financial institutions, they represent over 12 per cent of the GDP. In America, it is only 7 per cent of the GDP. Look at what is happening to the

Central Bank (Amdt.) Bill
[SEN. ANNISSETTE]

Thursday, February 05, 2009

American economy as a consequence of the financial crisis. Look at what is happening. This is not only in America; it has been extended all over the world. The recession is a synchronized recession that we are experiencing because of the global market.

If we have a situation where we are talking about CL Financial and its groups of companies, this represents more than 20 per cent of our GDP. One must understand and appreciate the financial situation in which we could have found ourselves if we did not arrest this situation with the speed and haste in which it was done. This was done pre-emptively, rather than waiting for the situation to extend. I hear some people saying: "Let us debate it. Let us go outside and bring the public." In a situation like this, it requires fast and immediate action. That is what it requires.

Mr. President, I have some concerns. I want to get the assurance from the hon. Minister of Finance that the question of severance pay would be respected and honoured for the workers who would be sent home as a consequence of this particular situation. I say it in the context that there is a court judgment that involves a company that we represented, Swan Hunter, where it has been ruled that if the company is wiped out and the company is not in existence, the question of severance pay, given how the Severance Act has been written, does not apply, because severance is to be paid based on surplus of labour and the company has to be operational for you to pay severance.

We have a situation where it will happen, because the investment bank would fold up and, therefore, that particular situation will arise. I am putting the hon. Minister of Finance and also the Government on notice that we in the Trade Union Movement and Michael Annisette as a trade unionist and an Independent Senator would like to get the assurance from the Government that the severance payment will be honoured and recognized by the Government, notwithstanding the legal loophole. I want to make that point. My support is conditional on this aspect of it.

Additionally, I want to make a fundamental point, I have alluded to the amount of moneys that workers have invested in the pension funds with CL Financial and the group of companies. While the Government talks about tripartitism, I have looked at the complement of the board and the Government did not see it fit to bring in labour on the board. We are serious stakeholders.

11.35 p.m.

Mr. President, we are a serious stakeholder and, therefore, we need someone to represent our interest. We do not want the technocrats. Let me make that clear.

We who are in the trade union movement bring a different perspective to bear on what is happening, because we speak for and understand the issues that affect workers on a day-to-day basis. Some of us have been living in those glass houses for too long that we do not appreciate and understand the social dislocation and effects decisions have on the workers that I have an honour to represent.

I want to tell the Government that we were talking about tripartite when the first signal of the meltdown started. The Prime Minister made the statement, and I laud him for thinking progressively. We are in 2009, and we are yet to set up that tripartite committee. That tells me that we have to “walk the walk” and not only “talk the talk”, because the trade union movement is an integral part of what is happening here. For us to get out from what is happening here, you need the parties, namely business, labour and the Government to sit and talk and set up parameters and come up with innovative ideas, so that we can come up with resolutions and solutions for a situation which is challenging every country in the world.

We must not fool ourselves. There is no script for what is happening globally. This is something that is new; this is something that is unique; and it is something that we have to understand to appreciate. What are the implications and what are involved? There are no “quick fix” solutions. We have to continue putting solutions on the table. They may fail, but we will have to continue to do it until we find the proper solution to the problem.

Everyone is talking about the Government being involved in banking and we have to be careful. What is happening in Sweden? Because of what is happening, the Swedish government has taken over the banks. They are actually nationalizing the banks—cleaning up the bad assets—and when they are running properly they would put them back out into the public, because the situation demands that.

Presently, this matter is being discussed in America. That is one of the proposals. There is the question with respect to the TARP Fund because it did not work. As a matter of fact, the population is saying that if you are asking the taxpayers to put out money to fund these companies, the taxpayers must benefit and, therefore, the assets must be owned by the Government so that it would get some kind of return. Presently, that is what is happening. People are not paying attention to what is happening.

Mr. President, Strauss-Kahn said:

“...the global financial crisis had been marked by important regulatory and supervisory failures in advanced economies...”

What does that mean?

Mr. President: Can you say what you are reading from?

Sen. M. Annisette: I am reading from the International Monetary Fund document which was published on October 09, 2008. It continues:

“...in the risk management frameworks of major private financial institutions, and in market discipline mechanisms. The world is on ‘the cusp of a global recession,’ but if countries act together, the world economy would recover, he stated.”

He went on to deal with some issues and one is:

- “Authorities need to draw lessons from the crisis for financial regulation and supervision, including issues such as fair value accounting, changing rating agency behaviour, closing loopholes in regulations, and filling gaps in information. ‘We need to come up with practical advice on how governments and central banks can use macroeconomic policies to puncture asset bubbles in good times.
- The global financial architecture needs to be revamped to meet the need of the 21st century globalized markets.”

I did not write that. The point I am making is that while we sit and make reference to the old laws, we are missing the point. The global world has changed so much and we are dealing with different dynamics. We have to understand that. For example, the number of derivatives which are contracts derived from security, have reached \$473 trillion. Let us begin to understand that. That is what we are talking about.

That is the belly of the financial problem. The kinds of derivatives that have been put in place—the lack of regulatory framework and the inadequacies of the 20th Century regulatory framework to deal with a 21st Century problem—I am supporting the two Bills but, at the same time, I think we need to think in the 21st Century, because some of the provisions in the Bill are rooted in the 20th Century mentality. So, we have to be careful.

With respect to the question of taking over, do you know that the Federal Reserve—which has been in existence for 94 years—in the last eight months, the assets that they have acquired in eight months are more than what they have acquired in the last 94 years of existence? What is the reason for that? This is because of what is happening globally. That is the reason.

We have a sacred responsibility not to play that kind of game with people’s bread and butter. It is people’s livelihood, savings and bread and butter that we

are talking about here. That is what we are talking about. It is plain and simple; trade union talk. I am telling you that anybody who makes the mistake and attempts to politicize and do anything to jeopardize my members' livelihood and their pension savings would not like to see how the workers on the dock would react. This is not a threat, but it is a reality.

My executive met in long sessions and they began to understand what are the realities. They did not understand it. I want to tell the Government that it must be able to articulate what it is doing in a much more people-friendly manner so that the man in the street will get an appreciation and understanding of what is actually happening and why the Government's intervention was so progressive. It should be lauded. I think the Government would have learnt from the experiences of the United States of America, England and all the other countries.

Today, the English rate has dropped to 1 per cent, the lowest since the English Bank has been formed in 1693. That raises another question—I might get licks from the business community—that the interest rates in Trinidad and Tobago are too high. We need to start looking at this matter. All the other countries are dropping their interest rates to stimulate their economies, but our interest rate is rising. So, we have to understand what is happening.

Sen. Mark: The Government is responsible.

Sen. M. Annisette: Interest can contribute to inflation. The point I am making is that the Americans, the Germans, the Swedes, great America and Great Britain, interest rates have gone down. This is the lowest in the history of English banking and, as you know, the English banking system started in 1693.

So, I want to close because we have been here long. You see, the transformation in our thinking can only come about or arise, in my estimation, if we have a new conscious way of thinking and that is putting Trinidad and Tobago first, second, third and fourth. I have been saying over and over that we have the capacity and the capability in this honourable Senate to do that. If we do that, we are going to be sending the right signals, and it is going to assist in all the other fundamental and social issues that are visiting our beloved country. I think we, in this honourable Senate, have the responsibility to demonstrate to the general public that is looking at us, that we are not only "talking the talk" but we are "walking the walk".

I want to conclude by just leaving some information. Are you aware that AIG, the biggest insurance company in the world has failed and the American government had to inject \$85 billion? The Bank of America has taken over

Central Bank (Amdt.) Bill
[SEN. ANNISSETTE]

Thursday, February 05, 2009

Merrill Lynch. A year ago, who would believe that would have been possible? What we are witnessing is that investment banking is going through the window and commercial banking is coming right back into play.

We have to understand these dynamics. If we do not understand what is happening in terms of the financial world, and if we do not get an appreciation and a handle of it, I am afraid that we will be making decisions and statements that are not going to make the people of Trinidad and Tobago proud. For example, the total market capitalization of the World Stock Market, the last check I made it was over \$51 trillion. So, we have to understand these economic realities. What is the economic output of the entire world? The last check I made it was over \$47 trillion. I am saying this in the context of derivatives that have taken over the world which have gone to \$473 trillion.

11.50 p.m.

So, brothers and sisters, comrades all, hon. Senators, and Mr. President, I make an honest plea that let us get over the two Bills, like yesterday, because it is required, and within the negotiations and the discussions, that all the concerns can be discussed. If we fail to act, and if we procrastinate, we will be doing a disservice to the people of Trinidad and Tobago and by extension, the working class of Trinidad and Tobago and the Caribbean, bearing in mind that CL Financial is all over the world, including the Caribbean.

I thank you, Mr. President and hon. Senators.

The Attorney General (Sen. The Hon. Bridgid Annisette-George): Thank you, Mr. President. I join this debate at this late hour just to add some clarification to some issues that arose in some of the contributions. I want to start in the vein, continuing the message of some of the other speakers. In supporting the two Bills, I sought to find something that would have been considered independent, for fear that one would have thought that it was self-serving if I supported the two Bills.

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

I refer to the *Trinidad Guardian* Editorial of today, Thursday, February 05, at page A12. I just want to refer to two parts of the article. The article is captioned, "A matter of confidence". In fact, the editorial calls upon hon. Members of this Senate to continue the important message:

"...that the authorities have been giving outside of Parliament: Confidence in the economy requires a strong financial sector and a strong financial sector

requires the Government to take some swift action to remedy some problems in a large segment of the sector at this time.”

I am quoting from the article.

I really want to commend the hon. Senators here today in that, I think that from the contributions the hon. Senators have risen to the occasion and have done what the society expects of them, in that they carry the message of confidence. I want to particularly read into the record a paragraph from the article. I quote:

"The Government moved to put taxpayers money at risk because of the extremely dire consequences of inaction and the fact that action to improve the balance sheets at Clico, Clico Investment Bank and Caribbean Money Market Brokers was needed to restore the confidence of the public in the financial system.

Failure to protect one segment of the country's financial system would have triggered contagion throughout the entire financial system."

Now, I want to also say that when any sector of the society suffers hardship, this Government has always demonstrated care and compassion. If one looks, we just closed the accounts for fiscal year 2007/2008. In terms of the Senior Citizens Grant, \$1.3 billion was spent and in subsidies and transfers, the bill was \$22 billion. That is the demonstration of the care and concern of this Government.

So, when I sat here and heard some Senators describe the actions of the Government as discriminatory in dealing with the response to Clico, and the CIB situation, in contrast to the response to the HCU situation, I want to refute any claims about discriminatory practices, and, Mr. Vice-President, through you, to Sen. Mark, I believe he made reference to section 4(d) of the Constitution about equality of treatment. I want to remind him that in deciding whether there has been inequality of treatment one has to apply a "sameness test".

The sameness test in law is something that we say and apply everyday in our country, when you are comparing, you compare oranges with oranges and apples with apples. That is what the sameness test comes down to in local parlance. When you are comparing what treatment has been meted out to one entity as against the ones that were meted out to another entity, one has to look at the sameness test.

I want to recall a recent decision—it was as recent as last month—in the case of *the Attorney General v Pamponette and others*. That is the maxi-taxi case with the use of the City Gate facility and the \$1 user fee. In that case, the court applied

Central Bank (Amdt.) Bill
[SEN. THE HON. B. ANNISSETTE-GEORGE]

Thursday, February 05, 2009

the sameness test and came down on decision that route 2 and route 3 maxi-taxis, which use the City Gate, are not similarly circumstanced as the other maxi-taxi drivers.

I want to say that the HCU situation does not pass the sameness test as the CIB, the Clico and the CMMB situation. For one, HCU is a credit union; it is governed by the Co-operative Societies Act and under the Co-operative Societies Act, those persons involved are not depositors, they are members and shareholders. Quite different from the situation of depositors in the banks and under the annuity plans.

Therefore, because they are different entities governed by different regulatory agencies and different laws, they do not pass the sameness test, and therefore, they are not similarly circumstanced. Apart from that, when one talks about what the regulator would have done, I just want to remind Members of this Senate, and also the national community, that the regulator, which is the Commissioner of Co-operative Societies would have taken a very proactive step with respect to Hindu Credit Union, because you would recall that when the section 4 enquiry was intercepted by the credit union, the commissioner, the regulator, would have gone to the court and obtained an injunction and got an interim receiver appointed in order to continue the enquiry into the affairs of the Hindu Credit Union in an attempt to safeguard the interest of its members.

[MR. PRESIDENT *in the Chair*]

I want to refute any call with respect to discriminatory practices. Again, when one looks at section 44D(4) and the amendment—

Sen. Ramkhelawan: Mr. President, I want to thank the hon. Attorney General for giving way, but I heard this argument twice and I believe that it is incorrect to say that there is no such thing as a deposit under the Co-operative Societies Act, 1971. There is such a thing as a deposit and there is a differentiation between a member who holds shares and a deposit. One has precedence over the other in the event of a demise of the institution; shareholder as the residual holder of assets is last on the list, a depositor is prior to that. I think it is some misconception, and I hope that I am not wrong, but I believe I understand the Co-operative Societies Act, being also a president of a co-operative society. I think it is inappropriate for us to repeat this again, and I think it should be corrected.

Sen. The Hon. B. Annisette-George: Thank you very much. Mr. President, I want to say that the way I understand the Co-operative Societies Act, it refers to members, there is no terminology of depositor under the Co-operative Societies

Act. Deposits have been created, in fact and in practice, but that was never contemplated by the Act, and to be a depositor or whatever sort of deposit accounts that were created, one has to become a member. So, that while in practice certain things may be done, under the Act, the Act only recognizes members and to be a member you have to be a shareholder, and that is the point. I appreciate what the hon. Senator is saying; I am in no way naive at all to know that other things do happen, but those things are not what the Act originally contemplated.

To continue, Mr. President, I was talking with respect to clause 5(b) of the Central Bank (Amdt.) Bill. Again, what was done here, I believe the hon. Sen. Mark referred to it as being discriminatory when the provision sought to exclude financial assistance to insurance companies regulated under the Insurance Act, and also to a society registered under the Co-operative Societies Act.

Again, I want to say that that is not discriminatory; that is not inequality of treatment. When you look and compare the different entities, they do not pass the sameness test, in that financial assistance would be given to banks, and it is here in a document—Sen. Seetahal SC, that was a first time. This is the document that compares the provisions and the amendments, and the point is made that financial institutions licensed under the Financial Institutions Act, which would be like banks, are required to maintain a reserve account with the Central Bank for which no interest is accrued. There is no such equivalent requirement for insurance companies. Also, financial institutions are required to pay annual licence fees, branch fees, and application fees to the Central Bank. There is no such equivalent requirement for insurance and I might say for societies registered under the Co-operative Societies Act.

That is the rationale for financial assistance not being provided to insurance companies and societies, therefore, the exclusion under clause 5 of the Central Bank (Amdt.) Bill.

12.05 a.m.

Further, I want to deal with the point of constitutionality and although it was dealt with quite adequately by Sen. Seetahal SC, just for the purposes of reinforcing the point, in that both Bills have a Preamble recognizing that some of the provisions are inconsistent with section 4 and section 5 of the Constitution and in accordance with section 13, they require the special majority of three-fifths, and that Preamble is there on the Bill. It is not an alteration of the Constitution in that these clauses are not—this is not a Constitution amendment which would have required the special majorities as required under section 54 of the Constitution.

Central Bank (Amdt.) Bill
[SEN. THE HON. B. ANNISSETTE-GEORGE]

Friday, February 06, 2009

Further, I would like to deal with another point, again raised by Sen. Mark, with respect to his call for there being a judge in chambers and this is under the Insurance (Amdt.) Bill. This was in respect of the new section 65 and this is under clause 8 of the Insurance (Amdt.) Bill.

Firstly, I want to say that we would be circulating an amendment to comply with a suggestion made by Sen. Ramkhelawan, and that would be—the clause currently reads that the inspector if he reasonably believes that a registrant is doing certain things, and Sen. Ramkhelawan had suggested that the inspector should act after having consulted with the Governor of the Central Bank. Therefore, an amendment would be circulated to include that provision.

The issue had also been raised by Sen. Mark in terms of section 65(1)(a), that any course of conduct is considered too wide, but I would just like to draw reference to the fact that any course of conduct is qualified by “that is an unsafe and unsound practice”. And the terminology “unsafe and unsound practice” is defined in section 65(2), using terminology that is quite consistent with industry norms and industry practice.

Further, Mr. President, the point was made that this is retroactive legislation and I just want to correct that misconception in that these provisions will only take effect after these Bills are passed by the requisite majority in both Houses and assented to by the President of the Republic. In any event, when legislation seeks to create new offences, such legislation does not affect actions which would have taken place before those new offences would have taken place, so that this is not at all retroactive legislation.

As far as also clause 8, where Sen. Mark had called for there to be an application before a judge in chambers, I would just like to say that since the introduction of the civil proceeding rules, there is no longer the concept of a judge in chambers. And, additionally—and this point was also dealt with by Sen. Seetahal SC—an ex parte injunction is really dealt with in cases of urgency and where one needs to be expedient, and there is sufficient protection even when it is ex parte, under the current rules for a judge to say, “bring the other side” and to proceed inter partes. So, I think there is sufficient protection for parties when such an application is made.

I just want to end on the note that when we look at some of our local philosophers, and I like to call the calypsonian such, there is a current calypso by a young woman by the name of Augusta called “Our Nation”. And I just want to—in these times when people may want to panic and where we want to build

confidence recognizing that confidence is the bedrock of everything—refer us to her calypso, “Our Nation” and the chorus which says:

“Red, black and white, don’t ever give up.

We gonna win, we gonna win this fight.

Red, black and white don’t ever give up.

One nation, one people, one culture, twin island in the sun.

Stop the fighting, let us unite.”

And I call upon all of us to support these two measures.

I thank you, Mr. President.

Sen. Gail Merhair: Thank you, Mr. President, for allowing me to contribute on these two Bills: the Central Bank (Amdt.) Bill and the Insurance (Amdt.) Bill. After all my distinguished colleagues on the Independent Bench spoke, I feel that I am winding up on the Bill—

Sen. Browne: Good, go ahead.

Sen. G. Merhair:—but I can assure you we did not engage in any collaboration of thought, although some of the sentiments might be the same.

Firstly, I would like to commend all parties who have come together to deal with this challenging financial situation. I think the Government needs to be commended for stepping up to the plate and coming forward. I think Mr. Lawrence Duprey, being a prominent businessman for so long in Trinidad and Tobago and having to deal with an issue which he was not able to handle, I think it would only be in dire straits that he would go seeking assistance from the Central Bank and the Government of Trinidad and Tobago. I think he must be commended, because he would have known the enormity of the situation at hand and he in fact did it in the best interest of the people of Trinidad and Tobago, his depositors and shareholders.

I think the Governor of the Central Bank, Mr. Ewart Williams, needs also, especially, to be commended because I felt that his focus on his comments was very clear, concise and to the point and he did not sugar-coat his comments.

The financial sector in Trinidad and Tobago as with any other country is the rock on which great economies are built. It is what makes us resilient and strong; what we need now is a swift and decisive action to bring a solution to this crisis.

Central Bank (Amdt.) Bill
[SEN. MERHAIR]

Friday, February 06, 2009

Now, I have heard a number of Members in this honourable Senate as well as in the other place, speak about bail out and buyout and all sorts of things. I would like to perhaps lend some assistance by quoting from Denise Lones on an article, “Current Economic Crisis Bailout or Buyout” in which she defined and I quote:

“A bail out is when you give a corporation money while forgiving their debt. A buyout is when you come in to save the day—but there is an asset to be traded.”

So, in my opinion, I think this is a buyout. It is what the government of the United Kingdom has done for banks, because I think in the interest of the taxpayers dollars a buyout is more prudent at this time than a bail out. It, however, pains me as a citizen of Trinidad and Tobago to witness the self-advanced statements that have been made by persons in the public domain. This issue as far as I am concerned is not one that is a political one and we should not sacrifice the efforts that people have made with their savings and to place them in financial institutions, people’s job security, and the manner in which some persons try to destabilize the economy in the name of self.

I think the time for argument from political principle is over; we are dealing with Trinidad and Tobago here. The blame that I have been hearing here and as well in the other place; if we are to lay blame then it has to be shared equally, because I think that this problem existed for about 20 years, all the previous administrations, the Central Bank, as well as the regulators, past and present, have to share some delinquency of not passing the proper legislation. So if blame has to be laid then it has to be laid at everybody’s feet and not just certain individuals. Also, this situation did not happen overnight. Many financial institutions saw some financial institutions being able to give large interest rates. What was going on here? Did anybody not notice why some were giving interest rates so much larger than others? Was it not possibly that these persons wanted to make themselves liquid, to expand their empire? Why did someone not come forward and say something?

The persons who regulate this industry must have seen the signs and in future I think we need to be more proactive than reactive. This situation definitely could have been avoided. Now, I do not want to be a preacher of doom and gloom, but I am going to support this legislation because I have looked carefully at some of the consequences that might occur if this legislation is not passed. Approximately 100 CIB workers—which is Clico Investment Bank workers—were asked to wind up operations on Monday and they were given one month’s salary and they were asked to reapply for their jobs. That is what happened on Monday of this week.

The reality is, and I am certain about it, that no underwriting took place in any of Clico's offices; no policies were underwritten effective Monday because of a lack of confidence in what transpired. Clico has approximately 500 sales advisors and agents and their jobs would have been in limbo, because, as a trained marketer, customers would have of course been, apprehensive to deal with Clico causing damages that have come under scrutiny or suspicion by the general public.

Do you know what this would probably mean? This would probably mean job losses. What about the administrative staff in all these offices? What will happen to them? Then, by extension, there is also going to be a cut in retail sales, of course that is going to go down. What about the persons who are financially trained? Can the financial sector absorb these persons or would you find that these trained financial persons now have to compete with different people in the sector for jobs? We may very well have people being left behind in certain sectors because they are no longer employable. What is happening now is causing a lot of stress and worry to the people of Trinidad and Tobago.

It has also been reported that there are long lines in most banking institutions. What does that mean? We are seeing moneys moving from one financial institution to another, people are moving things around. What is the consequence of this? What is happening is that some institutions will become more liquid than others and it is from my understanding that the deposit rates of interest have now gone down in some institutions because of this activity. Because some institutions have now become more liquid than others and that does not augur well for people in Trinidad and Tobago, because people of course want to get the most money that they can from the moneys that they have saved.

We have also had to look at people's life policies, annuities and shares that they have. A number of business people and a number of persons who needed a loan to buy a house, or a vehicle, or to expand their business have in fact used these Clico shares, policies and annuities as collateral. What does that mean? They are very fearful that these things are going to be called in by the financial institutions if they are not worth anything. So, as a result now this could have a crippling effect on the business sector and by extension Trinidad and Tobago.

12.20 a.m.

The uncertainty of this situation can also affect foreign investors, and I recall that the hon. Minister of Energy and Energy Industries, hon. Conrad Enill, made the point of what our rating is on the international market—I have been told by

Central Bank (Amdt.) Bill
[SEN. MERHAIR]

Friday, February 06, 2009

some of my business colleagues, that some businesses abroad are now asking for cash instead of giving some leeway in terms of a 30-day or 45-day line of credit—because they think the economy or the sector is not strong and that is not what we want at all. We definitely do not want that.

My recommendations—because I am quite certain that what has been happening is that there is some element of lack of trust that is coming out from the people at the ground level, the business people and I think this needs to be restored. It is my hope that by passing this legislation here this morning that that confidence, trust and integrity in the financial sector will be restored and I would humbly like to make some recommendations.

I think that a comprehensive audit needs to be done immediately by the Government which will bring some essence of accountability and transparency into what is going on. I think that the Government needs to select a board of directors and other Government appointees who are not perceived to be political. They need to be independent persons who not only have the skills to move these companies forward, but to restore faith, trust and confidence in our financial sector.

We also need to educate and sensitize our citizens as to what has taken place. Let them know that their money is safe. I think a lack of understanding and knowledge has led to a great deal of ignorance and panic in some of the sectors in Trinidad and Tobago. I would also like to suggest and I know it is happening in other parts of the world, that we have some sort of economic forum taking place in Trinidad and Tobago of approximately five persons, initially. It could be like an economic think-tank making some suggestions on policies and measures to assist, and perhaps protect Trinidad and Tobago from the global financial crisis that is impending. This group of course, after it meets initially and comes up with some sort of terms of reference, needs to be expanded to include the trade union movement, members of the business sector, social sectors, non-governmental organizations, as well as the financial sectors.

We also need to use the information derived from this, to chart a way forward in terms of our fiscal policies. And what is even more important, is that we need to update the necessary legislation that will provide the shield to protect the depositors, policyholders, shareholders, credit union societies, pension plans, annuities, merchant banks, what have you; we need to put legislation in place.

We also need to put legislation in place to deal with bankruptcy laws and monopolistic situations. I think this will strengthen our financial sector, as well as prepare us for that lovely building that we see downtown, the International

Financial Centre and it just begs the question and after what is happening here—are we ready? Are we ready for an International Financial Centre if we do not have legislation in place? This could happen to us again, and we want to make sure that it does not. I am also looking at the Deposit Insurance Corporation; do we need to raise that money? I know it was asked before.

I read a piece of literature from one of the local commercial banks and it said \$75,000. Because Trinidad and Tobago is so buoyant, so wealthy and doing so well, what we find is, a lot of people from all different sectors of the classes have more than \$75,000. What do they do? A lot of people are asking, so if I have \$300,000, what do I do with it? People are advising them that in order to protect their interest, they need to put their wife's, husband's or children's name and they need to split it up in different banks. People want to have moneys for their medical, for their children, for their children's education and we need to let them know their moneys are protected. I think this will bring back confidence in the sector.

Mr. President, I support the legislation. I think in times of crisis, we need to stand united as Trinbagonians because united we will stand and divided we will fall, and we cannot fall because our country must be placed first. As quoted in the *Business Express* of February 04, 2009 and I quote:

"Everyone has to come on board when the time comes to make tough decisions because if Trinidad and Tobago collapses, we all will collapse."

Trust and confidence, I reiterate is what is needed, and citizens are looking to Members of the honourable Senate to provide that solution. Let us move forward and in the interest of the people, to stabilize the situation, we not only need to do it right, but we also need to get it right.

Mr. President, I close by quoting *Friday Times* in an article, "Buy out vs bail out", published on January 24, 2009 and it is by a gentleman called Rahman Alyan and the last paragraph reads:

"We should stop expecting handouts and start working to make our country stronger. Why do we always expect the Government to step in and save us? Risks are inherent in doing business—as the merchants of the Gulf we have long known that"—for a very long time. "Now is the time to remember the lessons we learned from history and apply them to build a better future."

As I close, Mr. President, I thank you for giving me this opportunity at this time of the morning and I thank the honourable Senate for listening to me. [*Desk thumping*]

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Thank you, Mr. Speaker. I would like to thank all Senators who contributed to this debate. For those on my side and the Independents who supported us and elucidated some of the arguments, for the enlightenments and questions which came from the other side will serve to dispel doubts, rumours which may have existed in the minds of the public.

First of all, since I think many of the speakers started off with a certain element of confession, I think I must at this stage confess my own involvement. My employment history spans all of the institutions which are covered or some of the institutions which are covered in the Memorandum of Understanding. I was employed at Republic Bank as was my colleague, Sen. Subhas Ramkhelawan. In fact, I think the current managing director succeeded me as financial controller, and Subhas Ramkhelawan succeeded him as financial controller. Also, when I left Republic Bank, went to, and started up at Clico Investment Bank which features figures prominently in the Memorandum of Understanding.

I left CIB in 1993, after three years and I went to run a commercial bank which at the time was technically bankrupt and I spent the next 10 years turning that institution around. That institution is known as Caribbean Commercial Bank and was a member of the CL Financial Group. At today's date, I have no deposits in CIB or Clico, but I do have two pension annuity contracts as a result of my employment with Clico. There are no loans or deposits, but I do have loans and deposits with Republic Bank and I am a shareholder of Republic Bank. Having said that, I am not a significant shareholder, and I have no shares in CL Financial. I say that, if only to demonstrate the point that was made so clearly and so vividly by Sen. Ramkhelawan; that the market is indeed small, and also that the legislation and the changes that we wrote in 1971, in order to deepen the domestication of financial assets, and in fact, to attempt to marry what was a mismatch between demand and supply in the financial services marketplace, that may have created some difficulties.

In a small market, it is more than likely that we will have some level of concentration of assets, and some level of familiarity with some of the organizations of which we now speak, and the level of concentration is a specific issue, which of course has been brought to bear and is totally exposed in the circumstances in this matter.

I want to deal specifically with the issue of the Memorandum of Understanding. The Bills before us today are not pursuant to, or directly related with the Memorandum of Understanding. They are required in their own right to

give the Central Bank greater freedom, greater power and powers of action than presently exist, and that is their purpose; to facilitate with the Memorandum of Understanding. In fact, many of the contributions today, dealt with the issue of the lack of information, the issue of whether it is a rescue, whether it is a bail out, and I tried in an intervention with Sen. Ramkhelawan to indicate that the Bills before us are not about a rescue package. That is why they have no dollar value in them because quite frankly, the dollar value at this stage of the game is not known. We may have some idea of it, but you will not know until you have full control and you start to do the valuations and you start measuring up what are your assets and looking at your future, in terms of what is possible and you come up with a full rescue plan, or a turnaround plan.

The Memorandum of Understanding was published to give the public, to give this honourable Senate and the House of Representatives, a full and fair view of the discussions and of the agreements which were had between the Government of Trinidad and Tobago and the entity called the CL Financial Group, and to encompass as far as it is possible in negotiations of that nature, the outline of what is possible moving forward. In other words, it is a direction; it sets out the tone for a course of action and does not limit the parties as to what could happen.

The Government has moved swiftly, decisively to intervene in the market with the instruments and the institutions that it has at present, to allow us to achieve the objectives of an orderly transfer and at the same time, a maintenance and preservation of value because that is the priority in these circumstances, if we are to ensure that there is confidence in the system. Therefore, many of the points which were raised or dealt with the issue of what is likely to happen and so on, in a sense anticipate developments which are not yet known and which have not yet been firmly articulated.

I make the point in full understanding that in the absence of information, man is a reason making machine. We see things and we make reasons to fit the facts that we see. It is not that the reasons that we address or the explanations that we give, do in fact fit the circumstances as we see them. So I would want to caution anybody to avoid these statements which have been made with respect to takeover, buyout and so on.

The purpose once again, is the preservation of value. I must make that point abundantly clear because the depositors, the policyholders and the investors have a reasonable expectation of the maintenance and preservation of value on their behalf by the Government. That is what the Memorandum of Understanding seeks to do and sets it out in general terms so that is it does not circumscribe any future

course of action. Implicit in the Memorandum of Understanding is a propensity to a market based approach. I want to say very clearly that the Government already owns a TV station and a radio station; we do not want another one.

With respect to the sale of shares of Methanol, of the continuation of the project in the AUM, with respect to Republic Bank, as far as is possible, every effort will be made to ensure continuity because we all understand that these are national assets, and these assets redound to the benefit of the people of Trinidad and Tobago. In fact, that the institution called Clico, also known as CLF, was an institution which brought us pride for its capacities and its abilities, and none of us would have liked to witness the current events. We would all have preferred if there were some other alternative.

12.35 a.m.

The action that was taken, was taken in full knowledge, and in full knowledge that the public needed to be informed, lest the rumour mill went to work. So there was disclosure, as soon as was practicable, and in the full glare of the public. I just want to make those points. So there was never any intention of taking over, of doing things surreptitiously, as has been advanced.

While we are on that point, let me make another point. I think Sen. Ramkhelawan made the point about contamination. We must remember that we have been some way along this road before. In 1986, a number of nonbank financial institutions, because that was what they were called at the time—nonbank financial intermediaries, I think, was the accepted definition; the literature has come to recognize that they all are financial services firms—were unregulated or the regulation was not put into position sufficiently early to deal with them. It was in 1986 that the Deposit Insurance Corporation was initiated, in recognition of the need that such a possibility, such an eventuality may happen again and may recur.

Those institutions were wound up, not only in Trinidad and Tobago, but across the region, because some of them had branched out and gone to other islands. The Deposit Insurance Corporation at the time would have been in deficit, actually, because it did not have all the funds necessary to pay depositors, but eventually it came into position. That protection is now at \$75,000, and all 24 finance institutions licensed under the Financial Institutions Act are members of the fund.

The members comprise commercial banks, finance houses, trust companies, merchant banks, et cetera, and the Deposit Insurance Corporation comes into position only when the financial institution closes, as having failed; in other words, there is

no capacity for rescue. Every effort is being made in the circumstances to ensure that a rescue package takes place.

Our other experience was with Workers' Bank 1989. I must disclose that I was on the committee that, in a sense, set the policy direction for the establishment of Workers' Bank 1989. We also had two other institutions that were in difficulty, and those were eventually merged into one, known as FCB in 1993. So there is some experience in terms of dealing with issues of this nature and dealing with troubled assets. That methodology is in position and, as far as possible, our actions in the future, the actions of the Central Bank, will be guided with the experiences of our past. I think I need to record those facts.

It is unlikely that the contamination that Sen. Ramkhelawan spoke about would occur. As far as is possible, troubled assets will be separated from clean or good assets, and that is one of the reasons that there has been a delay, because that process also takes some information, gleaning and also certain decisions have to be made so that we can fully establish what the numbers are. That is the process that is ongoing, and those are the negotiations taking place, as we speak.

On two other technical matters, I think the issue was raised, the distinction between a registrant and a licensee. I think that is an important distinction, because it also deals with the types of action that can be taken. The Financial Institutions Act envisages intervention action against licensees. Insurance companies are not licensees under the Act; that is one of the reasons for the attempt to define the term "registrant". A registrant really is an insurance company, very different, and the actions that were contemplated were different between them. That is the reason for the attempt to make the distinction between a licensee and a registrant.

The capital provisions are also very different between a registrant and a licensee. The level of off-site inspection is also very different, but I shall deal with that later, as we move forward.

With respect to the HCU, I think that matter has been dealt with and made quite clear by the Minister of Energy and Energy Industries and the Leader of Government Business, Sen. Enill, and was further elucidated by Sen. Annisette-George.

With respect to the role of the regulator, I think Sen. Oudit and Sen. Drayton both raised issues. Sen. Oudit was much more comprehensive in her analysis of the legislation; in particular, her references to sections 65, 66 and 67, where she raised issues as to why these items were not used and why the intervention did not take place earlier.

The question was also raised with respect to whether there were any other companies which had statutory fund deficits. In that regard, I will also like to refer to the report on insurance and pensions. This is the last one I have, which was published for the year on December 31, and there is a table, Sen. Mark, table 11(a), which sets out the statement of statutory funds, securities held in long-term business. The last column sets out those entities which are in deficit. There are actually 23 companies listed. At December 31, 2006, four were in deficit, and the largest of those amounted to a deficit of \$368 million, which was corrected. That was the largest deficit.

I might add that the Clico Insurance Limited group showed a surplus of approximately \$7 million, which as a percentage of the total declared assets in the fund of \$8 billion, amounted to a 1 per cent surplus. That was in 2006.

Why not intervene earlier? Whenever regulatory concerns arise, the regulator is required to raise issues with the company, in order to correct deficiencies and to give them time. In as much as the documents and the reports actually come six months after the end of the financial year, they are actually received quite late. That negotiation period, by the time it is finished and corrections are made, you are technically at the end of the current financial year, and we are not going to deal with the results of the current financial year until the following year, which brings us to 2008. In 2008, we are now dealing with the difficulties of 2007.

The information you referred to in the comments by Mr. Imbert, the Member for Diego Martin North/East, the Minister of Works and Transport, in the transcript for the committee stage, when we talked about knowledge as at April 2008, the Minister technically was wrong. A general circular was sent to all insurance companies seeking to clarify the provisions of Chap. 84:01, with respect to admissible assets and the definition of admissible assets; all insurance companies, not Clico alone. Several companies raised objections; one even went so far as to initiate legal action. That action was subsequently withdrawn.

Because of the changes in the definition of admissible assets, it was recognized that the definition of admissible assets needed to be clarified, and regulations have been prepared to clarify the definition, which are included in the Bill. The percentages and the amounts have not changed. The definitions that would be included in the Schedules setting out the admissible assets have been elucidated to make it pellucidly clear, so that we will not have those difficulties.

The discussions between the insurance company and the Central Bank, the regulator, tend to be complex, and in order to comply with due process, the company has to be given time to remedy the situation. So that there is a period of time in which there is discussion and action on the part of the registrant.

Why not intervene under section 65(1)? By law, insurance companies are required to submit the annual returns, and I indicated before, coming six months after the end of the financial year; so by the time you have given them time to adjust, and while you are in the discussion stage, you are into another year. That is the reality. That is one of the reasons the section that has been changed, which deals with the issue of returns, moves to quarterly returns.

Now let us compare the regulatory oversight for a commercial bank. Every week commercial banks report to the Central Bank on their primary reserves, on their secondary reserves and on the state of their capital. Annually, there is the adjustment with respect to their capital, which affects the maximum lending position during the course of the year.

In addition, commercial banks report monthly on their assets and liabilities; in fact, they also give a weekly statement of assets and liabilities. In addition to giving an analysis of their statutory provisions with respect to their primary and secondary reserves, they give a statement of assets and liabilities every week. At the end of every month, they give a detailed statement of what their assets are and their liabilities. Quarterly, they even give a further break out; that is presented in the statistical digest, which is circulated, which sets out the assets and liabilities, and gives the distribution and the breakdown of loans and liabilities of the bank. No such provision exists for the monitoring and control of insurance companies.

I want to make the point, as I did in my presentation at the start, that insurance companies are financial services firms. Financial services firms are dummy variable for another bank; that is what we mean. Essentially, and I think the point was well made by Sen. Enill, when he said that the type of business an insurance company is, particularly long-term business, is a 50-year business. Effectively we deposit on long-term life business; we give the insurance company, we pay deposits into the insurance company, by way of insurance premiums, and we do not come back for them until we are ready to retire, until the policy matures and sometimes until we die.

There is not and there has not been the capacity to obtain the detailed information on the operations of the insurance company until it is too late. That is one of the difficulties in regulation. In this regard, it may make sense to quote from *The Economist* magazine, which is a special report on the future of finance, January 24, 2009 and it reads as follows:

"Finance is the machine that governs the economy, but it is unstable and dangerous...The case for regulation, in a nutshell, is that financiers make

mistakes and everyone else has to pay for them."—And in speaking to the current crisis—"Yet the crisis has also shown that regulators are condemned to labour under many disadvantages. Some of these can be put right, but many are beyond the reach of any reform. Given the financial system's fallibility, regulation is bound to be fallible too. This has an important point. Expecting perfection of regulators undermines their authority when they fall short.

In a fight, the regulators have the legal power. But the financiers have the political power, at least when there is no financial crisis in progress. The industry stands to make or lose large sums if the rules are changed, whereas everyone else has got better things to worry about than financial regulation. The wealthy and well-connected people on Wall Street, fine citizens and generous donors, usually get their way."

12.50 a.m.

There is an instant case in Trinidad and Tobago for which Sen. Enill was pilloried. In the attempt to pass legislation to bring credit unions under the rubric of the Central Bank there were demonstrations; there was noise; there was name-calling and some people were made to apologize. I just say that by way of demonstration and elucidating that particular point.

Sen. Mark: May I seek clarification?

Sen. The Hon. M. Browne: Yes, Sir.

Sen. Mark: I just wanted to ask the hon. Minister if he could advise us, given the statement made by the Governor of the Central Bank—he said that excessive related party transactions played a very big role in the crisis that this particular company, CIB and Clico had experienced, and in section 9 of the Financial Institutions Act of 2008, the Minister is responsible for making regulations for transactions with connected parties and connected party groups. I just wanted to ask the Minister, have we been able to make these regulations or are we in the process of making these regulations, among a number of other areas that are supposed to be regulated by the Central Bank? I do not know if the Minister could give us some clarification here.

Sen. The Hon. M. Browne: I can answer that by saying that those regulations are in progress. I can tell you that in the case of Barbados, in terms of related party transactions, related party transactions are brought into the Act under section 21 of the Barbados Financial Act and, for example, it is limited to 5 per cent of your share capital. In our case, those regulations are not yet written but

they are being evaluated as we speak and the experience that we are having now will serve to inform those regulations. In fact, Sen. Oudit did make that point with respect to the AM Best Report. The AM Best Report, for example, identifies concentrations in inter-company unquoted stocks, unaudited financial statements, higher debt, and so on. I did, in fact, when I started, indicate that given the small nature of our economy and given the fact that it is a substantial, if you want, cash flow, the substantial cash flow eventually has to be invested somewhere.

Unfortunately, given the fact that we only have 35 listed companies on the stock exchange, that there is a limited ability in terms of the stock exchange, you cannot buy them all, and in many instances I think that CLF, for example, increased its shareholdings and in many instances became either the majority owner or, in fact, in other instances, the sole owner. The best example of that would have been, of course, HCL, which was a listed liability company and I think eventually was taken private.

So, in fact, the small nature of our economy does pose certain strategic difficulties and one has to temper that with a balance in terms of what is possible, because the alternative is that all those financial assets which we require for the development of the economy, in fact, the development of a capital base, are likely to move elsewhere and we would not want to cause that to happen. But I think we must now make a decision with regard to temperance and prudence and a balance of what is possible in the domestic market.

There was one other technical point and I think it was raised by Sen. Subhas Ramkhelawan with respect to motor vehicles insurance, as to why it was included in the Bill. He was saying it was possibly an error. Well it is not an error. I am sorry that he is not here. Motor vehicles are the only category of business outside of life insurance business that requires the establishment of a statutory fund and that is why it is set up that way.

I want to make it clear that the purpose of these Bills is to facilitate the ability of the Central Bank to intervene and I want to make it also clear that business is both about success as it is about failure. It is about risk as it is about reward; it is about opportunity as well as sometimes the loss of opportunity and that success is the obverse of failure. I should also like to quote from the Time Magazine of February 02, with respect to one of the world's largest financial institutions known as "Citibank."

Citibank was founded in 1812. It nearly went under in 1837 but was bailed out by the city's richest man, John Jacob Astor. It withstood easily the first post-war crisis in 1873; it joined with JP Morgan in bailing out the nearly bankrupt federal

Central Bank (Amdt.) Bill
[SEN. THE HON. M. BROWNE]

Friday, February 06, 2009

government in 1895 and soon grew to be the country's biggest bank and the company went international in 1914. After that came near disaster by lending money to Cuban planters to finance sugar. I will skip all the other near disasters that Citibank went through.

In 1990, Citibank was literally run by the federal reserve board for a period of three years and that was only announced in 1993 when it had come out of its period of control. I quote:

“What Citi's history illustrates is that there are not new dilemmas and they've never been perfectly resolved. Banks and financial systems are inherently fragile, beset by a natural tendency to careen from fear to greed and back. We're deep in the fear part of the cycle right now. So what should government do?

In the 1800s, it stood still while banks failed. That's not a real option today. The modern world simply isn't prepared to survive a financial shutdown. But handing banks cash and hoping things will (get better and will) work out is no solution either. What's needed is a new beginning: new management, new investors, new boards of directors, in some cases, new institutions. That's how Citi, and the financial system in general, returned to health in the past. And that's what the next stage of the bank bailout will have to emphasize if it's going to stand a chance of success.”

Ladies and gentlemen, this morning we are here to help this country grow, to mature and part of that maturation process is taking responsibility and taking responsibility for action in difficult times. That is what these Bills are about. It is about giving the institution the authority and the capacity to deal with the circumstances in which we find ourselves.

Therefore, I beg to move that a Bill to amendment the Central Bank, Act, Chap. 79:02 be now read a second time.

Question put and agreed to.

Bill accordingly read a second time.

Sen. Mark: Mr. President, before we go there, I think it is appropriate at this time to draw to your attention Standing Order 51(1) which we have ignored repeatedly in this Senate. Standing Order 51(1) says clearly that the Bill shall stand committed to a select committee unless by a majority vote we do otherwise. But I have noticed a practice has developed where this particular Standing Order has been ignored. So I bring it to your attention so that we can begin to practise what Standing Order 51(1) says.

Central Bank (Amdt.) Bill

Friday, February 06, 2009

Mr. President: I think when the Minister moves that we go into committee, we go into committee and that Standing Order is effectively avoided.

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Members, we have five clauses and a preamble in this Bill.

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 want to intervene here. I did, in fact, prepare some amendments here but I advised the Leader of Government Business that I will look at these amendments, because they were not sufficiently tight so I thought I should deal with them one by one as we proceed. We would like to amend this particular clause 5(b) to include after “Financial Institution Act...as it considers necessary to prevent the collapse of the institutions”, the words “inclusive of insurance companies and cooperative societies.”

I want to tell you why I am advancing this. I think it is important for us as lawmakers not to engage in legislative action that can result in the fundamental rights of citizens being trampled upon and we, in the process, legalizing unequal treatment.

I believe that citizens are entitled to equal treatment from any public authority. It is incumbent on us to ensure that in the absence of any clearly defined criteria, as it relates to the provision of financial assistance to companies, that the Government considers the inclusion of insurance companies and organizations represented by the Co-operative Societies Act.

1.05 a.m.

I want to bring to the attention of the Attorney General that the Central Bank had to pay damages in 2002, when it was taken to the Privy Council on grounds of discriminating against Gulf Insurance Company Limited. It is important that we avoid further litigation in the future on matters of unequal treatment through discrimination. I make this submission that we incorporate in this provision both insurance companies, as well as co-operative societies in an effort to ensure that there is equality of treatment.

I suspect that there we would have much litigation when this legislation becomes law. There is already a precedent where the Privy Council ruled that the Government discriminated in the case of Gulf Insurance Company Limited. The

Central Bank (Amdt.) Bill
[SEN. MARK]

Friday, February 06, 2009

Central Bank was forced to pay damages. With what is going on in this country now, I suspect that many other bodies would take action against the State. I bring it to the attention of the hon. Minister and the Attorney General so that they can think carefully about what we are being called upon to do.

This side would not be party to supporting the legalization of inequality of treatment inconsistent with the provisions of the Constitution. I am letting you know that I am asking the Government to consider it because as a lawmaker, I cannot break the law.

Sen. Browne: Mr. Chairman, we are not prepared to accept or support the recommendation and suggestion for two reasons.

In the first instance, the banks keep reserves at the financial institutions, whereas the insurance companies and the co-operative societies do not.

Later this year we expect to bring comprehensive legislation with respect to insurance companies, as well as the credit unions. We have the opportunity to treat with it under that particular rubric. We see no need to do so.

The circumstances suggested in the instant case are somewhat different from what we are dealing with here.

Sen. Mark: What are the criteria established in law for the provision of financial assistance?

Sen. Browne: In the first instance, the Deposit Insurance Corporation sets out its members. We also have prudential reserve criteria which are set out in the sense of primary reserves and secondary reserves, items which are kept at the Central Bank. The licensees pay fees whereas the registrants do not. Those are substantial differences.

Sen. Mark: I am asking in the event of a bank experiencing financial difficulties and being on the brink of collapse and you want to save it, are there clearly outlined criteria as to how the Central Bank would pursue this matter?

Sen. Browne: That is one of solvency and salvage ability. In the cases which have taken place so far, the attempt has always been made, if not to salvage the institution, certainly, to salvage the interest of the depositors, as distinct from salvaging the institution. The examples of that would be Workers Bank, Trinidad Co-operative Bank and National Commercial Bank. Those institutions did not succeed but were brought together under a separate rubric and the depositors were protected.

Sen. Mark: Finally I ask the hon. Minister if he can find some time to look at Privy Council Appeal Judgment No. 78 of 2002, involving Gulf Insurance Company Limited and the Central Bank.

Sen. Browne: We have looked at it. The circumstances are completely different from the ones that you warrant with respect to the change. From that perspective we are not prepared to accede to your request. We understand the point that you make, but we do not think that by excluding them we are being discriminatory.

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Preamble approved.

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

Senate resumed.

Bill reported, without amendment.

Question put, That the Bill be now read the third time.

The Senate divided: Ayes 24 Noes 6

AYES

Enill, Hon. C.

Annisette-George, Hon. B.

Browne, Hon. M.

Joseph, Hon. M.

Manning, Hon. H.

Piggott, Hon. A.

Narace, Hon. J.

Dick-Forde, Hon. Dr. E.

Gronlund-Nunez, Hon. T.

George, W.

Hadeed, G.

Rogers, L.

Central Bank (Amdt.) Bill

Friday, February 06, 2009

Lezama, Miss L.
Melville, Miss J.
Gayle, N.
Deosaran, Prof. R.
Seetahal SC, Miss D.
Ali, B.
Annisette, M.
Ramkhelawan, S.
Baptiste-Mc Knight, Mrs. C.
Nicholson-Alfred, Mrs. A.
Drayton, Mrs. H.
Merhair, Miss G.
NOES
Mark, W.
Nanan, Dr. A.
Charles, Dr. C.
Kernahan, Dr. J.
Rahman, M. F.
Oudit, Mrs. L.

Question agreed to.

Bill accordingly read the third time and passed.

INSURANCE (AMDT.) BILL

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, I beg to move,

That a Bill to amend the Insurance Act, Chap. 84:01 be now read a second time.

Question proposed.

Insurance (Amdt.) Bill

Friday, February 06, 2009

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

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

Sen. Seetahal SC: Mr. Chairman, I have a concern. Under (b) registrant means a person registered pursuant to section 16 of this Act. I will like to find out the difference between that and an insurer having regard to the definition of insurer in section 3 which says:

“insurer means a company registered to carry on insurance business in Trinidad and Tobago and includes an underwriter and association of underwriters..”

Section 16 says:

“Subject to section 17 a company shall be registered where the Central Bank is satisfied.”

It seems to me that if insurer is a company registered to carry on insurance business and section 16 talks about a company shall be registered in these circumstances, then what is the practical difference if any?

Sen. Bowne: The definition of registrant excludes underwriting.

Sen. Seetahal SC: There is no person under section 16 which deals with a company. There is something that is supposed to be called consistency in drafting and I do not see it here.

1.20 a.m.

Sen. Annisette-George: The point made by the hon. Senator is taken. We can propose that “registrant” means a company registered pursuant to section 16 of the Act.

Sen. Seetahal SC: How will you deal with the “insurer” point?

Sen. Annisette-George: Remember, “insurer” also includes an underwriter.

Sen. Seetahal SC: All right.

Mr. Chairman: You want to amend it.

Sen. Seetahal SC: I will leave it at that. Just clarify the word “company” to “person” and we will move on from there.

Sen. Annisette-George: “Registrant” means a company registered pursuant to section 16 of this Act.

Mr. Chairman: The question is that clause 3(b) be amended as follows:

“registrant” means a company registered pursuant to section 16 of this Act.

Question put and agreed to.

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

Clause 4.

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

Sen. Mark: Mr. Chairman, I would like to suggest that we delete “notwithstanding any other written law”. I find it a bit wide and I do not understand the objective of spanning it so wide. I would also suggest that in 4, 6A(1)(a) and (b), when we say “any information”, what are we talking about? It is too wide; it is invasive and I would like to have clarification.

The final thing I would like to have clarification on is the penultimate line in paragraph 4 6A(1). What is this local regulatory agency? Is it the Central Bank? When we talk about the foreign regulatory agency or body, are we talking about another jurisdiction? Both in terms of local and foreign, we need clarification.

Sen. Browne: Both in terms of the local and foreign regulatory agency, we speak specifically with respect to SEC and DIC. Those are the local regulatory agencies. With respect to the foreign regulatory agencies, we were talking about the counterpart agencies involved in the business of regulating the insurance companies. Those would be official regulatory agencies.

That is a common provision. As I indicated in response to one of the questions during the course of the debate, under the Balla Court, for example, the provisions allow for sharing of information, precisely because of globalization and the fact that branches of companies may exist in other territories; that the parent company may have given a guarantee so that the company or the branch in another jurisdiction may require information from the domestic regulator and we would not be able to do so. It is to provide for information sharing which allows no regulatory arbitrage.

Sen. Mark: Why “any information”? Why not remove the word “any” and leave it as "information"? When we say "any", it gives an uncomfortable feeling in terms of the legislation.

Sen. Annisette-George: I thought that the objection was that it was too wide and, therefore, it was qualified by the terms regarding the business or affairs of the registrar.

Sen. Mark: You said “business or affairs”. What are we after? Is that not very broad?

Sen. Annisette-George: Regarding the type of business that they do.

Sen. Mark: What are the “affairs”?

Sen. Annisette-George: Just another terminology for business.

Sen. Mark: It is being used interchangeably?

Sen. Annisette-George: I think it can be, but you may want to confine that to the actual operations of the particular entity. Affairs would be a somewhat wider word.

Sen. Seetahal SC: You usually use it to make sure you cover everything. It is a wider word.

Sen. Mark: I find that this question about the provision of information to a third party impinges on confidentiality between client and company and I find it is an invasion of one's privacy. I find it repugnant and would like the Government to try to provide some kind of qualification here. It is too broad.

Sen. Annisette-George: That is why the provision starts “Notwithstanding any other written law” because of the very point made by the hon. Senator with respect to confidentiality and the fiduciary relationship. We pointed out somewhere in the contributions that in one particular section, 56(1), of the Central Bank Act, it is written “any other written law” as an all-encumbrancing term to cover any other statutory provision that deals with confidentiality and secrecy as far as the point with respect to the invasion of privacy.

The point has been made repeatedly that rights are not absolute. There is a balancing act and this is a question of good regulatory practice, protecting investors and policyholders as against the right to privacy. We have also covered the inconsistency with the Constitution by having the preamble and getting the particular type of majority that is required by section 13 of the Constitution.

Sen. Mark: I still find it broad, but if Government wishes to have its way, it can go. I would not hold back the proceedings.

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Sen. Seetahal SC: Mr. Chairman, in section 37(4) and (5) of the parent Act, there are references to the company carrying on long-term insurance business placing in trust assets and every company carrying on motor vehicle insurance business. Subsection 37(3) of the parent Act says:

“The fund referred to in subsection (1) shall be established and maintained—

(a) in the manner set out in subsections (4), (5) and (6);”

If (4) and (5) already deal with the fund, what is the point of (7), because (7) is saying:

“In addition to the requirements set out in subsection (6), every company registered to carry on long term insurance business or motor vehicle insurance business... shall place assets in the statutory fund.”

If this whole thing is the statutory fund, what is this about? Is there an additional fund?

Do you follow my point? Three says that the fund referred to is maintained in the manner for subsections (4), (5) and (6). Then you create a subsection (7) to say the assets must be placed in a fund. That is my first question.

The second question is: If you are including a subsection (7), should you not say in 3(a) that the fund referred to in subsection (1) shall be established and maintained in (4), (5), (6) and (7)? That means you ought to amend that as well.

I have a third question. We just dealt with “insurer” as against “registrant”, but in your definition, you talk about “every company registered to carry on long-term insurance” et cetera. Should that not be every insurer? If you read your clause 7 and you cross-check it; clause 7 is 61A which is referred to in clause 5. Are you with me? The second to last line on that page talks about 61A and, if you look at 61A, on the next page, it talks about “every insurer”. Is that talking about references to quarterly returns under that section? It is either you mean “every insurer” or you do not. Section 61A will have no reference to this unless you are talking about insurers.

Sen. Annisette-George: Maybe we should take them one at a time.

It is the same statutory fund; it is not more than one fund. It is how you contribute or deposit in the fund. Under subsections (4) and (5), you do it annually and against your balance sheet; and the new subsection (7) places an additional responsibility for contributing to the fund, so you do it quarterly.

Sen. Seetahal SC: You are talking about regularity. I am talking about the word. Subsection (7) says “shall place assets in the statutory fund”. Subsections (4) and (5) talk about “shall place assets in trust in Trinidad and Tobago”. That is the difference.

Sen. Annisette-George: You are talking about the manner in which—

Sen. Seetahal SC: I suggest that there is a difference between trust and the statutory fund. Whereas in the Act, by its own definition, it says, “the manner”, if you look at (3):

“The fund referred to in subsection (1) shall be established and maintained in the manner set out in (4), (5) and (6).

And the manner set out there refers to a trust. My point is that you have brought in a new (7) which says that you are placing money in the statutory fund as if this is a different thing when the legislation contradicts that.

Sen. Annisette-George: We are putting it to different capacities.

Sen. Seetahal SC: I am saying that you appear to create deposits in a statutory fund when, if you read the parent Act, it says that the statutory fund shall be maintained in the manner in (4) and (5) and the manner in (4) and (5) talks about placing it in a trust. The trust is the statutory fund, but you have created a new (7) which talks about “shall place the assets in a statutory fund”, so anybody reading will say that the trust is not the fund, which does not make sense. You will have to go back to the words “in a trust”, just like in (4) and (5)—“in trust in Trinidad and Tobago”, and continue.

Sen. Browne: I guess “in trust” really refers to the methodology.

Sen. Seetahal SC: I am saying that your introduction with statutory fund here is redundant because (3) says that the statutory fund is the trust. I do not know if there is some reason that I cannot think of. All I am saying is that (7) should say “shall place assets in trust in Trinidad and Tobago”.

Sen. Annisette-George: Could we ask that consideration be stood down to work out terminology.

Sen. Mark : Where policyholders' interests are involved and assets placed in the statutory fund, where there is a dereliction of duty on the part of the authorities to ensure that the law is enforced as we are outlining here, and an insurance company is in breach of the law and somebody is injured who has a car but because of the delinquency on the part of the authorities this particular company is unable to service my policy—you know that has taken place over and over in our country—what penalties or sanctions will you impose on the authority?

1.35 a.m.

In other words, if someone is injured in an accident and he has a policy and because of dereliction of duty by the authorities, he cannot claim because this particular agency or company is semi-bankrupt but continued to operate, because the authorities have not taken action to bring this company either to book, wind up, liquidate it and let the country know that this particular organization is a delinquent. In the meantime somebody is injured, who is going to compensate that person? Is it the State that will take responsibility for that? I am asking hypothetically: How do we impose sanctions and penalties on delinquency, as it relates to the authority in not enforcing the legislation so that people can have justice?

Sen. Annisette-George: Are you talking about penalties or compensation?

Sen. Mark: First of all penalties for the delinquent authorities and how could the particular policyholder be compensated by the authorities? Somebody has to compensate that individual, because of the delinquency on the part of the authorities. This is happening here on a regular basis, as you know. Now that we are passing very draconian legislation, we want to ensure that the policyholders have some rights. How do we deal with the rights of the policyholder when the authority is delinquent in carrying out its responsibility?

Sen. Annisette-George: There is no consideration of that in the amendments that we have here. As we have explained before, the amendments we are doing here are what we consider necessary in the circumstances and a total overhaul of the Insurance Act is intended to take place in the not too distant future and these comments would be taken into account.

Mr. Chairman: Have you settled your issue on clause 5, or should we stand it down?

Sen. Browne: Yes, we were deleting “the statutory fund” and saying in its place “assets in trust in Trinidad and Tobago”. I do not know if that would satisfy Sen. Seetahal.

Sen Seetahal SC: Satisfy me? It is just to make sense of the legislation. I do not have any particular desire to be satisfied at this time of the morning. I want you to get it clear, since we have stayed here so late.

Sen. Dr. Nanan: With respect to the assets as stated here, that would be following the Schedule of the Finance—you would be laying it out now with respect to—

Sen. Browne: That is understood, allowable assets.

Mr. Chairman: Delete the words “statutory fund” and insert “trust in Trinidad and Tobago”.

Sen Seetahal SC: That is one thing. My second concern is that I was asking if section 61A is being referred to. New section 61A talks about insurers. Do we mean in this section and subsection (7), insurer? We do not. Then I think the requirement under section 61A—how can it cross—

Sen. Annisette-George: No, section 61A means all insurers do the quarterly returns. “Insurers” is a more generic term. But section 37 excludes underwriters and it only deals with people who do long-term in motor vehicles.

Sen Seetahal SC: In any event, even though it is not only insurers’ rights; I wanted to get it clear that you knew.

Sen. Annisette-George: No, it is the other way around. Section 61A means all insurers. It means general or whatever.

Sen Seetahal SC: So, it would apply to clause 7 anyway.

Sen. Annisette-George: Yes.

Sen Seetahal SC: I get that, thanks. Finally, section 37(3)(a), should you not be amending it to say clause 7 as well?

Sen. Annisette-George: Except for the fact that we started with “In addition to...” I felt if we put in subsection (7) in subsection (3), then we would not start with “In addition to the requirements...”

Sen Seetahal SC: I think it should still be included just out of an abundance of caution. I suppose it does not make much of a difference if you are going to amend the Act later on.

Sen. Dr. Nanan: I humbly suggest: “shall place assets in the statutory fund” as stated in the Schedule.

Sen. Browne: We would stand it down and come back to it.

Clause 5 deferred.

Clause 6.

Question proposed, That clause 6 stand part of the Bill.

Sen. Mark: Mr. Chairman, may I suggest that, in line two of clause 6: “or any designated member of staff of the Central Bank”. As we proceed further into this particular measure, you will see the draconian measures that will infringe on the rights of citizens and particularly business people in a way never seen before. Therefore, I would like to suggest that from this particular clause 6 subsection (1) that a rank be accorded to this so-called designated officer. I do not believe, given the draconian measures that are being proposed in this legislation, that any ordinary citizen working with the bank should be allowed access to a business place. That person should be holding a particular office or a particular rank in the office of the Central Bank, rather than simply: “any designated officer”. I find that is going too far. I would like the Minister to consider identifying somebody of a particular rank, in order to deal with this matter.

Sen. Browne: In response to that, Mr. Chairman, there are two issues. Firstly, identifying a particular rank also stymies the organization, given the fact that from time to time organization changes may take place. If we were to designate a rank and there are changes in the designations, we then have to come back and change the legislation because of internal changes in the organization.

Secondly, I think there is a standard presumption that where management must exercise a right of this nature, that there is a certain element of reasonableness. In other words, if as an inspector, you are requiring somebody to go to handle delegated information, you do not send the janitor to do that. You are expected to send somebody of a certain level and competence to be able to do so and it is not necessary for it to be spelt out in law, because there is a reasonable presumption that the institution should do that.

Sen. Mark: The Minister has spoken, but I still believe that there should be some qualification, but if the Government wants to go that route they can go.

Let me go to another point. I do not believe that any designated officer could enter. They must enter with the consent of the registrant. I do not believe that—we still have the rule of law in this country—somebody could just barge in your business place without your consent. You need to have consent to come in there.

As a first level of entry—because they are becoming more draconian and more invasive as we go further into this legislation—there ought to be a qualification. That particular designated officer, whom I object to, may, with the consent of the registrant, enter into the premises. You need consent. You cannot break down people’s door and just barge in people’s place. It is a business place. If you are coming into my business place or any business place, you need my consent. It is only if I am resisting, then you could take another stage. Do not come and tell me the first stage. You are going into more draconian measures, which I would object to as we go further.

At this stage I would like to propose an amendment. I am proposing after the word “may”, “with the consent of the registrant”. Those are our words and we would like those to be put to the Senate, because we do not believe that people must have the authority to barge in a business place just so.

Sen. Seetahal SC: If we are going to include that, then we might as well not have the section, because if somebody consents you do not need the law. That is the purpose of the law; envisaging that someone would not consent. There would be no requirement for it otherwise.

Sen. Ramkhelawan: I agree with Sen. Seetahal SC, in that the whole purpose of this is to ensure that somebody does not stop you at the door. The idea is that if you want to enter the premises for information and somebody has something to hide, then they would not give you their consent. That would defeat the whole purpose. I ask Sen. Mark to reconsider, because it defeats the idea.

Sen. Mark: If Sen. Ramkhelawan wants that; that is his business. I am not in support of this. My duty is to protect the rights of citizens. In this instance I am going with my amendment, who want to vote could. That does not matter.

Mr. Chairman: Put the question, it would settle it.

After the word “may” in 50A(1), insert the words “with the consent of the registrant.”

Question, on amendment, put.

The Committee divided: Ayes 6 Noes 24

AYES

Mark, W.

Nanan, Dr. A.

Insurance (Amdt.) Bill

Friday, February 06, 2009

Charles, Dr. C.
Kernahan, Dr. J.
Rahman, M. F.
Oudit, Mrs. L.
NOES
Browne, M.
Annisette-George, Mrs. B.
Enill, C.
Joseph, M.
Manning, Mrs. H.
Piggott, A.
Narace, J.
Dick-Forde, Dr. E.
Gronlund-Nunez, Mrs. T.
George, W.
Hadeed, G.
Rogers, L.
Lezama, Miss L.
Melville, Miss J.
Gayle. N.
Deosaran, Prof. R.
Seetahal, Miss D. SC
Ali, B.
Annisette, M.
Ramkhelawan, S.
Baptiste-McKnight, Mrs. C.
Nicholson-Alfred, Mrs. A.

Drayton, Mrs. H.

Merhair, Miss G.

Amendment negatived.

1.50 a.m.

Sen. Mark: Mr. Chairman, with respect to clause 6, I have some additional changes. I am proposing that under clause 6(2)(c) that we add after the word “urgently” the words “may apply for an order of a Judge in an *inter partes* hearing of the High Court and that Order if granted shall constitute the warrant”. That is the amendment that I am proposing.

Mr. Chairman: What is the Government’s position?

Sen. Annisette-George: Both Sen. Seetahal SC and I dealt with that matter.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

Clause 5 reintroduced.

Sen. Browne: In clause 5(4), we are deleting the words “assets in the statutory fund” and putting in the words “in trust in Trinidad and Tobago assets in the statutory fund”.

Dr. Nanan: Mr. Chairman, I have an amendment here. I was making a suggestion in accordance with the Schedule.

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Sen. Seetahal SC: In clause 7 there is no statement as to where you should submit it. It should be “Every insurer shall submit... to the Central Bank”. What it says there does not say that— “It shall submit quarterly returns in a form as specified by the Central Bank”. If you look at clause 7 it talks about submitting to the Central Bank. So, you should say that. Am I clear?

Sen. Annisette-George: The heading of that section is “documents to be furnished to the Central Bank”.

Sen. Seetahal SC: What I am saying is that if you look at 61A it is all over. I am saying that grammatically it does not state any requirement to say to whom. It says “Every insurer shall submit...to the Central Bank”.

Clause 7 ordered to stand part of the Bill.

Clause 8.

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

Sen. Browne: Mr. Chairman, I beg to move that clause 8 be amended as follows:

1. In the proposed section 65(1)(f)(ii), insert after the word “Inspector” the words “, after consultation with the Governor.”.
2. In the proposed section 65(6), delete the words “if in the opinion of the Inspector” and substitute the words “if after consultation with the Governor the Inspector is of the opinion that”.
3. In the proposed section 65(7), delete the *chapeau* and substitute the following:
 “A direction made under subsection (6), shall not be final until the period of twenty working days expires and—”.
4. In the proposed section 65(8), delete the words “If a person to whom a final direction is issued fails to comply with the said direction” and substitute the words “If a person fails to comply with a direction issued or made under subsection (5), (6) or (7) respectively,”.
5. In the proposed section 65(9), in the *chapeau*—
 - (a) insert after the words “comply with” the words “a direction issued under subsection (5), (6) or”; and
 - (b) delete the words “a final direction under subsection”.

Sen. Seetahal SC: In section 65(7), other than the French words what is the normal equivalent?

Sen. Browne: Do you mean the heading?

Sen. Seetahal SC: I am just saying to, at least, tell us. Do you think it is the heading? I did not see any heading there.

Sen. Annisette-George: It is just the late part of the clause, just before the paragraph. The main part of the clause is what is called the *chapeau*.

Sen. Seetahal SC: It is the governing part of the section?

Sen. Mark: Mr. Chairman, under clause 8, I just want to ask the hon. Minister, why the inconsistency? In clause 8 which has been taken from section 86 of the Financial Institutions Act, 2008, there is (a), (b), (c) and (d) and all has “is committing” and there is one “has violated”, but you have put in “has committed.”, so I am wondering, for instance, why not maintain the consistency in the legislation that you have taken these provisions from? Why the deviation? We passed this Act in 2008. I am just asking the hon. Minister, why the inconsistency with these provisions? While the Minister is thinking about it, clause 8(c) talks about regulations. What regulations are we talking about there?

Sen. Annisette-George: Mr. Chairman, if I could answer the first question in terms of the Bill that is before us, “has committed” means the offence is a one-off offence and it has been done already and “is committing” is a continuing offence, and “is about to be committed” is something that you see that is going to take place. That is the language we felt necessary for this piece of legislation.

Sen. Mark: All I am asking is, why the inconsistency?

Sen. Annisette George: Mr. Chairman, I do not know that is an inconsistency. It is a different piece of legislation and we have adopted a different type of language.

2.05 a.m.

Sen. Mark: As I said, I have a little reservation about it; I am not satisfied with the answer, but I am just asking, Mr. Chairman, through you, the regulations should be subject to a negative resolution of the Parliament, because if you are going to make regulations to govern the insurance industry, they must come to the Parliament either through an affirmative resolution or through a negative resolution.

Sen. Narace: Follow the Insurance Act.

Sen. Mark: No, this is for this aspect of the Insurance Act. You are not in the insurance business any longer, are you? What are you getting involved for? I am talking to the Chairman. What are these regulations? You are talking about regulations, I am not seeing them. I am simply saying if you do not have them, bring them to us later on.

Sen. Seetahal SC: Are they the regulations that were supplied to us?

Sen. Mark: No, no, that was just a change to the regulations, but it is not the regulations I am talking about.

Sen. Browne: We do intend to overhaul the Act later this year and we would deal with that in the overhaul.

Sen. Mark: You said you are going to overhaul the Act, but are you going to make regulations?

Sen. Browne: There are existing regulations.

Sen. Mark: What regulations are you referring to? Could you tell us, so we would be able to go to the law and see what regulations you are referring to?

Sen. Browne: Any regulation that is made under the Act.

Sen. Mark: These regulations are those that are in the Act, they are not new regulations. So, no new regulations are being made right now. The regulations are what have been made.

Sen. Browne: There are existing regulations and there are provisions such as exist that allow us to alter the regulations, and we are saying that we take the point and we would deal with that under the comprehensive overhaul, not now.

Sen. Mark: So, there are no regulations to come between now until the new one?

Sen. Browne: I did not say that, and I do not know that that is going to be the case. I am giving an undertaking that in the future overhaul we would bring that into consideration.

Sen. Mark: What are these regulations? Mr. Chairman, all I am asking is that if the Government has intention of making regulations, I would like to make an amendment. I am saying that these regulations should be subject to a negative resolution of Parliament. I cannot get a proper answer from the Minister.

Sen. Browne: We agree in principle with the point that is being made, and we are saying that when the overhaul of the Act is being done and brought to Parliament, we would make that a condition. We do not propose to do that at this stage.

Sen. Annisette-George: Mr. Chairman, in any event, the power to make regulations under the Act does not come from this section. So, the power to make regulations would be in accordance with the particular provision of the Act.

Sen. Mark: You cannot make regulations under this provision; that is what you are telling us?

Sen. Browne: No, not under this provision.

Sen. Annisette-George: There is a provision dealing with the power to make regulations under this Act. I believe it is section 2(1)(4), and therefore all regulations made under the Act will be made in accordance with section 2(1)(4). This does not give the power to make regulations.

Sen. Mark: So, when you say regulations made hereunder, what are you referring to?

Sen. Annisette-George: Regulations made hereunder means under the Act.

Sen. Mark: Under the Act? So, we expect you to bring regulations shortly under the Act?

Sen. Browne: They exist already.

Sen. Mark: They exist already?

Hon. Senators: Yes!

Sen. Mark: Mr. Chairman, I think they are playing games with me this morning. *[Interruption]* You are up, so let me withdraw that. All I am saying is that I am not getting a clear answer from the Minister. I find that for instance, somehow what I am asking—I am not tired; if he is tired, he is tired; I am very up, and with the citizens' interest here, and my eyes would be open. All I am asking him is to tell us, Mr. Chairman, through you—

Mr. Chairman: I followed him perfectly.

Sen. Mark: And you are happy with it?

Mr. Chairman: I do not have to be. Do you have an amendment for me to put?

Sen. Mark: I would like to put, Sir, the regulations subject to a negative resolution of the Parliament.

Mr. Chairman: Okay.

Sen. Browne: I am advised, Mr. Chairman, that the reference here to regulations means regulations made pursuant to the powers in section 2(1)(4) under the Act, and that this clause here does not give us any power to make regulations, and therefore that amendment is superfluous.

Mr. Chairman: He wants to put it anyway. Are you in subclause (c)? You want me to remove the words "made hereunder"?

Sen. Mark: No, I am saying, Mr. Chairman, that after regulations in (c), you put "subject to a negative resolution of Parliament".

Hon. Senators: Put it in (d) too.

Sen. Mark: No, that would follow.

Mr. Chairman: The question is that clause 8, amend section 65(1)(c) to insert after the word "Regulations" "subject to a negative resolution of Parliament".

Question, on amendment, put and negatived.

Sen. Mark: May I go on to (2) now on the same page? I would like the Minister to tell us what "generally accepted standards of prudent operation and conduct" really mean, because I know about the generally accepted principles of accounting, and you get in the literature exactly what those things mean. I do not know what these things mean. I would like to know if they are going to define those things, so that for instance, any businessmen who are in the insurance business, would know exactly what the standards are.

Sen. Browne: The generally accepted standards of prudent operation behaviour refer to guidance, which is provided by legal, regional or international practices. These are normally espoused and as I said, you refer to it by international accounting standards, would be an example, and other international regulatory organizations, such as the International Association of Insurance Supervisors, were issued insurance core principles, as is in accordance with those core principles, which are issued from time to time.

Sen. Mark: Mr. Chairman, through you, would it not be necessary and so on for you to put under the interpretation section exactly what you mean there, because this thing is rather vague and nebulous. You are saying one thing for the record but it is not for instance, defined in the law. Remember you are going to give the inspector certain authority and powers. So the individual who is running his operation needs to be guided as to what these standards are. We are being very unfair to those persons who are going to be affected by the law.

Sen. Browne: With respect, I think the relevant example would be the prudential criteria, which is set up by a separate set of regulations, I believe. Those regulations, for example, do not speak to the Balla Accord, they just set what the regulations are. Those regulations are generally done in accordance with

the Balla Accord, and such a cord that the Central Bank would be signatories to or agree to and would be issued by the Bank for International Settlements from time to time. It is not specifically referred to in any definition section as to what the guidance is, and in the same fashion, "generally accepted" would mean generally accepted.

Sen. Mark: So when you say generally accepted standards of prudent operation of conduct, you are saying that we are referring to essentially the generally accepted—

Mr. Chairman: I think the question is asked and answered. Do you have an amendment to put?

Sen. Mark: No, I just want to get clarification, Sir.

Mr. Chairman: He has answered it. Do you have an amendment to put?

Sen. Mark: Am, Chairman, no.

Mr. Chairman: I am the Chairman here.

Sen. Mark: I know you are the Chairman, Sir, I am not querying that.

Mr. Chairman: Do you have an amendment to put?

Sen. Mark: No, Sir. You could proceed, Sir.

Mr. Chairman: Then let us move on.

Sen. Mark: I am seeing you, Sir; do not believe I am not seeing you.

Mr. Chairman: Do you have anything else?

Sen. Mark: Yes, is this clause 8 we are continuing with, Sir? I just wanted to ask the hon. Attorney General and the Minister, particularly subsections (3) and (4), that is the bottom of page 4. The impact of these amendments, would these representations not limit the person to make representation at the end of the day? Like clauses 3 and 4 or the provisions in subsections (3) and (4)?

I am wondering, for instance, if the question of notice of the intention, would you say that the amendments that you have put forward would in fact, protect and safeguard the rights of the person, because initially, after you serve once you take action thereafter. I see that you mentioned somewhere in the amendments that you would have another serving of, or making of representation, after the expiration of the first 20 days.

Sen. Annisette-George: How these sections operate, what happens is in subsection (3), and we are talking here of section 65, the regulator will first give to the company a notice setting out the matters and the directions that they propose to issue and the time and place where the person should make representations. Therefore, if the person attends within the time then all of that is taken into account.

There is notice required to be served with these fresh directions; the person must do something within the period of time. If they do not make the recommendations within the 20 working days, then automatically on the 21st day, the inspector could make the order final.

Sen. Mark: Proceed, proceed.

Mr. Chairman: Hon. Senators, the question is that clause 8, as amended, now stand part of the Bill.

Sen. Mark: Mr. Chairman, I really thought this was clause 9, but apparently, it is numbered 9. May I just ask the Attorney General, through you, Mr. Chairman, if you would allow me—I am glad that you have the patience to allow me this morning—the fine in subsection (9), “five million dollars” or “five hundred thousand dollars for each day” and then “five million dollars and to imprisonment for five years”, I find that is a bit harsh; the sum is too huge. I am just asking if you want to reconsider the sum of \$5 million. I personally find it a bit harsh.

Sen. Browne: I could reconsider; I would reconsider it fine.

Sen. Mark: You would reconsider it, fine.

Sen. Annisette-George: Remember this is the insurance companies and these are people's funds; the same people that we want to protect.

Sen. Mark: I felt that it is a bit harsh.

Sen. Seetahal SC: It is the maximum anyway, Sen. Mark, it does not mean that they have to get it.

Question put and agreed to.

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

Clause 9 ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Sen. Browne: We have a suggested amendment in clause 10. It is in 68(2), including after the words "circumstances" the words, "including matters presented by the insurer".

Sen. Mark: I have some other proposals here, Sir. Can I make my proposal now or you have to put the amendment first? Make mine now?

Mr. Chairman: Yes.

Sen. Mark: Clause 10, new section 68, the Government is amending the Insurance Act by deleting sections 68 to 75. Now, may I bring to your attention that what the Government is doing here is removing from the hands of a high court judge to take under his judicial control any organization in the area of insurance for the purposes of, let us say, what management and winding up.

2.20 a.m.

So, it is called judicial management and that is part of the current legislation. What the Government is proposing in clause 10, is to place the power in the hands of the Executive and I find that is a most backward step. I believe that for instance, where the current law stands in terms of sections 68 to 75, a judge is in charge and a judge is able to hear the matters before him and make a judgment. But what this is doing here, as I said, is putting this power in the hands of the Executive. This is a draconian provision, it takes away judicial power when it should be increasing the intervention of the court and I believe this is a draconian measure and this is where we find it very difficult to support this entire Bill because of this particular clause.

I want to go on to tell you, Mr. Chairman, without a judicial intervention the assets would go directly to the State and to the Executive. This measure makes the Executive the judge, the jury and the executioner. We believe that this could give the Government, if it is carried out in its current form, controlling interest in the media, TV6, the *Express* and 10 radio stations and we believe that this matter ought to be taken seriously. This is not an easy provision here. In addition to that, I want to let you know that when you go to new subsection (4) of this particular clause 10, you will see where the winding-up of the insurer which is the company, is in accordance with the Companies Act.

You would know that we are seeking to protect policyholders. When you have a winding up under the Companies Act, in terms of the order of distribution of the assets, the policyholders and the annuitants would be almost last on the list of creditors who would be able to enjoy the distribution. So, on the one hand we are

Insurance (Amdt.) Bill
[SEN. MARK]

Friday, February 06, 2009

saying we want to protect the policyholders but on the other hand the Government is contradicting its very intention and we are not in support. We are violently opposed almost to this provision.

Sen. Manning: That is all right.

Sen. Mark: Sen. Manning, if you will allow me. [*Inaudible*] All right, good. Well, could you protect me, Sir? I was speaking but I am being interrupted.

Mr. Chairman: Speak to me.

Sen. Mark: Okay. So, Mr. Chairman, we are saying that this is a matter that we are very concerned with and therefore I have made our submission in terms of the danger of this provision and we are calling for the complete deletion—

Sen. Browne: All right, we hear you.

Sen. Mark: Mr. Chairman, may I continue with your protection?

Mr. Chairman: Please do.

Sen. Mark: Yes, I am suggesting, Sir, that we delete the entire clause 10 and we continue with the current arrangement that is under the Insurance Act, we retain sections 68 to 75. That is my proposal, Sir.

Sen. Browne: While we do agree—

Sen. Mark: Any rationale?

Sen. Browne: The argument that you suggested actually also serves to work against the interest of the policyholders and the interested parties, insofar as it is a very expensive process and it does not alter the order of priority that you suggest. In fact, it puts the policyholders even lower down the line of priority and in such circumstances—

Sen. Mark: No.

Sen. Browne: Yes.

Sen. Mark: Not higher?

Sen. Browne: Not higher up. It does not put them any higher up.

Sen. Mark: I thought we are protecting the policyholders?

Sen. Browne: I am saying, what you are suggesting, in fact, does not improve the position. What we are doing here improves the positions.

Sen. Mark: So when a company is winding-up and so on, the policyholder will have good benefits?

Sen. Browne: The judicial management and winding up is a much more expensive process and in so doing dilutes the funds which are available for distribution.

Sen. Mark: So, if you go the way of the Executive intervention, it will be better?

Sen. Browne: It is an independent regulator, Sir, under the heading of “suspension or winding-up.”

Sen. Mark: What is independent, the governor? Mr. Chairman, I have put my position forward and you can put my amendments, Sir.

Mr. Chairman: Okay. Your amendment is that clause 10—

Sen. Mark: Be deleted and be replaced. It is not only deleted but be replaced by sections 68 to 75 of the current Act.

Mr. Chairman: Well, we do not need to do that.

Sen. Mark: Okay, I understand you.

Mr. Chairman: Hon. Senators, the question is that clause 10 be deleted.

Question, on amendment, put and negatived.

Mr. Chairman: Hon. Senators, the question is that clause 10 be amended as follows:

“In the proposed section 68(2) insert after the word 'circumstances' the words 'including matters presented by the insurer.’”

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Clause 11 ordered to stand part of the Bill.

Preamble approved.

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

Senate resumed.

Bill reported, with amendment.

Question put, That the Bill be now read the third time.

The Senate divided. Ayes 24 Noes 6

AYES

Browne, Hon. M.

Annisette-George, Hon. B.

Enill, Hon. C.

Joseph, Hon. M.

Manning, Hon. H.

Piggott, Hon. A.

Narace, Hon. J.

Dick-Forde, Hon. Dr. E.

Gronlund-Nunez, Hon. T.

George, W.

Hadeed, G.

Rogers, L.

Lezama, Miss L.

Melville, Miss J.

Gayle, N.

Deosaran, Prof. R.

Seetahal SC, Miss D.

Ali, B.

Annisette, M.

Ramkhelawan, S.

Baptiste-Mc Knight, Mrs. C.

Nicholson-Alfred, Mrs. A.

Drayton, Mrs. H.

Insurance (Amdt.) Bill

Friday, February 06, 2009

Merhair, Miss G.

NOES

Mark, W.

Nanan, Dr. A.

Charles, Dr. C.

Kernahan, Dr. J.

Rahman, M. F.

Oudit, Mrs. L.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Thank you, Mr. President. On behalf of all of us I wish to thank all who have participated in this particular debate.

I beg to move that the Senate do now adjourn to Tuesday, February 10, 2009, at 1.30 p.m., where we would debate Bill No. 2 under Government Business; a Bill entitled an Act to Regulate Emergency Ambulance Services by the Minister of Health.

Sen. Mark: Mr. President, may I? I just wanted to remind my hon. colleague that Private Members' Day is due again in February, because it was in January, but because of the arrangement. So, I just want you to take note that we will have Private Members' business sometime before the end of this month. So, you will take note of that.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 2.31 a.m.