

SENATE

Tuesday, October 06, 2009

The Senate met at 10.30 a.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

COMMITTEE OF PRIVILEGES

(SEN. WADE MARK)

Mr. President: Hon. Senators, at the sitting of the Senate yesterday, October 05, 2009, a matter of privilege was raised on a question of Sen. Wade Mark. As indicated, I have had some time to consider the evidence that has been presented, and I do find that there is a prima facie case to be made and, therefore, I have referred the matter to the Committee of Privileges.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Venture Capital Incentive Programme for the year ended September 30, 2003. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Venture Capital Incentive Programme for the year ended September 30, 2004. [*Sen. The Hon. M. Browne*]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Venture Capital Incentive Programme for the year ended September 30, 2005. [*Sen. The Hon. M. Browne*]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Venture Capital Incentive Programme for the year ended September 30, 2006. [*Sen. The Hon. M. Browne*]

ORAL ANSWERS TO QUESTIONS

The following question stood on the Order Paper in the name of Sen. Dr. Sharon-ann Gopaul-McNicol:

Gang Violence
(Details of)

- 150. A.** With respect to gang violence in Trinidad and Tobago, could the hon. Minister of National Security provide the Senate with the details of the model being used to combat the problem; and

- B. Could the Minister also provide the Senate with any evidence of the success of the model being used in other countries, particularly in the Caribbean, Britain, United States of America and Canada?

Sen. Mark: Mr. President, we will defer that question.

Question, by leave, deferred

Adoption of Children

169. Sen. Gail Merhair asked the hon. Minister of Social Development:

Could the Minister indicate to this Senate:

- (i) The number of children who have been adopted within the last five years; and
- (ii) The number of children still cared for by the State?

The Minister in the Office of the Prime Minister (Sen. The Hon. Dr. Lenny Saith): Mr. President, in response to question 169, the number of children who have been adopted through the Adoption Unit within the last five years is 115.

Forty-six children are still cared for by the State under the Foster Care Programme implemented by the Ministry of Social Development.

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Lyndira Oudit:

Firearm User Licences (Details of)

186. Could the Minister of National Security indicate to the Senate:

- (i) the number of persons who applied for firearm user licences annually since 2002;
- (ii) the number of firearm user licences issued annually, since 2002; and
- (iii) the number of persons who are not nationals of Trinidad and Tobago who were granted firearm user licences yearly, since 2002?

Vide end of sitting for written reply.

**FINANCIAL INTELLIGENCE UNIT
OF TRINIDAD AND TOBAGO BILL**

Order for second reading read.

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

That a Bill to establish the Financial Intelligence Unit of Trinidad and Tobago, for the implementation of the anti-money laundering policies of the Financial Action Task Force, be now read a second time.

I must begin by declaring unambiguously that this Bill requires a three-fifths majority of the Senate under section 13 of the Constitution, as it is inconsistent with sections 4 and 5 of the Constitution.

Mr. President, as a result of the global and regional realities in which crime as a whole is assuming a more significant and sophisticated dimension, the Government has to respond with equal determination to combat all forms of criminal activity. The ability to conceal illicitly derived proceeds is a key element of incentive and support for such criminal activity, and is at the core of challenges facing governments everywhere and this Government in its crime fighting strategies.

Mr. President, money laundering may be defined as a process in which the illicit source of assets obtained or generated by criminal activity is concealed to obscure the link between the funds and the original criminal activity. This definition may be found in the IMF Fact Sheet which was printed in April 2008. I, therefore, emphasize that our efforts are to fight money laundering, and the reasons which underlie this Bill. It deals with more than just simply cleaning or legitimizing the proceeds derived from involvement in illegal narcotics or drug money. It extends to the proceeds of other forms of illegal activity such as corruption and tax evasion.

A financial intelligence unit can be described as an agency that receives reports of suspicious transactions or suspicious activities from financial institutions and other identified businesses, and analyses these reports and disseminates them to the appropriate law enforcement agencies.

Financial intelligence units have an active role to play in receiving and following through the dissemination of sensitive financial disclosures in relation to the proceeds derived from these criminal activities. Financial gain is also the primary objective of organized crime.

By way of background, in response to mounting concerns over money laundering, the Financial Action Task Force (FATF) was established in 1989 at the

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Paris Meeting of the G7 Finance Ministers with responsibility for examining money laundering techniques and trends, reviewing national and international efforts to combat money laundering.

In 1990, the FATF issued a report containing a set of 40 recommendations, which provided a comprehensive plan of action needed to fight against money laundering. By 2004, these recommendations had evolved into what is known as the 40 + 9 recommendations which include measures for combating terrorist financing. These recommendations were distributed yesterday in the Senate. They are already in your possession, so I would not go through those recommendations.

Specific to this regime of recommendations adopted and implemented by the FATF is the requirement in recommendations 26—32 for all countries to establish an FIU. Essential criteria have been defined in support of this recommendation. These include the following:

- (i) Countries should establish an FIU that serves as a national centre for receiving and, if permitted, requesting, analysing, and disseminating disclosures of information concerning suspected money laundering for financial activities. The FIU can be established either as an independent governmental authority or within an existing authority or authorities.
- (ii) The FIU or another competent authority should provide financial institutions and other reporting parties with guidance on the manner of reporting, including the format and procedures.
- (iii) The FIU should be authorized to obtain additional information needed from reporting parties to properly undertake its functions.
- (iv) The FIU should be authorized to disseminate financial information to domestic authorities for investigation and/or action when there are grounds to suspect money laundering.
- (v) The FIU should have sufficient operational independence and autonomy to ensure that it is free from undue influence or interference.
- (vi) The FIU should publicly release periodic reports, and such reports should include statistics, typologies and trends as well as information regarding its activities.
- (vii) A country with an FIU may apply for membership in the Egmont Group.

The Egmont Group is an informal international gathering of financial intelligence units which was formed in 1995. This group promotes and has issued

principles for information exchange between financial intelligence units for money laundering cases. It allows for enhanced operational cooperation to combat global money laundering and terrorist financing and is, therefore, a useful resource in our fight against crime. I might add that given the international nature of the activities of which we speak, it is important that there is information sharing activities to ensure that what we close off in one jurisdiction is not re-created in another. That process works two ways.

The principles that govern the information exchange process among Egmont Group members require that all information exchanged by FIUs must be subjected to strict controls and safeguards to ensure that the information is used only in an authorized manner. In particular:

- (i) Information exchanged between FIUs must be used only for the specific purpose for which the information was sought or provided.
- (ii) The requesting FIU may not transfer information shared by a disclosing FIU to a third party, nor make use of the information in an administrative, investigative, prosecutorial, or judicial purpose without the prior consent of the FIU that disclosed the information.
- (iii) All information exchanged by FIUs must be subjected to strict controls and safeguards to ensure that the information is used only in an authorized manner.

Mr. President, countries that wish to access these cooperation channels must meet certain requirements which include a robust domestic anti-money laundering system, ratification and implementation of the related international conventions and compliance with the recommendations of the FATF.

Organized crime and money laundering is a well established cross-border activity and, as such, cannot be fought solely on a domestic basis. Effective international cooperation among the relevant FIUs in various countries, for example, to cooperate to put internationally scattered pieces of suspicious activity information together, is a requirement, if the war on international organized crime is to succeed. This cooperation is necessary at all stages of the process—financial intelligence gathering, investigative and prosecution.

A highly functional FIU is critical to Trinidad and Tobago's participation in the international cooperation regime such as that established by the Egmont Group. In other words, being part of a proper international cooperation regime will help us to prevent, detect and prosecute money laundering in Trinidad and Tobago.

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This Bill seeks to establish the FIU in the Ministry of Finance. Enactment of this Bill will achieve compliance with the FATF's recommendation 26 and also provide the necessary legal framework for the administration of the Proceeds of Crime Act, which we debated and was passed yesterday, by the creation of a statutory body to undertake the functions specified in that Act.

10.45 a.m.

These functions were assigned by Cabinet and by Cabinet authority to a unit established in the Ministry of National Security. That unit, however, lacked the necessary legal authority to fully discharge the mandate of the Proceeds of Crime Act.

Furthermore, the Proceeds of Crime (Amdt.) Bill, which was passed yesterday, and which strengthens the previous Act, specifically proposes the establishment of an intelligence unit. The model adopted—and there are several, but the model we have adopted—to set up the Financial Intelligence Unit features an establishment with an administrative role that focuses on monitoring and enforcing the relevant Act and regulations relating to money laundering and terrorist financing. It is therefore supervisory in nature.

The Financial Intelligence Unit as contemplated in this Bill will not have investigative or judicial powers. Where, in the opinion of the FIU analysis of the information suggests an investigation is appropriate, the matter will be referred by the FIU to the appropriate enforcement agency. In taking this approach, we have kept separate the supervisory function, which is in essence, a financial oversight function and the law enforcement function, which will focus on investigations and determinations of financial, criminal activity.

Identification of suspicious activities can be to some extent, subjective. Regardless of how much a company's anti-money laundering and counter-terrorist financing policy may be crafted to provide guidance, it is envisaged that this separation between supervision and enforcement will engender a greater inclination to report suspicious activity and mitigate concerns that, for example, the compliance officer in a financial institution may have about falsely reporting a customer.

The FIU will be headed by a director, a deputy director, staffed with suitably qualified officers, who may be employed by appointment, by assigning, by secondment or by transfer from another ministry or statutory corporation or appointed on contract. The staffing arrangements will ensure the benefit of cross fertilization of skill sets, competencies and experience, commensurate with the highly sensitive continuum of duties and responsibilities conferred on these officials in the exercise of their powers. These powers are provided for in clauses 3 and 4 of the Bill.

Mr. President, it is to be noted that in 2007, the Counter Drug and Crime Task Force received a total of 135 Suspicious Activity Reports from the banking and financial sectors and this figure increased to 161 in 2008. It should also be noted that a typology exercise facilitated by the Regional Financial Intelligence Unit in Port of Spain, on the occasion of the May 04 to 08 Caribbean Financial Action Task Force Plenary of Senior Officials, disclosed that a disproportional volume of money laundering activities emanates from the trafficking of drugs.

Correspondingly, officials of the FIU, who would be tasked, and indeed entrusted with this very sensitive and onerous responsibility of collecting and analysing information, patterns and trends must be of the highest level of integrity. Accordingly, clauses 5 through 6 provide safeguards in relation to the identification and bona fides of FIU officers. There are attendant sanctions for any breach. Breaches of confidentiality are addressed in clauses 22 and 25 of the Bill.

Part III of the Bill deals with the functions and powers of the FIU. Clause 8 details the functions of the FIU, which will be empowered to be the primary institution for the collection, for the analysis, dissemination and exchange of financial intelligence and information amongst law enforcement authorities, financial institutions and listed businesses in Trinidad and Tobago, as well as internationally. These include the Egmont Group members and prosecutorial authorities. The unit will be further empowered to receive suspicious transactions and suspicious activities reports from financial institutions and/or listed businesses.

Clause 9 provides for the FIU to implement appropriate systems to adequately monitor the effectiveness of anti-money laundering and anti-terrorist financing activities. This clause proposes that the Bill will be responsible for implementing a monitoring system by maintaining comprehensive statistics on suspicious transactions and suspicious activities, money laundering investigations and convictions, property that is frozen, seized and confiscated, as well as international requests that have been made for mutual legal assistance and cooperation.

Clause 11 includes Trinidad and Tobago or elsewhere in recognition of the extra-territorial/jurisdictional dimension of the phenomena of money laundering and terrorist financing. Another important element of the Bill that is before this honourable Senate, is the requirement on the part of a financial institution or listed business, to seek the approval of the Director of the FIU to allow or disallow the completion of a transaction or activity that is deemed suspicious, in the context of an analysis or evaluation on the part of the FIU. In this context, clauses 14 and 27

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make specific reference to the power of the Minister of Finance to make regulations to give effect to such a development. These regulations will be subject to the negative resolution of Parliament.

The Government recognizes that Trinidad and Tobago is part of a regional, and indeed a global community with established trade links in North, Central and South America, Europe, Africa and the Far East. Clause 16 therefore seeks to ensure that countries identified by the FATF as non-compliant or not sufficiently compliant, be appropriately gazetted so that due caution may be exercised in this country's trade and investment dealings with such partners. It should be noted that there exist regulations in other jurisdictions, which require an examination of our own banking procedures and the existence of anti-money laundering guidelines. Where those guidelines do not exist or are insufficiently robust, then that country and those businesses may, for example, choose not to do business with us.

It is, therefore, imperative that at the strategic and macro levels patterns and trends be established in order to determine those areas of the financial framework that are particularly vulnerable to the laundering of money and to the financing of terrorism. Accordingly, at clause 17, the FIU will be required to report annually to the Minister on its performance, inclusive of relevant statistics. This report will be laid in Parliament. Based on the information gathered, remedial action can be taken in a timely manner by the Government through its various supervisory and regulatory authorities, inclusive of the FIU, to arrest risk-prone areas within the financial framework, while at the same time minimizing any possible adverse consequences to commercial and economic efficiencies.

Part IV of the Bill provides offences and penalties for a range of offences including: the failure of a financial institution or listed business to provide information, breach of confidentiality of information and disclosure of an investigation.

Mr. President, between 2002—2003, the International Monetary Fund (IMF) and the World Bank (WB) participated in a year-long pilot programme to conduct assessments on money laundering and terrorist financing in various countries, using the methodology developed by the Financial Action Task Force (FAFT), that is to say, the 40 + 8 recommendations. Special recommendation 9 was subsequently adopted in October 2004. The ensuing report, entitled: 12-Month Pilot Programme of Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) Assessments, the Joint Review of the pilot programme identified what have come to be regarded as the most common weaknesses of the global AML/CFT regime. Among these were: poor coordination among government agencies, especially among financial supervisors, financial investigators, the

police, public prosecutors and the public; ineffective law enforcement due to lack of skills, training or resources to investigate, prosecute, and adjudicate money laundering cases among police prosecutors or the courts.

The IMF and the World Bank also identified the inadequacy of systems and controls among financial firms to identify and report suspicious activity, or to ensure that adequate records were being maintained. Shortcomings in international cooperation due to strong secrecy provisions as well as restrictions placed on the use of information and the inability to share information, unless a criminal investigation was underway or a formal agreement was in place, were all identified as weaknesses in all systems in all countries. Trinidad and Tobago's Third Round Mutual Evaluation Report of the CFATF disclosed many of these deficiencies which have contributed to this country's lean compliance ratings. This Bill is one step in the direction of improved compliance, and also an attempt to correct some of these inefficiencies.

Government is pressing on to establish Trinidad and Tobago as an international financial centre, to serve as a regional capital market centre. It is in this context that the establishment of the Financial Intelligence Unit to give full effect to the provisions of the POCA becomes even more relevant. In addition, strengthening our system by establishing an effective financial intelligence unit, will discourage money launderers, who as we know are always on the lookout for lax and ineffective anti-money laundering regimes which then become a safe haven.

Mr. President, the enactment of an FIU is but one component of a suite of legislation that is being brought before this Senate. Amendments to the Proceeds of Crime Act (POCA)—which was passed yesterday—and introduction of Financial Obligations Regulations, 2009 are also part of Government's legislative package in this regard. Arising from increased incidence and severity of terror attacks, combating the financing of terrorism has also become an important dimension in the global anti-money laundering campaign. Government would soon introduce a subsequent piece of legislation, which is intended to criminalize the financing of terrorism, as required under the FATF 9 special recommendations—the plus 9 that I mentioned earlier. This would be achieved through appropriate amendments to the Anti-Terrorism Act, No. 26 of 2005 and was mentioned by the Minister of National Security in his presentation yesterday and in the committee stage.

Mr. President, this Bill will be a significant amendment in the criminalizing of the financing of terrorism, and is a necessary criterion for Egmont Group membership, which Government intends to pursue in the shortest possible time.

Therefore, I beg to move.

Question proposed.

11.00 a.m.

Sen. Wade Mark: Thank you very much, Mr. President. The Bill before us today deals with the establishment of the Financial Intelligence Unit of Trinidad and Tobago for the implementation of anti-money laundering policies of the Financial Action Task Force.

We would want to examine the present legislation very carefully, particularly in light of the various models that are available and to advance our view as to the model that we would like to suggest that the Government consider in seeking to ensure that there are proper checks and balances so that the rights, freedoms and liberties of the citizens are not unnecessarily undermined and compromised.

There are several areas of concern to us in the current legislation which we intend to also advance and to make the necessary and relevant recommendations and amendments. But before doing so, Mr. President, I just want to let you know that when I looked at the status of the Egmont Group dated June 2009 we saw Anguilla being a member of this informal group; we saw Antigua and Barbuda; there is Aruba; there is Bahamas; Barbados; Belize; Bermuda; we have the Cayman Islands; Dominica; Grenada; we also have St. Kitts and Nevis; St. Lucia; St. Vincent and the Grenadines and even Venezuela.

Out of 116 countries whose financial intelligence units are now part of the Egmont Group, Trinidad and Tobago the richest country in the region, the country that is out there giving leadership to the region is nowhere part of this particular international grouping and we are now about to do it at the 11th hour. It is a shame and it is a disgrace that this country could allow Anguilla; Grenada; St. Vincent; St Lucia; Barbados; Bahamas and Belize to become members of this group to deal with anti-money laundering legislation, anti-money laundering activities and we are now making efforts to get there.

I just want to refer to the United States Narcotics Control Strategy Report of 2009 and I want to share with you, the weaknesses of this FIU that have been lodged in the Ministry of National Security. We have some concerns about putting that in the office of the Minister of Finance. We would like to put that in the office of the Attorney General and we would indicate to you why we want to do that. [*Desk thumping*]

Mr. President, could you imagine that this Financial Intelligence Unit has been in existence for several years. It has been lodged in the Ministry of National Security. Hear what the United States of America has to say about Trinidad and Tobago as it relates to the FIU. This is the Narcotics Control Strategy Report and

they are dealing with reports as they relate to Trinidad and Tobago and I quote from page 43 of this report. It says:

“For the period January to September 2008 the Government of Trinidad and Tobago officials reported 417 financial investigations stemming from 13,632 suspicious activity reports.”

So between January to September, nine months, there were close to 14,000 suspicious activity reports submitted by this particular body to the relevant authorities.

The Government of Trinidad and Tobago received 20 foreign intelligence requests and 101 requests from local institutions. Full year data is not available. Enforcement of suspicious activity reporting remains weak. So we have 14,000 suspicious reports on activities, but the mechanism for enforcement and follow through, we are being told by the United States, is extremely weak in Trinidad and Tobago. It goes on:

“Most designated institutions have never submitted a report to the authorities, either through lack of suspicious activity or lack of awareness of the requirement.”

It goes on:

“In 2004 the Government of Trinidad and Tobago established a Tax Fraud Investigations Unit within its Inland Revenue Division to address tax evasion and non-reported or under-reported income that may be derived from money laundering activities.”

I would have thought in light of this report the hon. Minister in the Ministry of Finance would have told this Parliament what is the status of tax evasion. How many people have under-reported or not reported, as yet, their incomes to the Inland Revenue Department? What is happening to the work of the Tax Fraud Investigations Unit? So, we would have known that the Government has done work, there is activity on, but here it is, the United States Narcotics Control Strategy Report is claiming that enforcement of suspicious activity reporting remains extremely weak in this country.

I want to remind the hon. Minister that in 2005 in this country there were two huge drug busts; one in Central Trinidad to the value of \$500 million and the other one at Monos Island valued at over \$700 million, and those were just two that they found and we were able to capture and hold. What about all that is coming through and we do not have any seizure of the drugs, and when I spoke

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about the question yesterday it was in that context because it is being estimated by some that it is about 20 per cent of the country's GDP—money laundering, eh.

I want to share with you, Mr. President, and this honourable Senate, another paragraph in this same report:

“The major concern in Trinidad and Tobago is a lack of comprehensive Anti-Money Laundering and Counter Terrorist Financing Legislation including necessary enforcement regulations.”

The report goes on to say that:

“The existing laws are not in accordance with international standards and are ineffective in that there have been no anti-money laundering convictions in six years.”

That is what the United States is saying, and currently they talk about the legislation that is before us. They went on to indicate that:

“The Government of Trinidad and Tobago should ensure a comprehensive anti-money laundering combating terrorism financing framework compliant with the FATF recommendations is in place before launching its proposed international financial centre. Trinidad and Tobago should move expeditiously to become a party to the United Nations Convention for the suppression of the financing of terrorism.”

I would like the hon. Minister and the Attorney General, when they are speaking to say, when does this Government intend to sign, to ratify and to effect the domestic legislation, the UN Convention for the Suppression of the Financing of Terrorism. This is a convention that has been passed and the FATF is saying that we must sign and now the United States is also calling on the Government of Trinidad and Tobago to sign, ratify and translate into legislative measures the provisions contained in the UN Convention for the Suppression of the Financing of Terrorism.

Sen. Jeremie SC: Sen. Mark, perhaps you are a little out of date. My understanding is that the convention was in fact signed within the last two months—that is the Ministry of Foreign Affairs has done so. The legislation to give effect to it is to come before this Senate soon.

Sen. W. Mark: Well, I am happy to know that it has been signed, because it appears that only when this report came out in February 2009 and it made the global circle that this Government was forced, through embarrassment, to run to the United Nations and have it signed two months ago.

So it is only when this Government is embarrassed internationally by a report like this that the Government is forced to take action to fall in line. I find it is a disgrace that the Government has to be told by international agencies how they must conduct their business, when we should have that right to do so in this country. As I said yesterday, they were brought kicking and screaming, virtually, to the table in order to put those things in place; otherwise we would not have been here today. If Trinidad and Tobago was not threatened with being blacklisted by Friday of this week we would not have been here dealing with these pieces of legislation.

Sen. Piggott: And you are still not supporting the Bill.

Sen. Rahman: We abstained.

Sen. Piggott: But you did not support the one yesterday.

Sen. W. Mark: Mr. President, let me continue. [*Interruption*] I want to go to an article on this FIU dealing—it was in the *Express* of Thursday, October 01, 2009 on page 3 and the headline was “Karen: Govt going after ‘shirt and tie’ criminals”. Is that true? This was astonishing news to me. It was absorbing when I read it.

Hon. Senator: Absorbing?

Sen. W. Mark: Yes, I was absorbed with the information. [*Laughter*]

Sen. Piggott: Did you check with your teacher on that?

Sen. W. Mark: Mr. President, hear what it says:

“Government is going after white-collar criminals because it is their nefarious activity which spawns street crimes and leads to ‘the blood that is let by our young people’...”

When did the Government discover this, just recently? They are now discovering that it is white-collar criminals spawning the blood of our young people in this country? It goes on:

““What is the crime that the FIU is intended to police? It is the crime that is dressed up nicely in a white shirt and a tie and looks so respectable.””

I find that is a serious statement. So if you and I dress up in a white shirt and a tie, we are criminals? This is what the Minister is saying. This is what is being said here. So, everybody in this country who dresses up in a white shirt and a tie is a criminal. That is what is being said here, white-collar criminals—to tell you

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for instance how the Government does not know what they are doing. [Interruption] They do not know what they are doing. It is broad-brush; they are painting everybody in. Do you know why? Because they are under pressure so they are doing all kinds of wild things. They said:

“We sometimes forget that those persons involved in organised crime are really the true criminals.”

But you are there about eight and half years, and you have not convicted one criminal for money laundering. Not one, but you are talking about that now.

11.15 a.m.

Mr. President, they go on to say:

“And the symptom of that crime is what we see expressed on our streets... When we see young men and women who are losing their lives and their blood being shed...the real variable is organized crime. Who is laundering the money, it cannot be the small man.”

But you did not know that before? You did not know that the small man is not responsible for laundering money? Yet still, you have not convicted one big man, since 2002. Not one convicted for money laundering and it goes on:

“...Financial Obligations regulations, was a necessary measure to root out the scourge of money laundering, 'which starts not in the hills of Laventille...'—hear this one. It does not start in the hills of Laventille—”but somewhere else, where there are persons with the means and ability to launder their money, who are able to bring in the guns and destroy the very fabric of our society and I dare say the soul of our nation.”

Mr. President, this is a new discovery? How come for the first time the Government is now saying the crime that is occurring in Laventille is not being caused by Laventillians, but it is people outside of Laventille with the means and the ability to launder money. You now discover that? When I read this thing, I am shocked. I am saying, is this Government serious after being in power for eight years almost, seven and half years, you are now saying you are going after the “shirt and tie criminals”. So these shirt and tie criminals were not there seven years ago?

Mr. President, when they had the big drug bust on Monos Island and they got a haul of \$7 million and above, do you know who they arrested? Five or six ordinary people. You think “them” bringing in the drugs? You think the six

ordinary people that were arrested, were the people who brought in the drugs? No, they were not the people. Up to now, you cannot get the big sharks. So, we have to ask the question: Is this Government serious about money laundering, or are they just only dancing to the beat of international music, because they are under pressure, because the country is about to be blacklisted if we do not support this today, or if they do not pass it today? They are operating under duress, that is why they are forced to bring the legislation in the way they have brought it.

Mr. President, I want to tell you that we have very serious concerns about this legislation. First of all, we want to indicate to you and this honourable Senate, that the location of this particular unit called the Financial Intelligence Unit, needs to be properly assessed since it may not be prudent to establish it within an administration that does not enjoy the trust and the confidence of the population. This is a very serious matter. You cannot put a unit in an administrative—well they are using a model that is called an administrative model, where it is housed—that is the FIU—in a Government Ministry. In this instance, the Government is proposing the Ministry of Finance, and we are saying that the location of that unit in that Ministry, given the lack of trust on the part of the people of this Government, and the practices that have taken place and the experiences that we have had in the last few years as they relate to this Government's operation, we believe that the operational independence of this FIU would be undermined and would be challenged. Therefore, we are saying that there is need for checks and balances to ensure that the rights and freedoms and liberties of our people are not infringed upon by this Government, who from where we sit, have had a history of abusing their power in office. They have abused power, they have abused their office and we know the history of them.

I do not want to go into the Attorney General and his encounters with the Chief Justice. I do not want to go into the encounter with the former Director of Public Prosecutions. I do not want to get into those things at all, today. But I am telling you, Mr. President, that the question of public trust is critical when you are going to establish a unit like this.

Mr. President, when I go through and I tell you what the power of the FIU is and how they can investigate your account, my account and other people's account, and if you put this unit in the hands of a Ministry, and a Minister that is a political individual as this Minister is and there are no checks and balances, then a Minister of Finance who does not like you or whose government does not like you, you can find yourself at the wrong end of the law. What we are saying today is that this piece of legislation, whilst it is important and we recognize its critical

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significance, we need to ensure there are checks and balances to ensure and safeguard, and to protect the rights and freedoms and liberties of the citizenry of our country.

So Mr. President, I want to indicate to this honourable Senate, the administrative model that is being advanced by this Government, I want to tell you what the International Monetary Fund and World Bank in a 2004 Report said about this model that the Government is seeking to implement in this piece of legislation. On page 23 of this report, there is a section called Institutional Autonomy and Accountability. It reads and I quote:

"The core functions of an FIU call for objectivity in decision making, the timely processing of incoming information, and strict protection of confidential data. As the exchange of information between FIUs is based in large part on trust, building an FIU that inspires trust from its counterparts is key to effective cooperation. To ensure that these requirements are met on an ongoing basis, the FIUs need to be given enough operational autonomy to allow them to carry out their assigned tasks without due interference."

This is what the International Monetary Fund and the World Bank is saying about this administrative model that we are seeking to impose in the legislation on the country.

Mr. President, when they talk about autonomy, they went on to explain especially what they meant—

"A number of factors enter into the definition of autonomy and accountability of the FIU. One is the placement of the FIU in the national administration and, in particular, whether it is established as part of an existing government ministry or agency, or outside that existing structure. The law may also protect the independence of the FIU by defining the manner in which its head is appointed and replaced."

This is another critical area. The director who is being appointed, we have to be very clear in our minds that that director is above suspicion, and we are proposing like in the Police Service Act, like in the Police Complaints Authority, that a joint recommendation or joint advice by the Prime Minister and the Leader of the Opposition, to His Excellency the President, will be our proposal. We do not want a director to be appointed by the Minister. The director must be appointed on the joint advice of the Prime Minister and the Leader of the Opposition. That again, is needed to ensure that this director maintains independence, and therefore, he would not be if he is on contract, employed by a Minister and by a Government,

he would not be subject to abuse and put under undue pressures because the person will know that there is independence. I am an independent person. I can take action against anyone, but if you put that person on contract, you can terminate that person's employment at short notice. We are saying that we want to ensure that the director and his deputy are given full autonomy in terms of independence.

Mr. President, I just want to share with my colleagues, again, one of the disadvantages in this particular model that has been outlined in the document that I am reading here. On page 11, one of the disadvantages of this administrative-type model, reads:

"The Administrative-type FIUs (unless they are truly independent) are more subject to the direct supervision of political authorities."

I want to read what the World Bank and the IMF is saying about FIUs within the administrative model. They are saying that unless they are truly independent, they are going to be subject to the direct supervision of political authorities. That is very dangerous because here it is, the listed businesses or listed business rather, that we referred to yesterday, the professions that are involved, the various professionals that would have to be covered by this legislation, you cannot leave them to the whims and fancy of any administration. You cannot do that. Therefore, we are calling on the Government to look very closely at this particular question. In the definition section of the legislation, we would like again, that the Government defines what they mean by "suspicious activity". That should be defined in the FIU legislation under the interpretation section. We would like them to do that.

Mr. President, law enforcement authority must not only mean the Commissioner of Police or any law enforcement body prescribed by the Minister with responsibility for National Security under clause 2. We would like to include here the Comptroller of Customs and Excise, we want to include the Chairman of the Board of Inland Revenue, and we want to include the DPP in this particular section. We want to make sure that this is not confined to just the police because this is investigating but they also have to transmit if they believe that there is a suspicious activity. So before you send things to the police, as how someone was trying to do recently, they must get the all-clear from the Director of Public Prosecutions. The Director of Public Prosecutions must clear, and therefore, we want the Director of Public Prosecutions in this particular section.

We will come back to another matter, Mr. President, but let me go to Part II of the legislation. If you look at Part II, clause (3), subsection (2), we talk about the

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establishment in 3(1) of this FIU, and then you go on now to this critical subclause (2) and it states that:

"The FIU shall consist of a Director and Deputy Director and such appropriate number of suitably qualified officers as may be necessary, for the performance of its functions and may include—

(a) public officers, appointed, assigned, seconded or transferred...

(b) and officers and other persons appointed on contract by the Permanent Secretary..."

Mr. President, this Government cannot be serious. Here it is we are establishing a Financial Intelligence Unit to deal with suspicious transactions involving large sections of the population, and hear what the Government is saying: They are going to appoint a director, a deputy director and such appropriate numbers of suitably qualified person.

11.30 a.m.

Nowhere in this section are they telling you what the qualifications of these people are; you must tell us what their qualifications are. They must be qualified in accounting, finance, criminal law; these are things that must be stated here; it is the public you are dealing with. We want to know the qualifications of these people; we want to know the experience they must have. Nowhere in clause 3(2) are we being told who is going to appoint the director.

Do you know what that means? The Minister of Finance, through contractual arrangement via the Cabinet, would appoint the director who would now be able to determine whether my money—because I put money in the bank, they are seeing some movements and they say, "Oh God, boy, Wade Mark have some extra change, suspicious activity". I do not wear white shirts and I do not wear ties, so it "cyar" be me. [*Crosstalk*]

Mr. President, let me indicate to you the dangers of this. I want to deal with the dangers. How could you bring a piece of legislation and not tell the country and the people who would appoint the director; who would appoint the deputy director; how are officers going to be employed? You leave that blank and you say, "That is okay."

It is not okay with us. We are proposing an amendment. We are saying that the director and his deputy should be appointed on the joint advice of the Prime Minister and the Leader of the Opposition, and His Excellency could then appoint these people, so that there is some degree of independence.

We did not get what was the composition of this Financial Intelligence Unit (FIU). Are the police going to be there? Are the custom officers or the comptroller going to be there? Is the Chairman of the Board of Inland Revenue going to be there? All these agencies and personnel would have to play a big role, but they are not mentioned in the literature or the particular measure here.

The FIU should be comprised of the following: An accountant; an attorney who is a senior counsel; we want police officers there and we also want other officers, such as consultants from the United Nations Drug Enforcement Office to really carry us through in the initial period. There must be a composition of the FIU; do not leave it open for manipulation. We are telling you, and this is consistent with international legislation. We looked at the Bahamas; we looked at St. Kitts; South Africa; India; Antigua and Barbuda; Barbados and Mauritius. We looked at these areas to see what the practice had been in those jurisdictions.

I also want to propose, since the Government has crashed the Integrity Commission—the Government of this country has crashed and killed the Integrity Commission in Trinidad and Tobago. You cannot appoint a director, a deputy director, other officers and members, and they sit there, but have not declared their income; they have not declared their assets; they have not declared their liabilities. Do you know what goes on in this country? People are bribed; people are corrupted.

We want to know that when a director is appointed, if he goes in with \$100,000, after he leaves, based on his salary, that he leaves with \$500,000. If you see movement from \$100,000 to \$10 million, you know that man is on the take. Therefore, he must declare his assets, his income and his liability, before he takes up that post or within 30 days of taking up that post. That must be monitored every year, so there must be no doubt in our minds that the "fella" who is the director or the woman who is the director or the deputy are persons who are clean, pure and above suspicion. We must not play lightly with a measure that is going to have serious consequences, if we are not careful. We cannot support it in its current manifestation. We are calling on the Government to take measures to deal with this.

Mr. President, I found this quite amusing. How is this body going to be financed? May I remind you that the FIU will be responsible for all the listed businesses. They would be responsible for all the financial institutions that we defined in yesterday's debate, in the Proceeds of Crime (Amdt.) Bill. Where are the resources going to come from? Nowhere in the legislation does the Government tell us where the budget and the finances for this important body is going to come from; nowhere.

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Therefore, we have many amendments that we are going to circulate, to ensure that the finances for this organization are budgeted and they have their own block vote, so they would not be subject to the whims and fancies of any minister. They must have operational autonomy and there must be a budgetary allocation, independent of the Ministry that they would be in charge of. The director would be in charge of that.

We have made a number of recommendations in terms of amendments:

1. The funds and resources of the FIU shall consist of any moneys as may from time to time be provided by Parliament.
2. The FIU shall prepare for each new financial year an annual budget of revenue and expenditure which shall be submitted to the Minister at least two months prior to the commencement of the financial year.
3. The FIU shall keep proper accounts and records in relation thereto and shall prepare in respect of each financial year a statement of accounts.
4. The accounts of the FIU each shall be audited by the Auditor General of the Republic of Trinidad and Tobago. As soon as these accounts are audited by the Auditor General, they should be submitted to the Minister, through the FIU, and a copy shall be reported to the Parliament. Lay a copy in the Parliament.

These are just a few of the amendments we are proposing, because we believe that if this thing is to work properly, there must be financial autonomy, as far as is practically possible, to ensure that this FIU does not become the plaything of the political directorate. This is the danger with which we are faced with the legislation in its current form. That is why this legislation is very critical.

Mr. President, if you go to page 10 of the legislation, clause 8(g), when we talk about the prosecutorial authorities, there ought to be a definition of that in the legislation. Who are we talking about, the Director of Public Prosecutions? If it is the DPP, the Solicitor General or whoever, we suggest that there be a definition; it must be defined so that everyone would know exactly what we are talking about. This is why we are suggesting that.

Mr. President, we also want to incorporate in subsection (4) of the same clause a provision which says that:

"The records shall be retained, on information of consumers or customers that this FIU would receive, for a minimum of five years."

We want that too in the legislation; after five years destroy it.

We also want it stated in the legislation, we want it in law, that the FIU shall inform the public and financial and business entities of their obligations under measures and they must ensure that all the offences which these people could be subjected to are brought to their attention through education and public awareness programmes.

I want to get clarification, when the Minister is winding up, on section 4 of the same clause 8 I am speaking to on page 11. When we talk about:

"...exchange of intelligence shall be undertaken on the basis of reciprocity with an FIU..."

What does that mean? Does it mean that if you have information on some criminal activity taking place or some laundering taking place, and the US Government was to ask you for that information, you would not supply it to them unless they supply information to you? I could not understand what this meant. I would like some clarification when the Minister is winding up. We would like to know what this means.

In clause 14 we see where the FIU may:

"...where the circumstances set out in Regulations prescribed under section 27..."

The Government is going to be making regulations. Look at 27(1); first of all we want to ensure that the Minister would make regulations, after consultation with the FIU. We want to have that in the legislation. We do not want the Minister to be making regulations. We want in the legislation that the Minister, after consultation with the FIU, may make regulations. Because of the seriousness of this matter, we want it stated in subsection (2) that:

"Regulations made under this section shall be subject to an affirmative resolution of this Parliament."

That is what we want; that is what we suggest the Government considers, in the context of ensuring that there are sufficient checks and balances in this matter.

Mr. President, under section 17 of this Bill—we know that people do not read the *Gazette*. They come out very infrequently and irregularly. We suggest, in clause 17(1)(a) line 2, that instead of saying "one newspaper", it should be "at least two newspapers in daily circulation", so that the public would be aware of what is taking place. We ask the Government to not just put it in one newspaper, but in, at least, two of the newspapers.

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In clause 17, subclause (2) I read:

"In respect of countries listed in the Notice published under subsection (1), the FIU may by Order set out the measures that may be utilized by a financial institution or listed business, against such countries."

The FIU is an administrative body without accountability to this Parliament. The Minister is accountable to this Parliament, not the FIU. We would bring them before a joint select committee, when it is necessary, but we would like to ensure that, in this particular clause, instead of the FIU making those orders that:

"The Minister, by Order, and subject to an affirmative resolution of Parliament shall set out the measures that may be utilized by the financial institution or listed business, against such countries."

The Minister, under our system, has to be accountable to the Parliament, not the FIU. So we are suggesting an amendment where the Minister would make the order, but it must be subject to an affirmative resolution of the Parliament, setting out your measures.

In 18(1) I also want to suggest to the hon. Minister that: "The Director shall submit, before October 01 of each year..."—not just an annual report. We have a financial year, September 30—October 01. That is our financial year, as I understood it, in the Republic of Trinidad and Tobago. If that is so, then clause 18(1) should read:

"The Director shall submit before October 01, of each year, an annual report..."—not to the Minister, but—"to the President of this Republic" His Excellency.

11.45 a.m.

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. Mr. President, we are saying that instead of the Minister tabling this report, we are saying that the report shall be sent to the President and he shall cause that report to be laid in both Houses of Parliament within 60 days of receiving that report, and we are making amendments to that effect.

Mr. President, we would like to suggest that the FIU should be governed by a board, and we will circulate amendments dealing with this new section that deals

with the board and its composition to ensure that this FIU does not become a runaway horse. We want to make sure that there is a supervisory authority, which we call a board, that will be responsible for the overall supervision of that body, and the Minister or the Attorney General could be part of it, but there must be a board or an authority that is responsible.

Mr. President, we are also suggesting that the FIU shall be administered by a board which shall consist of a chairman who should be a judge or who shall have served as a judge of the Appeal Court. We want two other members of high repute; one of whom shall be a person with substantial experience in the legal profession and the other being a person with experience in the financial services sector.

We are saying that the chairperson and members of the board shall be appointed by His Excellency the President, on the joint recommendation of the Prime Minister and the Leader of the Opposition. And we are saying that the appointment of the Chairman and each member of the board shall be on such terms as may be specified in the instruments, or as determined by the SRC, and the board shall determine its own procedures in this context.

Mr. President, we want to make sure that there is a provision in the legislation for the removal of the director. There must be in the legislation provisions that deal with the removal of a director. Do you know in Antigua and Barbuda a joint select committee is responsible for appointing the director in that small country of Antigua/Barbuda? I am saying we can go to that, but I am proposing on the joint advice of the Prime Minister and the Opposition Leader.

Mr. President, we cannot allow a director to be removed or replaced whimsically and that is why we have taken from the Bahamas their Financial Institutions Act. I want to ask the hon. Minister to look at the First Schedule of the Bahamas Financial Intelligence Unit Act which gives a detailed appreciation on how a director is to be appointed, how he is to be removed, the period of time that he is going to be appointed for. I believe that will make good sense if we want to build trust and ensure that people do not come to any worrying conclusions as it relates to the functioning of this particular institution.

This is an institution that has a lot of power. Let me give you an example of some of its power. It is the primary institution for the collection, analysis, dissemination and exchange of financial intelligence and information among law enforcement authorities, financial institutions and listed businesses in our country. They shall also receive suspicious transaction and activity reports.

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Mr. President, that is why I ask there be a clear definition of what is meant by “suspicious transaction”. It is used in the legislation so in the definition column we must put what suspicious transactions mean and what a suspicious activity report means. That must be in this piece of legislation.

It goes on in furtherance of the functions assigned to it, they are also going to be in a position to request financial information from a financial institution or listed business in order to facilitate the exercise of its power under the Act.

Mr. President, they are going to analyze and evaluate the reports and information upon receipt and determine whether there is sufficient basis to transmit reports for investigation by any local or foreign law enforcement authority. You see the kind of power that this FIU is going to have?

We are saying that in order to have sufficient checks and balances so there is no abuse of authority or office or powers given to the FIU, we must enshrine and entrench in the legislation the necessary safeguards to ensure that people's rights are not trampled upon and undermined.

There are money launderers out there, we say go at them; once you have the evidence, take them, send them where you have to send them but you must protect the rights of the innocent, those people who could fall through the cracks. And, therefore, we have a responsibility in the Parliament, whilst we are going after the criminals who are involved in money laundering, and the financing of terrorism acts, we must make sure that the innocent does not pay for the guilty. That is why we are insisting that there must be sufficient safeguards to protect the rights, liberties and freedom of the people of this country.

Mr. President, we are being told in the legislation that they are going to set reporting standards to be followed by the institutions or listed businesses but are we going to see them? The FIU is going to set standards. We believe that should be subject to the Parliament, bring them to the Parliament, let the Parliament have an oversight role in these matters.

This Bill requires a three-fifths majority because it infringes on section 4 and section 5 of the Constitution, every right in that Constitution under sections 4 and 5; your right to property, your right to privacy. When you have your money in a bank account, nobody is supposed to go and check your money just so. If somebody is going to invade your privacy, you must have checks and balances because they can abuse their power.

What we are arguing here today, is that whilst we are prepared to give the Government the necessary support, it must understand that we as the Opposition are the watchdogs for the public interest. We must be able to ensure that the rights, freedoms and liberties of the people are not compromised although we recognize there is a need to go after the money launderers. We are going after the criminals, we are going after the terrorists, but we want to make sure that the rights, freedoms and liberties of the people are safeguarded. That is what our role is here, not to block, we are not here to block legislation, we want to make sure that there is balance.

We are also seeing where they are going to disseminate at regular intervals financial intelligence and information to local and foreign authorities, et cetera, facilitate the sharing of information, provide information, advice, provide assistance. Mr. President, nowhere in the legislation is there any provision for them to inform the public and the financial and business entities of their obligations under the measures that are being effected by them. We are proposing that they have a duty and a responsibility under the legislation to inform the population.

I want to indicate that we have amendments to deal with consultation. We do not believe that any institution, FIU in particular, should formulate standards without prior consultation with the stakeholders: the private sector, financial institutions, the credit unions, real estate agents and the betting pool people. You must bring them in and consult with them. You cannot impose rules and measures on people that you expect to work if they are not involved and are not part and parcel of the arrangement.

We are saying we are going to propose measures in order to amend this legislation to make it mandatory on the FIU to consult with all these bodies that are going to be affected by the measures so they can have an input into those standards that are eventually going to be established. You cannot impose measures on the population. Bring the law association, bring the chartered accountants group, bring the auditors together, bring all the professionals, bring all the organizations and businesses, bring the financial institutions; take them into your confidence and let them know what measures you are proposing, that is in law in the Bahamas. It is not I inventing that, it is in the law of the Bahamas where they treat democracy very seriously.

Mr. President, we are going to be imposing measures on the population of this country which, at the end of the day would be in their interest, but they are not aware. They are not educated, they have not been brought up-to-date. And the Minister is saying after; after we pass these things, the population will get to know about it.

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You do not do things like that; you educate the people in advance, let them know what is coming. We have been debating two critical measures over the last 24 hours and the population is nonplussed. The law association has not been consulted—

Mr. President: I just thought I would remind you that you are to direct your comments to me. You keep speaking down there and there is nobody down there at all.

Hon. Member: The camera is there.

Mr. President: But you are required to speak to me, the camera is there, but you must speak to me. You keep turning your back and you must not do that.

Sen. W. Mark: Mr. President, you know recently I got a whiplash injury, and my doctor advised me to keep turning left and right to make sure that—
[*Laughter*]

"No, ah telling yuh de truth, ah got ah whiplash. Mr. President, ah serious yuh know, dah ain't no joke yuh know."

Mr. President: Be that as it may, when you are on your legs here, direct to me, if it is too long for you then sit down, but talk to me.

Sen. W. Mark: No, I will bring my medical, and I am sure when I bring my medical report you will be agreeing with me.

Mr. President: No, you will talk to me.

Sen. W. Mark: Okay. But you will forgive me; if I fall down you will be responsible. I will hold the President responsible if I happen to collapse with stiff neck. [*Interruption*]

Mr. President, may I continue? I really believe that we can work together as a team. I believe that if you want this legislation to be passed today, we can work together as a team. We are going to submit our amendments for the consideration of the Government. They are all designed to strengthen the legislation and to safeguard and protect the rights of the people.

We recognize that these pieces of legislation are necessary and we are saying if you agree to all our recommendations we have advanced, we will support the legislation. I am saying that the United National Congress is prepared, if the Government takes on board our recommendations, to give our full support to the legislation. We have several amendments to strengthen the legislation to make it work so that we can protect the rights of the people, so that we can get the criminals and we will circulate them shortly to you.

I have them in writing, I have to type them up and have them circulated to the hon. Senators so they can have a view of them.

Mr. President, I thank you very much for allowing me to make my contribution on this very important measure that we would really like to work with the Government in passing, but you must take into account, you must give consideration to our amendments which are critical to strengthen the legislation and make it in the interest of the people.

I thank you, Mr. President.

12.00 noon

Sen. Subhas Ramkhelawan: Thank you, Mr. President. As I rise to make my contribution on this Bill, the Financial Intelligence Unit of Trinidad and Tobago, I want to say that the impression that I got in reading this particular Bill is that it is really the weakest form of a financial intelligence unit, and I want to commend my hon. colleague, Sen. Mark, for putting into perspective, and very well so, some issues with regard to the structure and the reporting relationships of this Financial Intelligence Unit, as it is envisaged.

It has often been repeated in this Senate and elsewhere that we as a nation have ambitions to be a leading international financial centre and it has sometimes been mentioned that we also wish to be a regional financial centre. I think if we want to achieve one or both of these, we must establish the highest bar for issues relating to money laundering in this country, and as at this point in time we really do not have anything that is effective.

What we want to put in now, really, is what I consider to be the lowest bar. I do not want to repeat much of what my hon. colleague, Sen. Mark said, but simply to endorse some of the areas. One is that the structure that is envisaged for our Financial Intelligence Unit in this piece of proposed legislation, is that the reporting relationship is to the Minister of Finance and immediately it creates the connotation that this aspect of a Financial Intelligence Unit could be politicized, or there can be the perception of politicizing of such a critical aspect of money laundering or critical aspect of our establishment of a Financial Intelligence Unit, and when we start at this point I do not think it is going to get any better. So we need to look very carefully at the reporting relationship.

Many of the proposed amendments to the legislation—I also endorse those that were proposed by Sen. Mark, but the question is that we find ourselves now as a nation with our backs to the wall because, in very short order, if we do not

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pass this piece of legislation we are going to be blacklisted. The question is: how do we resolve this particular matter?

I find it very difficult to support this rather weak piece of legislation and the weak structures that are going to be put in place. I get the impression that it was a very rushed job so we can get past the hurdle of blacklisting. Let me say, I will do whatever is in my power as a concerned citizen and sitting in this honourable Senate, to ensure that we are not blacklisted. I think every right-thinking citizen and every right-thinking Senator must do that. But it is almost as if a gun is being put to our heads. Because if we do not support this weak piece of legislation it will be said that we are the reason for the blacklisting and maybe others will forget that it has come very little, very late in an attempt to straddle this particular hurdle. So in a sense we find ourselves trapped into supporting this particular measure.

I would like to suggest, as a means of compromise—and while I support many of the suggestions made for amendments by Sen. Mark, I am sanguine to the fact that time is running out and that to make substantial changes, many of which are substantial and far-reaching, we might not be able to achieve within the limited time frame.

I support the idea of an independent agency; I support the idea that the appointment of the head of this unit should be in consultation with the Prime Minister and the Leader of the Opposition and probably made by the President. But time is against us. I think that is the important point; time is against us.

There is just one suggestion that I would like to make, because I think that I have a difficulty supporting this piece of legislation unconditionally. The suggestion that I would like to make is that the Government give an undertaking that it re-look this piece of legislation and have it translated into a structure where it will come under the aegis of an independent agency rather than an approach which is really a watered-down approach where the director reports to the Minister and we have clauses in this Bill that suggest that the director will not disclose, and in law, should not disclose to the Minister.

I feel that if this piece of legislation is to come and to be passed and to be supported, it will have to come with some conditionalities, for some changes; for some lifting of the bar; for some raising of the bar. I do not want to repeat what Sen. Mark would have said, but those are very, very strong and cogent issues that have to be addressed. We want to be an international financial centre; we want to be a regional capital market; we want to take leadership, yet still leadership requires us to set the highest standards and this would be amongst the weakest standards that you would have in the Caribbean and in the context of other regional financial centres. It is about the weakest.

Sen. Joseph: No, it is not.

Sen. S. Ramkhelawan: Well, it is very close to the lowest point. Well, the Minister will have his opportunity to respond, as he started. But the idea of a director reporting to the Minister in a Financial Intelligence Unit, really is an idea that I find it very difficult to warm to, for a Financial Intelligence Unit.

The second point that I would like to make is that we have been reasonably good—I say reasonably—and efficient at passing legislation and what we have found is that as we go along, we are weak at enforcement. Here, again, in this piece of legislation, when you look at these matters of money laundering, there is a strong forensic element to this issue of money laundering. And we are going to pass it to the existing investigative authorities which, I am of the view, do not have those kinds of investigative skills.

So we pass a piece of legislation which, in my view, is at the lowest treader on the bar and then the levels of investigation that will be necessary and what is contemplated in this piece of legislation, is weak.

In terms of reporting back to the Parliament, there is a clause in the Bill which suggests that the report will go to the Minister and within two months it will be laid in the Parliament, but what the clause does not say is that the report would be forwarded to the Minister within three months at the end of the financial year and thereafter another two months, so that we can have a time line within which these reports would be tabled in the Parliament. I think it should be, at the longest, maybe four months from the end of the financial year.

There is not much more to be said, except that I would be listening for an undertaking from the Government that if we were to pass this piece of legislation, that we would look to be strengthening this piece of legislation within one year's time. If that is the case, I would be minded to give support to the legislation without any further questions in my mind. But as it is now, I am concerned about the level of weakness of the legislation and at the same time I am concerned that we cannot allow ourselves to be blacklisted.

Thank you very much, Mr. President.

Sen. Mohammed Faisal Rahman: Thank you, Mr. President. It is with a great amount of concern that I rise today to address this matter of the establishment of the Financial Intelligence Unit of Trinidad and Tobago for the implementation of the Anti-Money Laundering policies of the Financial Action Task Force.

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This creature which we are having to establish in a bit of a rush out of circumstances that have arisen from serious delinquency on the part of the Government, is one that needs very, very serious thought and reflection. Perhaps the Government took all of these years to enter into this area of the FIU because it knew the enormity of the task, but I do not think so. I think it is a matter of delinquency and being unconcerned with the issues which the Financial Intelligence Unit would have to grapple with and the consequent embarrassment that may be presented to the Government as a consequence of action on the part of that unit.

Some of the very serious problems that the FIU faces in its future operation are integrally related to man's greed and nature.

12.15 p.m.

We cannot begin to understand the ramifications of proper appointment and structuring of the FIU. To begin with, we have to understand that we are operating in a very corrupt society. A society that is corrupt from the police force, the customs department, Inland Revenue Department and every other department that functions in this country. We are rife with corruption. Anybody who has been in business and has had to face the bureaucracy and offered means whereby he can circumvent the problems that he has had to face would know about what I am talking.

I am not saying that everybody is corrupt, but it seems as though in the eyes of the Prime Minister, he cannot find anybody not corrupt enough to justify an integrity commission. *[Interruption]* No, no, no. The Prime Minister is dragging his feet right now on that matter and considering the efficiency and value of the whole institution because of the problems that the President seems to be facing with regard to appointing members of the commission.

Mr. President: Senator, you cannot impute that kind of motive to the Prime Minister. The Prime Minister has very little to do with the appointment of the Integrity Commission other than he has the right under the Constitution to be consulted by His Excellency The President. The appointment was done by His Excellency. You cannot suggest that it is somehow the Prime Minister's fault unless there is some evidence that you have. That is out of order.

Sen. M. F. Rahman: I do not know if I misheard the Prime Minister when he was reconsidering the whole idea of the Integrity Commission. I am not trying to impute anything. I entirely agree with you, Sir, that in the absence of a pronouncement from the Prime Minister, no such nexus can be made. I recall having heard concerns of the Prime Minister in that regard. The fact that we have not been able to appoint so many other high officials in this country and the

Attorney General has underscored the privilege and right of the Prime Minister to veto, because we cannot attribute to the Prime Minister—what is the phrase he used—we must attribute to him a sense of responsibility.

Sen. Jeremie SC: Bona fide.

Sen. M. F. Rahman: No, no, no. There is another phrase he used which suggested that the Prime Minister will not willy-nilly veto. He would veto for good reason and the only good reason can be that the people who are proposed are not good enough.

Mr. President: Senator, do not go there because you are now getting into the realm of misleading the Senate. The Prime Minister and the Leader of the Opposition have no veto power. The President makes his decision. If you read the Constitution it is very clear. The President makes his decision. He is required by the Constitution to consult. That is all. Neither the Prime Minister nor the Leader of the Opposition has any veto power over this issue. So just do not go there! You are off base, you are wrong and you are out of order. So just leave it alone and get on with something else.

Sen. M. F. Rahman: Sir, I am speaking about the DPP position. I am not speaking about the—

Mr. President: Make yourself abundantly clear. Make yourself very clear here.

Sen. M. F. Rahman: Yes, Sir. I stated in my remarks a little while back that there are several senior positions that remain unfilled. I have long left the idea of the Integrity Commission. I am not referring to that.

Mr. President: Any of these positions that have something to do with this Bill; leave it alone and get on to talk about this Bill for me, please. We had a late night last night and we are likely to have another one this evening, so talk about the Bill.

Sen. M. F. Rahman: I am very concerned that the members of the Financial Intelligence Unit have to be men of the highest integrity. I am speaking about integrity and our inability to find suitably qualified people in other areas of integrity. The nexus is that this FIU demands people of the highest integrity. I am a little surprised that the connection has not been made in our minds. I started off by saying that we have a serious dilemma. We have to give serious consideration to this whole matter of the Financial Intelligence Unit which has not been addressed for so many years.

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We have a serious problem on our hands. We have a situation facing us where we are going to have to find very serious men of serious integrity who would be prepared to dare to investigate drug lords at the risk of their lives, men who potentially are as corrupt as anyone else. I am. It is a human being situation about which we are talking. I have always mentioned this matter. We have situations here where men would be approached by drug lords to find out what their status is and offer bribes and if they do not succumb to bribes, be faced with threats.

I do not know how many men will be prepared. You have to take a man like Bob Lindquist from overseas to come here, who is not connected with the society here, to investigate people. He can do his job and go away. We are talking about an FIU whose members are going to be based here and be on the firing line. When fellows are moving billions of dollars out of our country and laundering, they are not going to think very much about the sanctity of human life and be overly concerned about paying a couple million dollars to bribe officials. I am talking about the integrity of the FIU officials, which is a matter that we have to give the most serious consideration. It does not matter how good the structure of the FIU is, we are talking about the personnel. It is the personnel and nature of human personality about which I am very concerned.

While we want to have an independent FIU, the independence has to be balanced with accountability because if you make them too independent, they can prosecute who is not paying enough or not prosecute those who are threatening enough. We are looking at a continuing situation where we are dealing with the most volatile of circumstances. We are not in a situation to say that we are going to appoint a judge who is insulated from everything. We are not saying that we are going to appoint a commissioner of police who has his army and police to support him.

We are setting up an intelligence unit. I do not know the structured size of it, whether it is one dozen, two dozen or 100 members. We have a virtual mini central intelligence agency to be appointed here to deal with money laundering and drugs. I believe that this whole matter of integrity has to be balanced with the circumstances into which these people are going to be thrust.

With all the positions that remain vacant—*[Interruption]* This has to be driven home. Have you not been listening to what I am saying? We have to understand where we are at now. If you do not have a DPP, how are you going to prosecute somebody who is failing in the Financial Intelligence Unit? If the Financial Intelligence Unit is filled with bad apples and eggs, who is going to prosecute them? Which Commissioner of Police is going to investigate them? While they

have the power to investigate drug lords and money launderers, who has the authority to investigate those Financial Intelligence Unit officials? Who will guard the guards? This is a serious matter that runs through all the policing aspects in a society.

I will say this. I was very surprised to learn that there has been a corresponding microcosmic unit already functioning and doing some of the work of this FIU in the Ministry of National Security. I have not seen any evidence of their activity and fruits of their labour. I have not had the slightest clue that there is such a unit doing any such work.

We had those massive drug busts and \$800 million of drugs and the property owners where the drug was found have not been brought to book. I should not say brought to book, those are not the right words. They have not been investigated. We have had four or five small “fry” charged and jailed. Most interestingly, there was a multi-million dollar fire that coincided immediately after that drug bust and there was never a thought about looking for a nexus. The rich and powerful have their means and ways of circumventing justice through bribery. This little country of ours has been famous for its graft and corruption.

We are faced with a situation here where, not for the preservation of the integrity of the country, our foreign exchange or institutions, but for the preservation of our credit rating. This is terrible. For the worst of motives we are embarking upon establishing an FIU so that we can speed by with a good international rating. It is not because drug dealing is such a rampant problem and money laundering is a problem but because we want a good credit rating.

I think that this is very, very regrettable and the intention behind the FIU is basically flawed since that is the situation. It is really very unfortunate. This Government has had a lacklustre, unenthusiastic and less than concerned attitude and position to these issues that have been plaguing the world. The world since all these years, 1989, has been concerned about this galloping development of criminality and lives are being lost all over the world.

Our Minister of Finance is telling us that this sort of white-collar criminality breeds, spawns and propagates the murder in the streets. For 20 years we have had this going on and now only to preserve our credit rating, we have an interest. This is deplorable.

12.30 p.m.

While the FIU members have to be given a free hand, there have to be constraints placed upon their own operation, because you cannot have untrammelled authority

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and untrammelled licence. You must always know that there must be a balance when you are dealing with people in sensitive positions; positions of great trust; and positions that attract the corruption that is rampant in the society. [*Crosstalk*]

We have to bear in mind that if the FIU can function with the unrestrained freedom of UDeCott, it will be able to defy any authority that puts it into a position where it can do as it pleases, and this is a problem. Once you formulate a creature and give it that sort of authority, you are going to find yourself confronted by rebellion within the ranks of the organization that you have set up to control the crime that you thought you wanted to control.

It is going to be a very bad situation if FIU personnel are being given power, and then having got into cohorts with the ungodly, turned upon the Government and said: "Well, touch us and let us see what you are going to do. We are taking in some people to book; we are keeping you looking good, so why push us to prosecute the people that we think should not be prosecuted." Maybe we need to have levels of FIUs to ensure that we do not have this type of corruption entering into the picture.

Now, one of the statements made by a Government Minister in recent times is that the Government does not think it prudent to appoint officials to sensitive positions from the public that does not support it. In other words, the expression was: "Yuh think we are so stupid to appoint you." This is a very dangerous thing when you apply it to the question of the FIU. As a matter of policy, if you are going to entrust sensitive positions to people who support you, it is instructive to realize that criminals, drug lords and money launderers always make sure that they support the Government in power; whether it is the PNM Government or the UNC government, they cosy up to the Government. So, if people are cosying up to the party in power and you decide that you are not going to appoint officials to investigate them, who do not belong to your party, do you understand where you are at? You are in a situation where you can only appoint people who are "palli-wally" in the circle and society of the very people that you are trying to police. We have a dilemma. I started off by saying that we have a dilemma.

This FIU is a matter that should have been looked at, examined and discussed with people who know about this and it should not be brought one week before we face blacklisting to find ourselves having to say, we have to go along with this out of expediency. What is going to happen, if you establish the wrong FIU, you are actually building a stable without gate and trying to put your herd of horses inside there. That is a very unwise way to go.

I would like to suggest that while the Bill makes reference to suitably qualified persons, recently we learnt from the Minister of National Security that the new recruits in the police service are subjected to a lie detector test and other forms of screening. I would like to suggest that the strictest microscope be put upon perspective members of the FIU that they be subjected to a lie detector test; that they be subjected to the Integrity Commission; and that they be subjected to periodic examination of their personal accounts, because it is the most reasonable thing to expect that they would become targets for those persons who are out to bribe to get out of the net.

These FIU officers have to be treated well with regard to salaries. Putting them under the Salaries Review Commission does not seem to be very wise. The Salaries Review Commission does not value very much the work that was done by dedicated Senators who have served for 20 years. Salaries are paid in a very arbitrary way with regard to risks that the candidates may be undergoing.

While this is a very delicate matter, these people can go either one side or the other in terms of good or evil, and while they are subjected to risk to their lives, they have to be treated in such a way that the risk that they are undertaking—the demands on their integrity that they are going to have to give and subscribe—they have to be treated better than your average salary structure. Just as you would pay the SAUTT personnel much more than the normal policemen, persons in the FIU have to be treated exceptionally, to ensure the ongoing integrity as you will treat judges. There is a little irony here, because judges are treated well while they are in office. I do not think that they are treated as well when it comes to pensions. One has to know that you cannot put a man in a position who knows that while he is making money today, when he retires he is going to have trouble, so he may be tempted to provide for his retirement by means that are not entirely legal. So, you have to bear all these things in mind.

This FIU is a very delicate unit and concept, and it has to be approached with very great deliberation, far more than the Government has given to this matter. While the legislation seems to be comprehensive, it does not take into account these factors that I am trying to bring to the attention of the Government and which seem to be treated very lightly by some of the senior Senators on the other side. I do not know why. I suppose they want to get the matter over and done with.

The bottom line profit: It seems as though that is what this Government seems to be concerned with, it looks at the credit rating. The Government is concerned about how it is rated and that is its bottom line. That is a dangerous thing.

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Presently, we have stampede legislation which is becoming the norm. Every now and then we are faced with a Bill and if we do not support the Bill, it is going to get us into trouble—"Shame on you that you did not support it and you started the Bill and you do not want to support it even though reasonable amendments are being put forward." It is almost as if the Government wants to say: "We will do things at the eleventh hour and you only have to rubber stamp it." I do not think that you are going to find a very compliant Opposition in those circumstances.

Attrition in the FIU: You do not want to have people going in there and leaving the job and then for a new crop of people to come in. These investigations require certain continuity in terms of pursuit. While you want to have a "hawkeye" on the FIU personnel—I am not standing here with the answers, I am seeing the problems. What I am saying is that the Government has not addressed these issues in its current urgency to have this unit established and to pass this legislation.

If today by virtue of its majority it has its way, I would want to endorse what Sen. Ramkhelawan said and expect the Government to return here in a very short time with a much better tidied-up, considered and thought-out piece of legislation to ensure that the shortfalls of this piece of legislation will be corrected very shortly, and that we have a very efficient and effective FIU established and functioning for the benefit of the country, if we are really serious about attacking the crime situation that is, in an economic sense, going to really drag us down; the underground economy and the criminal economy.

You have the underground economy where people go out and buy things to sell and they are not declared. That is not a bad thing at the end of the day, because people need employment and they support their families and they make an honest living. They may be under the radar with regard to the Board of Inland Revenue, but they are not criminally inclined.

We have a situation here where we are dealing with a criminal situation that will bleed the country. People who have no concerns will enjoy their wealth in any part of the world that they want to, but they would run the drugs through this country; make their money, get their cut and kill who they want. Do not talk about killing, because that is a common thing nowadays.

Some years ago we had a young couple from Canada who were newly married and they were murdered within a couple of days at Blanchisseuse, and it was all drug related. The ungodly do not care about the sanctity of life, so how are they going to care about the sanctity of life of the FIU investigators and members? You are going to have a situation where you may very well find that the FIU members become an endangered species, and you really want to provide for that in advance.

If we cannot accomplish all the amendments today, I would like to have an undertaking—this is not unreasonable, and this has come from an Independent Senator—let us be assured that this matter which has not been given the thought that it ought to have been given, will occupy the attention of the Government, and it will not take seven years to return with a new package. [*Interruption*] Six months is a reasonable time. Please, invite some comments and some discussions from people who have an understanding of the problems that we face; and an understanding that this is a very serious dilemma.

I want to apologize if at times I seem to be heading in a direction, but I am trying to make a circuit to make a point. I am using a circuitous route, but the objective is to grapple with the problem that the Government continues to place on our laps. We tend to get this repeat continuing repeat scenario where a hot potato is dropped on our laps and we just have to keep quiet and attend to the matter. “Good Lord, I am getting burn.” Sometimes it is impossible to get the right analogy without heading in a little shady dangerous direction.

I am apologizing again in advance for any future infractions, because I know that this sort of thing is going to happen. This country is so rife with corruption and mismanagement, and the Government is not even aware of the dangers that lurk around the corner. They are not even aware of the dangers that are lurking on the horizon far more around the corner. You could forgive them for not seeing around the corner, but it is from the horizon.

I just wanted to underscore something that I have here and, that is, the leverage that drug operators and money launderers can use against hard-working people who are seeking to derail them is tremendous.

12.45 p.m.

I would not like to see Trinidad get to the stage where Chicago was and American states used to be, where cars are blowing up as soon as you turn your key in your ignition and "fellas" get taken out. You know, Sir, with the murder rate, the crime rate, criminality in general, in this country, we are certainly heading in that direction. This country has resources still and it is a fantastic hub for business, which the drug runners have realized. So, we are a fantastic hub for drug transshipment, air and sea, and do not talk about little fast boats.

You know something, with the fast patrol boats, I could almost guarantee you that they are going to have fast cabin cruisers and other fast ships that are going to be used to outrun the fast patrol vessels. Those fast patrol vessels better have some good cannons on board to take out the "fellas" that are going to be in front

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of them, because we are heading for a virtual war. The more you confront the ungodly, the more the ungodly is going to come back and try to establish itself, and they are not restrained by qualms of concern. Their concern is themselves, their money, and their wealth. These people behave as if the money that they make through the illicit means, is their most rightful possession, and “do not touch my money”, even it is being made—

Mr. President: Senator, you are trying my patience and starting to waste the time of this Parliament. Talk about this Bill, please. We are going to have a long session; I said it already. We had a long session yesterday; we are going to have a long session today and I am putting all Senators on notice, talk about the Bill; talk about the Bill, please.

Sen. M. F Rahman: Yes, Sir, I have not been able to make the point of the concerns that I have that surround this Bill. This Bill is in a context of a social disaster, and I am very sorry if it has escaped the audience. I do not think I have very much more to say, except that we have a very deadly situation on our hands, Sir. I would stop now because I am going to have to leave the rest to the imagination.

Thank you very much.

Sen. Prof. Ramesh Deosaran: Let me assure my colleagues that I would be relatively brief. The first thing I would like to say, after listening to the debate so far, is this Bill as it is, really should not pass through the Senate. This is not a position of obstruction. On serious consideration of the Bill and the implications, I think Government should open the doors once again as it did, to some extent, yesterday, to some of the views made, including some of those by Sen. Mark and my colleague on the Independent Bench, Sen. Ramkhelawan, and perhaps some by Sen. Rahman. I say so with a full understanding of the Government's position.

At this time I am not going to talk about they had it on the desk for a long time, they blacklisted it and so on. I am not making the point whether or not there was time to do it or whether they did not have the time. I am looking at the Bill on its own merit, and recognize that there are serious issues that need to be attended to. For example, the FIU must be politically insulated. That is standard practice in matters of this kind.

I will concede that perhaps you had to do it in a hurry, but still I think my other colleagues would want to propose a solution that might be a compromise. Maybe we can pass the Bill now with some amendments—the reasonable ones that you think—but add a sunset clause to it and give a solemn pledge to the

Senate that you would return within six months or thereabouts, because the amendments that we have in mind are rather extensive, and I do not know if you would be able to accommodate all of them now.

Sen. Jeremie SC: Senator, thank you for giving way. I just wanted to provide you with some information by way of background before you condemn the legislation. It is based on a well-established administrative model, which is in practice in Barbados, the Bahamas and St. Kitts. In the Bahamas and Barbados in particular, you have a more developed financial sector than we do. We do not depend on offshore financial business for much of our revenues, but in those territories you have the same type of arrangements.

What we have done in this legislation, conforms to FATF standards, with respect to the Office of the Director. There are issues with respect to autonomy on the one hand and independence on the other. So, you have autonomy and independence. We have done this legislation in concert—*[Interruption]* I am speaking to—going hand in hand with the Caribbean Financial Action Task Force, which is an arm of the FATF. So, that we know that what we have before you today complies, to a large extent, with the 40 + 9 recommendations.

Thank you.

Sen. Prof. R. Deosaran: As I said, I am not literally condemning the legislation, I am trying to save the legislation from itself, in a way. Now, the second point we are raising, through you, Mr. President, is the matter of reference to the other countries. Let me refer to recommendation 6 in the FTAF:

"Financial institutions should, in relation to politically exposed persons, in addition to performing normal due diligence measures:..."

They are asking the institutions to be careful about politically exposed persons. The Minister is a politically exposed person. I do not have to push the envelope too far to see that the Minister is a political agent of a political party, of an Executive, which may or may not have links to the issues that we are considering.

If the word "suspicion" is used so prevalently in the whole scenario, I think we are to remove all suspicions from the Minister, in being too close to such an agency as the FIU. If you tell me, hon. Attorney General, that other countries have it, I might venture to say, well, you have minimal standards to which we could have adhered, but there is no reason why, as a leading country industrially, economically and in terms of budget, we cannot raise the standards, *[Desk thumping]* and in due time, have those other countries follow our standards.

Sen. Jeremie SC: Sen. Prof. Deosaran, we are not saying that the legislation is perfect at this point in time. What we are saying is that passage of this legislation carries us further along. Right now, we fail in terms of the FATF recommendations, and we are not going to pass the review, which comes on the 11th. A sunset clause would not allow us to do that. We can give an undertaking on this side, because we looked at the various models.

We have the same technicians that Sen. Mark is always proud to associate himself with. He always says that he fights with us, not with the technicians. We have the same technicians and they have produced this administrative model for us. We have had discussion and debate on it. We looked at the type of majorities which are required.

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

Sen. Prof. R. Deosaran: I understand what you are saying, but I do not think you were really listening to what I was saying. [*Desk thumping*] That does not make or prepare us for a spirit of compromise, especially with the requirement for a three-fifths majority. The signal of a three-fifths majority should invoke the spirit of compromise, because this is—as has been said so repeatedly—no ordinary Bill.

You are entering into people's cash, into people's pocket; you are entering into very sacred ground, ownership of property, and you are attacking very severely, section 4 of the Constitution, where you are guaranteed to do process, through due process. You are violating some sections in the Constitution.

So, my suggestion, as I said initially, is to move gently with both eyes and both ears open, because this is very sensitive ground. You are on the Government side, so you are looking at it from one side, but just put yourself outside of the Government, as another person, on somewhere outside and see if you would be comfortable with having people enquire into your business, especially since the hon. Minister in the Ministry of Finance was quite correct.

He said suspiciousness is quite a subjective phenomenon. Having suspicions is a very subjective exercise. You are not sure but you are entitled to the legislation on the basis of suspicion, transactions which appear suspicious, to move into people's private property. So, I am just illustrating to you, Mr. Vice-President, and the honourable Senate and perhaps to the country, let us move carefully with this Bill.

As I said, I would give it my support, but I must put forward some reasonable conditions, and I do so after hearing my colleagues, Sen. Ramkhelawan and Sen. Wade Mark, because you would add further evidence to the suspicion that we are

ambushed. In that context I think you should be much ready to listen, except if you tell me that the model you have here is immutable, irretrievable and by some law, it has to remain as it is. Until you tell me so, I believe there is room for reasonable adjustment. The word reasonable is, in my view, very paramount in this exercise.

So, I would listen to the Minister in the Ministry of Finance or even when the Attorney General speaks once again, and perhaps I will be persuaded otherwise. As I stand and examine the Bill, I urge caution and move in a spirit of reasonable compromise.

Let us take clause 3, that is the appointment of these officers, and I agree. What are their qualifications? I am surprised that Barbados would have a legislation like this without delineating the exact qualifications for such a post. When you are appointing a police commissioner you have the qualifications listed. When you are appointing people to the Environmental Management Authority (EMA), you have qualifications listed. This is a far more sensitive piece of legislation than EMA.

How come they do not have it? Especially when given the nature of this exercise and the implications of this Bill, integrity is the flagship of virtue; public confidence is another one and the officers, especially the director and the deputy director, must be seen and must in fact be politically insulated. [*Desk thumping*] I am not saying that you do not have difficulties with the Bill. I see the Bill as a very complicated, challenging Bill.

[MR. PRESIDENT *in the Chair*]

You do not want to make matters so broad that you cannot manage them, but you also do not want to have the definitions and the issue so narrowly defined that you leave many people out. I think Sen. Rahman made a point, I do not know if he meant it in the way that he said it. He said, you do not want these officers to be too independent, and that is true. So, while we are arguing for political insulation, they must be accountable to some agency or some other officer or through some process.

1.00 p.m.

That is why I would suggest that perhaps a better route would be to let the FIU director submit the report to the President, let the President pass it to the Minister and let the Minister then pass it to Parliament where it could be subject to a parliamentary select committee. That would raise public confidence, so the people will know, the businessman will know, the politician will know, the foreign

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investor will know and the banker will know that when there is an enquiry or when there is an attempt to gather information under the FIU, it would have been done with the integrity and the level of trust that would normally be required.

When you have the FIU so cosily etched to the Minister in clause 3, I think it does raise some concerns. They seem like bedfellows, because after all, these officers would be on contract and you know when somebody wants a contract renewed, you know when an expert, a consultant or anybody wants a contract renewed—I need go no further. The question answers itself. It is a lack of political insulation. In fact, I would have preferred that the directors in the FIU have some tenure. Tenure is a keyword in such an exercise. Not contract. [*Desk thumping*]

This is not a special purpose company, and do not treat it as a special purpose company. I understand the challenges you have. I see you trying to have balance but I must say as I had indicated earlier on, any reputable accountant would understand the point that I am making, the question of care and due diligence alongside vigilance and integrity.

So, we come to the other issue or an extended issue from clause 3 and even clause 22(A). Why not put this under the aegis of the Central Bank? I was having a discussion with my colleague before she might elaborate on it, Sen. Drayton, because in section 16 you already have a provision asking the FIU to work closely with the Central Bank. The fact is they should not work closely, it should be under the Central Bank rather than, if a choice has to be made under a Minister.

This is Trinidad and Tobago; we have certain cultural issues here. We have election campaign that is very different from the one in Barbados. The kind of things I hear on the election campaign—how many women this candidate has, how many motor cars he has in his garage and all of those innuendoes flow from our political platform, not the ones in Barbados. So there are cultural differences that you must consider without belabouring the point. If you find that is not convenient, I leave it to the Government to accept the other proposal. Let there be a discussion between the Prime Minister and the Leader of the Opposition in appointing the director, deputy director and the officers and let the recommendation go to the President. The keyword is confidence. You cannot have an agency like this where the Minister has a virtual first cousin to the director of the FIU. It does not work so, especially when he is also responsible, through the Permanent Secretary for securing the contract, and they did not tell you a contract for how long, you know. They did not tell you a contract for three years in the first instance, subject to renewal for such and such a reason. It could be a contract for one year.

We do not know the terms of the contract. We do not know the conditions that would have led to the satisfaction for service. We do not know that. It could be a blackmail situation. The Minister could tell you if you do not tell me this so and so would happen by implication if not by sheer body language.

Some of us would know about human relations; the psychology of interpersonal relations and human nature. You have a very criminogenic condition. If you find that too is not palatable and you find it will be too complicated now, well, set up an authority to supervise the agency. *[Interruption]* So, you have a number of outlets that can respond to the concerns about trust, integrity, public confidence and still maintain some measure of accountability.

It is not to criticize the Bill and to condemn the Bill. I appreciate the position you are in, and perhaps if the UNC were bringing such a Bill, they too would be told the same thing and I hope they would be just as understanding as you are. The matter of funding, that matter was also raised by Sen. Mark.

Hon. Senator: Who pays the Piper calls the tune.

Sen. Prof. R. Deosaran: Who pays the Piper calls the tune. That is a main feature in public administration. That is why you put something in the Consolidated Fund and that is the reason why the Judiciary is screaming its head off about funding.

I would like to suggest, Mr. President, that you do not put a very important critical agency like the FIU under such vulnerable conditions. *[Desk thumping]* Let the budget be insulated as well, whilst we are trying to catch the thieves. We have to be careful that we do not brand everybody else as thieves; we have to be careful that we do not go and witch hunt, not only witch hunt, but politically driven witch hunts. *[Interruption]* So the question of the level of integrity of these officers must be assured, we have to screen them, and I agree with the requirement, the proposal for polygraph testing and so on. So, once the public recognizes that these people who are FIU officials and they recognize the kind of screening and testing that they undergo here, public confidence will be level.

One of the recommendations in the FATF document, Recommendation 26, says that:

“The FIU should merely collect, analyze and disseminate.”

It did not say anything about making policies and so on, so I am wondering as a very minor point whether the Bill in a section talks about monitoring its policies. The FIU monitoring its policies—sorry I cannot find it now—it is just a minor point, perhaps we can leave it out.

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I support the Minister in his reference to clause 18. It is quite good, and that is the direction on which I am elaborating. That is a matter of some transparency and good—

Hon. Senator: Clause 9.

Sen. Prof. R. Deosaran: Clause 9, okay, thank you. I think it is good business practice. I know the Minister in the Ministry of Finance has excelled in good business. He has a very fine reputation. *[Interruption]* I say so quite sincerely. I do not mean it any other way.

So, if you look at clause 18(2), I think that is the provision I was alluding to and it is quite a commendable one, except that it should be expanded in the way I said, send the report to the President, back to the Minister, back to Parliament and subject to a parliamentary committee.

My last point is clause 27, in light of what I have said and the justification I have put forward to support what I have said. I believe an affirmative resolution is preferable to a negative resolution.

Finally, let me once again emphasize the point that in the circumstances, it would be helpful, it is not an objection. I am not expressing a position of obstruction to you, but the implications are so serious, the sensitivity in this Bill is so serious. The ground you are preparing to tread is very hallowed ground. You have to genuflect before you enter; you have to knock carefully before you enter, and so in that light I would suggest once again a sunset clause possibly of about a six months period.

Thank you very much, Mr. President.

The Minister of National Security (Sen. The Hon. Martin Joseph): Thank you very much, Mr. President. I am pleased to join in this debate on an Act to establish the Financial Intelligence Unit of Trinidad and Tobago for the implementation of the anti-money laundering policies of the Financial Action Task Force.

The Minister of Trade and Industry and Minister in the Ministry of Finance who piloted the Bill, took pains to underscore the challenge that we face in bringing legislation of this kind and the attempt to ensure, as Sen. Mark raised in his contribution, the need to strike a balance between ensuring that the legislation is in keeping with both FATF and CFATF, and at the same time ensure that the privacy issues, that citizens must of necessity have, that those things are taken into consideration.

The Attorney General also indicated earlier on the challenge that we face in terms of ensuring that we drafted legislation that will satisfy those two requirements. It is in those circumstances that the legislation has been so crafted. We recognized that it is not perfect legislation. [*Desk thumping*] It cannot be perfect legislation. We recognized that we were going into areas that we have not been before, and I hope even as we say that, that we recognize and in criticizing us of taking so long to come with the legislation, that we understand that part of the delay—and it is not an excuse—was the reality of trying to craft something that will satisfy these competing demands. That is what we are faced with and it is as a result that the question about location—I think this was the first issue that Sen. Mark raised—of the unit, why within the Ministry of Finance? It is for that reason that if you look at clauses 22 and 22A, a section that prevents both the director of the FIU and the staff of the FIU from disclosing any information, whatever, that will come into the hands of the FIU.

In these sections we included hefty fines to deal with breaches of this section. I wish to draw the attention of the honourable Senate to clause 22A in which if the director breaches his duty of non-disclosure, the penalty is a fine of \$300,000 and imprisonment of three years and if an FIU agent breaches the duty of non-disclosure the penalty is a fine of \$250,000 and imprisonment of five years. These penalties are purposely harsh—

1.15 p.m.

Sen. Prof. Deosaran: Thank you and I am sorry to break your trend, but it is a very crucial point I am making. In clause 22, the clause to which you refer, who will find out and who will report, if the director breaches his responsibility? That is a grey area. I do not know if you can suggest how that will be known?

Sen. The Hon. M. Joseph: Process of discovery. It is a grey area and I am sure the Minister of Finance in winding up will be able to expand that a little more. But the point is, that the intention was to underscore the seriousness of the responsibility that these persons were going to—So that as I said, the harsh fines are purposely put there to deal with infringements there.

FATF recommendation 26(1) states that countries should establish an FIU that serves as a national centre for receiving, analysing and disseminating disclosures and other relevant information concerning suspicious money laundering of financial activities.

Members of the Senate are asked to note that FATF itself has provided that the FIU can be established either as an independent governing authority or within

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existing authority or authorities, so that the model that we are using, Mr. President, hon. Members, is not a model that has not been endorsed by FATF. I think it is kind of unfortunate to say that the administrative model is the weakest model, because it is not. As the hon. Minister indicated in piloting, there are four different models. There is the administrative model, there is the judicial or prosecutorial model, there is the law enforcement model and there is the hybrid model.

Of the countries that are part of the Egmont Group, some 116 if my information is correct, some 76 have administrative models and the countries that have administrative models, including the United Kingdom, Canada, Australia and the United States; and in the Caribbean, it is the Bahamas, Antigua/Barbuda, St. Kitts/Nevis and the Cayman Islands. And just for information, interestingly enough, in these countries, the Bahamas, the FIU is found in the Ministry of Finance; in Antigua and Barbuda, the FIU is under the Prime Minister, who is the Minister of Finance; and in St. Kitts and Nevis, the FIU is also within the Ministry of Finance. So to say that by having the FIU within the Ministry of Finance, you compromise its operation is not so. Then if you look at the specific reporting, the directors, et cetera, have not been required to report to the Minister of Finance, it is only in terms of some of the general reporting. But at the end of the day, the unit has to be accountable somewhere. So that again, in those circumstances, Mr. President, hon. Senators, we had to take into consideration our peculiar circumstance and come up with something that would be acceptable.

Sen. Dr. Nanan: I thank you for giving way, Minister. In your contribution, you mentioned the Cayman Islands as having the administrative model, but the Cayman Islands moved away from the Financial Intelligence Unit agency to a Finance Regulatory Authority, that is now under the Anti-Money Laundering Steering Committee chaired by the Attorney General. So I do not know if you want to comment on that move by the Cayman Islands, which is the fifth largest in terms of capital for the world and their approach now, moving away from that model to this different [*Inaudible*] I just want to know.

Sen. The Hon. M. Joseph: I think the Cayman Islands, a population of 20,000 and administered by the United Kingdom government, I do not know whether or not that—but the point we are making is this, because I think on the basis of comments made, that by introducing this legislation, we are moving closer to a better level of compliance and with time, we will be able to strengthen the legislation so that we would be in a position to satisfy and address some of the issues. I think unfortunately, Sen. Prof. Deosaran, the question about putting a sunset clause at this time will not satisfy the requirement we are to meet.

Mr. President, there were also issues raised with respect to the public education programme. Sen. Mark made heavy weather about the public education programme or the lack thereof.

Sen. Mark: I did?

Sen. The Hon. M. Joseph: Yes, you did. Yesterday—I do not know if we could make mention of what went before, we did mention that there has been a serious public education programme that has been in place for the last three or four years. In terms of —

Sen. Mark: Where?

Sen. The Hon. M. Joseph: Right here in Trinidad and Tobago. With respect to the stakeholders, in terms of preparing them for the impending legislation, also as part of a Cabinet-appointed committee that is responsible for ensuring that there is a public awareness programme which is one of the four pillars that comprises the Government's approved anti-money laundering and counter financing of terrorism policy and strategy. The public awareness programme was specifically designed for Government to engage in a sustained outreach initiative to the businesses, banking, non-banking and regulatory sections, as well as listed businesses.

The programme is complementary to the legislative process that is before this honourable Senate. It comprises meetings, symposia and press releases, all aimed at raising levels of awareness, educating the public and garnering the necessary support that would translate into a culture of compliance. Just interestingly enough, this morning when I opened my mail—because of the time I got home—there was my Unit Trust statement and interestingly enough, Mr. President, hon. Senators, this is part of my Unit Trust statement and permit me if I could read it, verbatim:

"The UTC wishes to remind all customers on current Anti-Money Laundering policies.

The Central Bank of Trinidad and Tobago, in accordance with its guidelines for anti-money laundering and the combating of terrorist financing, requires that customers conducting certain transactions be identified by name, address, government-issued identification (passport, ID card, driver's permit) and other relevant information.

Effective immediately customers will also be required to verify the source of funds for investments \$60,000 and over by completing and signing the Source of Funds Declaration Form. Please note that the UTC cannot accept investments that require a Source of Funds Declaration Form if such form is not completed.

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All customers will be subject to these requirements."

And they say for more information call...

Unit Trust Corporation (of Trinidad and Tobago)."

Sen. Mark: May I ask you something? Through you, Mr. President, could you tell us for instance if that was the first piece of information you got in your mailbox, because as I understand it, the Central Bank had these guidelines out since 2004. I am a member of Unit Trust. I have savings there, and for the last five years I have never received that. So I want to know when the Unit Trust issued that and whether that was the first one of its kind?

Sen. The Hon. M. Joseph: I do not know if you have been reading your mail because I know you get mail all the time. [*Interruption*] I make it up?

Sen. Mark: I have a "little thing" in Unit Trust.

Sen. The Hon. M. Joseph: All I am saying, Sir —[*Interruption*]

Sen. Mark: I wonder if that is a scheme.

Sen. The Hon. M. Joseph: A scheme? [*Interruption*] Also, Mr. President, hon. Members, I am sure you will be familiar with some of these advertisements that you have been seeing appearing in the newspaper as it relates to this. One says, "money laundering is the real killer". It is an advertisement. All as part of the public awareness programme in terms of—[*Interruption*]

Sen. Mark: What papers that in?

Sen. The Hon. M. Joseph: *Express, Guardian, Mirror and Newsday* between July and August of this year. So to say that, I think—I am countering the point that you made, that you were saying that there is no public education programme and the Government cannot wait until—we were saying we will wait until we implement the legislation before we started to—[*Interruption*]

Sen. Mark: That is very feeble.

Sen. The Hon. M. Joseph: Mr. President—[*Interruption*]

Sen. Mark: Hon. Minister of National Security, through you, Mr. President, may I ask a question?

Sen. The Hon. M. Joseph: Sure.

Sen. Mark: Mr. President, I would like to ask the hon. Minister if they could give us a breakdown of the stakeholders that he has met, for instance, the listed business that you mentioned. Could you identify for instance the categories that

you met with under "Listed Business". I would also like to know, as I am on my legs, whether the Law Association of Trinidad and Tobago, the chartered accountants, the group of auditors, these are institutions and they will be affected, so could you tell us the list. I just want to know if he has the list there.

Sen. The Hon. M. Joseph: The Minister will provide the list in his winding up.

Sen. Mark: Okay.

Sen. The Hon. M. Joseph: So that it will be provided. In keeping with our commitment as we did yesterday, whatever you asked for we provided, but then at the end of the day what you promised, you did not deliver. But then that is—nothing is—*[Interruption]*

Sen. Mark: Me? I do not make promises.

Sen. The Hon. M. Joseph: Mr. President, again, let me just underscore the issue of the FIU and the Egmont Group. As the Minister indicated, most of the countries which I called in the Caribbean where their FIUs are established, and their FIUs are also housed in the Ministry of Finance, they all satisfy the requirement of the Egmont Group.

Mr. President: You have three more minutes.

Sen. The Hon. M. Joseph: I am not going to finish in three minutes.

Mr. President: You are not?

Sen. The Hon. M. Joseph: No.

Mr. President: Can I break for lunch?

Sen. The Hon. M. Joseph: Yes, please.

Mr. President: Very well. If you are at a convenient point we will stop for the luncheon break then. It is 1.27 p.m., but we will come back at 2.30 p.m.

1.27 p.m.: *Sitting suspended.*

2.30 p.m.: *Sitting resumed.*

Sen. The Hon. M. Joseph: Mr. President, I was responding to some of the concerns raised on the other side, especially as it related to the Financial Intelligence Unit (FIU) model which the Government is proposing. I also want to give the assurance that notwithstanding the fact that there might be some weaknesses with respect to the legislation, there is a commitment on the part of the Government to ensure that there would be ongoing review and improvement to it.

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Sen. Dr. Nanan had raised the question about the type of model which was in place. This is just for the record—it was provided to me during the lunch break—these are the countries in the region and the types of models they have: Anguilla, Antigua and Barbuda have a hybrid model, which is the law enforcement/administrative model. Again, I remind Senators that I had indicated that the Egmont Group recognized some four different models: The administrative, the judicial or prosecutorial, law enforcement and the hybrid. As I indicated also, 76 of the 116 Egmont countries had administrative models. Again, this was to underscore the fact that the administrative model was a lowering of the bar or the weakest model; that was not, in fact, the case.

As I said earlier on, the FATF requires countries to determine which model would best suit their peculiar circumstances. The model we are using and the approach we are using also satisfies those requirements. We needed to strike a balance between satisfying them and our own peculiar circumstances.

The Bahamas has an administrative model; Barbados has an administrative model; Belize, a hybrid model; Bermuda, a law enforcement model; the British Virgin Islands, a hybrid model; Cayman Islands, an administrative model; Dominica, a hybrid; Grenada, law enforcement; Guyana, administrative, Haiti, administrative; Jamaica, law enforcement; St. Kitts and Nevis, administrative; St. Lucia, law enforcement; St. Vincent and the Grenadines, a hybrid model. Before Trinidad and Tobago had a sort of law enforcement model; the Turks and Caicos has a law enforcement model.

We are satisfied that with the passage of this legislation, we would ensure that we are not only complying, but we would have progressed sufficiently to make sure there is a specialist entity designed to treat with this whole question of money laundering.

Mr. President, with these few words, I thank you for the opportunity to have participated in this debate. I tried to impress upon those Independent Senators the need to support this legislation.

Sen. Dr. Sharon-ann Gopaul-McNicol: Mr. President, thank you for giving me the opportunity to participate in this debate. It is a known concept that past behaviour is the best and single most predictor of future behaviour. So while I agree that we should not allow ourselves to be blacklisted, and I certainly would not want Trinidad and Tobago to be put in that unfortunate situation, I do not intend to be pressured either. I want to be clear.

I think that we are sending a terrible message in this country, as leaders in this society, to our children, when we feel that we could be disorganized, wait until the last minute as ministers and leaders and then come with the highest level of manipulation, slam our backs against a wall and expect us to go along, just because there is a time frame under which we are operating. I think that people are rewarded for bad behaviour and bad performance in this country, no exception in this room as well. I certainly will not be party to this kind of pressure.

Certain conditions were already put in place by those who spoke prior to myself, a sunset clause and all of that, and I hope we would respect that.

Minister Browne in his contribution this morning, as I look at the *Hansard*, made reference to the Financial Action Task Force (FATF). [*Interruption*]

Mr. President: The hon. Senator should be referred to as the hon. Minister in the Ministry of Finance, that is the form.

Sen. Dr. S. Gopaul-McNicol: Sorry. This morning, the hon. Minister in the Ministry of Finance, and the Minister of Trade and Industry, made reference to the Financial Action Task Force. The 40 recommendations made by the FATF provide a complete set of countermeasures against money laundering.

So many countries have supported these 40 recommendations, and even though Trinidad and Tobago is not a member of the FATF, we are a member of the Caribbean FATF, which all support the 40 recommendations from what I came to understand from the Minister of National Security. So it is my hope that the Financial Intelligence Unit should ensure that these recommendations are followed.

I want to make reference to just a few, four alone, of the 40 recommendations, in that, these four may present a challenge to us in terms of ensuring that the recommendations are followed. Recommendation 15 states:

"Financial institutions should develop programmes against money laundering and terrorist financing. These programmes should include:

- a) The development of internal policies, procedures and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees."

I see that this is going to be a challenge for us to attain, simply because the very standard of how employees are going to be hired by those in the Financial Intelligence Unit have not been made clear. Certainly if I were to think of the

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procedure right now in the hiring of police officers, with the irrelevant tests that have not been standardized on our population, I hope that we would secure some more relevant measures in the implementation of the hiring of employees for the FIU.

Recommendation 21 states:

"Financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations."

As we pursue this intent on our part, engaging in political integration with countries in the region, I hope we pay close attention to these countries in terms of their own adherence to the 40 recommendations made by the FATF. I am not certain, at this point, that this has been taken into consideration.

Recommendation 30 states:

"Countries should provide their competent authorities involved in combating money laundering and terrorist financing with adequate financial, human and technical resources. Countries should have in place processes to ensure that staff of those authorities are of high integrity."

Again, I have to wonder if we are clear in terms of the hiring policies to secure employees of the highest integrity, as is expected by the conditions laid forward in the 40 recommendations of FATF.

Finally, recommendation 33 states:

"Countries should take measures to prevent the unlawful use of legal persons by money launderers."

I have to hold my breath on this one, because when I think and watch, with such horror, where legal persons compromise their ethics in this country, as we saw with the Chief Justice situation and the Director of Public Prosecutions (DPP), I am personally worried that there might be any misuse of legal persons for money laundering. [*Interruption*]

Sen. Seetahal SC: I would like some clarification, seeing that I am a legal person too. The hon. Senator said, "where we see legal persons compromise their integrity". I am sure she misspoke.

Sen. Dr. S. Gopaul-McNicol: No; actually, I was just referring to the whole fiasco which took place in the Attorney General's Office. I am sorry that I was not as clear. If anyone felt offended, I apologize.

In any event, my concern also, separate from these recommendations, was the location of the Financial Intelligence Unit. It cannot be underscored, or we should not marginalize our concern around where this particular FIU location is placed. I personally hope that it would be where it would be free of political interference, where it could be in an independent kind of situation. I am not sure that we are given the assurance of this happening, certainly not this time around as we make reference to the time frame and so forth.

I am emphasizing the need to have this particular institution free of political interference; simply because when you think of the vulnerability that all of us are feeling actually and the vulnerability that we are all under, considering that just suspicious activity could land you into all kinds of political involvement, if there is any need or any particular person who might be speaking out, as we have seen. We saw Dr. Rowley's attempt to bring forward all kinds of concerns with respect to UDeCott, and here we are today, having to face this situation.

In keeping with this particular FIU, which is a very important institution, I think we need to be very careful in terms of persons not being politically harassed, as a result of just even attempting to speak out on matters in this country. It could happen.

I also watched in horror the marginalization of the issue of human trafficking in January, when a report came in on the fact that there were over 600 persons missing. We saw the vilifying, literally, of the Missing Persons Association, made to feel as if they were engaging in something so inappropriate, as they raised this issue.

So in keeping with this particular Financial Intelligence Unit, my real concern is that I do not—and I must admit—trust this administration in ensuring that persons would not experience political harassment, if they were to raise these various issues. This "suspicious activity" is very broad. It needs, in my mind, to be operationally defined, so that we are very clear in terms of who could be singled out in this particular situation.

Mr. President, this is all I had intended to contribute. I did not want to take too long. I thank you for engaging me and allowing me this time. [*Crosstalk*]

Hon. Senators: Happy birthday!

Sen. Helen Drayton: Mr. President, I open by referring to comments by the hon. Minister of National Security and the hon. Minister in the Ministry of Finance, that the Government faces a challenge. I want to suggest that it may face a challenge if a decision in the interest of the credibility of this institution, does not arise out of dialogue, common sense and persuasion.

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We understand that if this legislation is not passed, the country could be blacklisted. I wish to state that I do not feel that I have a gun to my head nor do I feel trapped.

2.45 p.m.

It is basic, this situation, in that I am only one Independent Senator but if it is not passed, if the country is blacklisted, then let the people of Trinidad and Tobago know fully and honestly that any consequences would be as a result of inaction by the Government, not any Member of this Parliament not accepting legislation that is substandard and not in the interest of the stated goals of the Government. The FIU structure in the context of location does not meet the test of distance from the political directorate; it does not meet the test of credibility for Trinidad and Tobago. I am not prepared to aspire to standards of Antigua, Haiti or the Bahamas.

This Bill has to meet certain tests or this FIU, as I said, the test of credibility in compliance; it has to meet the test of robustness in the fight against money laundering and terrorism financing; it has to meet adequacy of governance structure in the context of the IFC, which is the International Financial Centre as an instrument of economic diversification. It has to meet no test of being blacklisted.

So what other countries choose to do, and some of them may have taught us a lesson with their hybrid models in that they have innovated and created, and this has been a call by myself all along and that is, that in bringing proposals and legislation, especially as we are aspiring to developed country status and that innovation is a requirement, that we seek to consult and tap into the creative talents that exist in Trinidad and Tobago.

But you cannot come at the midnight hour and say if we do not pass this, the country will be blacklisted. I am sorry; I am not going to fall into that mire. The question has to be asked: Why is the Government going down that road? It must know that by placing such a sensitive and important institution in the Ministry of Finance that it runs the risk of a very high potential for accusations, interference, corruption and of collusion. It knows that, so why are we not aspiring to higher standards of governance, competence and efficiency?

The FIU, although it is a supervisory body requires some distance from the political directorate. You notice I have not used the word "independence" because I really do not believe in a democratic society you could ever have total independence as some people might like to believe, might be inclined to believe

from—you know that is the Government from critical agencies of governance. That would be very hard to achieve because independence only comes about more from the integrity of people.

We also have to look at the Ministry of Finance. Insurance companies once fell under the jurisdiction of the Ministry of Finance and what happened? The seeds of non-compliance by one company that controlled 25 per cent of this nation's assets took root under the jurisdiction of the Ministry of Finance. It broke the law, it failed to meet its statutory requirements and the Government is asking us, when that memory is so fresh, to put a Financial Intelligence Unit in the Ministry of Finance. I think we have to hold the Government to higher standards of performance and accountability.

Now, with respect to suggestions that were made with respect to a sunset clause, I have not heard anything that convinces me that that is not possible. The fact—and whoever the governing powers are, already know that we have not been compliant. So if we do not have any powers of persuasion to let them know that in a short while we will be compliant, then we cannot accept what the Government is saying with respect to this Bill.

Where another suggestion was made to put it under the Central Bank, there might be challenges there; it could be auxiliary, it could be adjunct. There are avenues that the Government can use and I assure it—because we do not want our country to be non-compliant—if we have to stay here all night or come back tomorrow or day after, we are prepared to do it, but I am not prepared to find myself in a situation where the Government is saying we are going to be blacklisted and, therefore, we have to do this.

With respect to the human resources, Sen. Prof. Deosaran made a very valuable recommendation when we were debating the Proceeds of Crime Bill and that is a joint select committee be established with respect to the proceeds of crime. I am not saying that that is an answer, but again, if we are thinking out of the box, we can consider this committee being responsible, and that could be embedded in legislation for fleshing out the qualifications, the terms of reference and policy. We can find ways around this situation.

So that if the Government chooses to completely ignore and say no, even before we can feel confident that the suggestions are being considered, then it certainly runs the risk of failure, but then I am only one Independent Senator. So I want to urge the Government to let us get together and look at this critically and see how

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we can arrive at a situation that does not compromise the integrity of this country and the integrity of us all here. We cannot subject ourselves to this kind of duress unnecessarily when all we are trying to do is seek the interest of the public.

Thank you, Mr. President.

Sen. Dr. Jennifer Kernahan: Thank you, Mr. President, for the opportunity to contribute to the Bill before us, an Act to establish the Financial Intelligence Unit of Trinidad and Tobago for the implementation of the anti-money laundering policies of the Financial Action Task Force.

Mr. President, today is the sixth day of October, a very historic day in the lives of our people in the Caribbean because today marks the 33rd Anniversary of the downing of a Cubana aircraft, a terrorist act over Barbados. And we are in this Parliament today where this Government is seeking to avoid being blacklisted on the part of the Financial Action Task Force because of its failure to upgrade legislation on money laundering.

Mr. President, we are being asked to institute legislation in line with the 40+9 recommendations which include anti-terrorist activities, money laundering activities, and specifically, we are being asked to approve a Bill before us to establish the Financial Intelligence Unit.

It is recognized by all authorities, all jurisdictions that we have looked at, that the establishment of a Financial Intelligence Unit is an important step forward in the fight against terrorist activities, money laundering activities, criminal activities and so forth but, as it turns out, we in Trinidad and Tobago have apparently already established such a unit; the Financial Intelligence Unit of Trinidad and Tobago and it is a division of the Counter Drug Crime Task Force.

I am reading from a document, IBA Anti-Money Laundering Forum The Lawyer's Guide to Legislation and Compliance Trinidad and Tobago. Last updated: 09/02/2009 and it says:

"The Financial Intelligence Unit of Trinidad & Tobago (FIU) is a division of the Counter Drug Crime Task Force. Its functions are to:

- Conduct criminal investigation both proactively and reactively;
- Conduct money laundering investigations;
- Receives and carry out investigations of Suspicious Activity Reports;

- Deals with confiscation according to the Proceeds of Crime Act 2000;
- Ensures the implementation of compliance programmes by financial institutions."

It goes on to say that:

"Through the Proceeds of Crime Act, 2000 (POCA 2000), a 'designated authority' was established to carry out the functions of identifying and tracing property that may become the subject of confiscation orders. The 'designated authority', who can be an experienced lawyer, accountant or a police officer (of rank of Inspector or above), is in immediate command of the FIU, and although the FIU itself does not have the authority to directly obtain any additionally required information from reporting bodies, the 'designated authority' does... Section 32 of POCA 2000, gives the ability to apply to a Judge for a production order, compelling the production of financial information from reporting parties during the investigation of Drug Trafficking or Money Laundering Offences."

So it seems that we had these provisions in place, we had a designated authority who could have applied to a judge for a production order to get more information, but apparently it was not enough and the Caribbean Financial Action Task Force in a recent report expressed its concerns over the lack of overall review of the effectiveness of the current system for combating money laundering and terrorist financing, and called for Trinidad and Tobago to adapt a supervisory system with closer scrutiny of money transfers and increased cooperation between all financial institutions.

So Mr. President, what we have here is a system that was set up, the Financial Intelligence Unit and could have, and should have, been doing the work it was supposed to do, and we are here today actually to enforce the legislation that would give the Financial Task Force more teeth, more authority and more strength. It is surprising that the fact that we have this already in effect, did not come up at all in any of the Ministers' contributions this afternoon. So this is what we are about, giving the Financial Intelligence Unit more authority and more strength.

3.00 p.m.

The Financial Intelligence Unit of Barbados made a statement to the effect that whoever controls an economy controls a country and that large scale money laundering has the potential to destabilize financial institutions, financial sectors and entire economies.

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So we have recognized that, and the United National Congress has, in fact, put measures in place to deal with these issues. But we want to move on now to the fact that we want to put this Financial Intelligence Unit in the context of a separate piece of legislation and give it more authority, more strength, and therein lies the problems that we have encountered this afternoon and the reservations that many Senators have expressed.

Clause 3 of the Bill purports now to move the Financial Intelligence Unit of the Ministry of National Security where it currently resides as part of the task force, and establishes it as:

“a department of the Ministry of Finance, to be known as the Financial Intelligence Unit...for the purpose of performing the functions and exercising the powers vested in it under this Act and under any other written law.”

Then clause 3(2) goes on to say that:

"The FIU shall consist of a Director and Deputy Director and such appropriate number of staff as may be necessary, for the performance of its functions."

And clause 4 states:

"The Director shall be the head of the FIU and shall be responsible for the overall supervision of the department and the implementation of anti-money laundering policies in accordance with this Act and any other law."

We find these clauses, as many other Senators have said here this afternoon, totally unacceptable and it does not give us the assurance of relative independence—because I agree with Sen. Drayton that the Financial Intelligence Unit will have to report to some organ, to some body, to Parliament ultimately, but it needs to have that relative independence and isolation from political interference and I think this is the basic sentiment being expressed here this afternoon.

The other issue with these clauses that I read out, is the whole question of such an important organization with such wide powers and so on. Nothing in these clauses here gives us any idea of who the people to be heading this unit are; what their roles and responsibilities are; what their qualifications are, and so on, and this is very disturbing because of the wide remit that this Financial Intelligence Unit would have.

When we compare and examine this proposed Bill before us with other legislation in the Caribbean, we find that the structure and arrangements of the Bill before us are totally counter-productive to what it is purported to do and we

find that other legislation is far more advanced, clear, precise and gives you that sense of isolation from any element of political interference.

When you look at Barbados—I think the Minister of National Security mentioned the Barbados Bill—Barbados has actually established an Anti-Money Laundering Authority. This Authority was established in 1998 to supervise financial institutions in an effort to prevent money laundering. How is this Authority comprised? It is comprised of nine members drawn mainly from the key public sector agencies that relate directly to the Anti-Money Laundering Authority. They did not leave that to chance; they did not leave that up in the air, just a director, and we have no idea about what the staff would be, except as this Bill says here, "an appropriate number of staff as may be necessary for the performance of its function".

They are clear here on the composition of the Authority which makes sense because it draws all the key players in the economy that would have knowledge and expertise in the area of combating money laundering. It says here that there would be:

- Chairperson — from the private sector.
- Deputy Chairperson — from the University of the West Indies.
- The Solicitor General, or representative.
- The Commissioner of Police, or representative.
- The Commissioner of Inland Revenue, or representative.
- The Comptroller of Customs, or representative.
- The Supervisor of Insurance, or representative.
- The Registrar of Corporate Affairs and Intellectual Property, or representative.
- Representative of the Central Bank of Barbados.

That is a very potent, a very strong committee that makes up this authority. And what happens then is that:

"The executive functions of the Authority are carried out by the Financial Intelligence Unit."

So you have the Authority and out of that Authority you have an executive body which is responsible for the day-to-day affairs of the Authority, and this executive function carried out by people coming out of this Authority, they are

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called the Financial Intelligence Unit. It is headed by a director and it is responsible for the day-to-day work of the Authority.

"Thus, all reports of suspicious activity are sent to the FIU from where they are managed."

So we understand that structure. People would be comfortable with a structure like that; we would be comfortable with the fact that these are high ranking professional people in their own right in the society, with wide knowledge and experience and they are independent and they are able to do the important job that they are given to do, to regulate and look at the issues of money laundering in their society.

The Minister of National Security spoke about different models and hybrids and—what is the word?—administrative, and so on, but our objective here today is to look at everything that is happening; look at other jurisdictions and find a model that would suit our own political, social history, our experiences and find a model that would suit that. We cannot just import things and say because Bahamas has this and Barbados has that, and whatever; we have to look at what is happening out there and take the best and get ideas, and so on, but we also have to place it in the context of our own experience here; our own experience of blatant political interference and political manipulation of independent institutions in this country.

We do not know what their political history is; we do not know what their social history is, and they have their models suited to their history and we have to examine whatever model is presented by this Government in the context of our history, and our very recent history. These things are not in the long, forgotten past. In our very recent history we have had serious issues of blatant manipulation of independent institutions: the Judiciary, as was mentioned here, the Parliament, the Public Service Commission and so on. This is not something that we are prepared to play with.

We looked at St. Christopher and Nevis and their financial institutions and they had a similar type of structure and they established this in 2000 and clause 3 of their Act states:

"For the purposes of combating money laundering, there is established a body to be known as the Financial Intelligence Unit, which body shall comprise of—

- (a) a representative from the Attorney General's Chambers;
- (b) a representative from the Ministry of Finance, Saint Christopher;

- (c) a representative from the Ministry of Finance, Nevis;
- (d) a Director appointed in writing by the Minister;
- (e) a representative from the Legal Department, Nevis;
- (f) such number of consultants, having suitable qualifications and experience relevant to the functions of the Intelligence Unit, as are necessary, to be appointed in writing by the Minister;
- (g) such number of police officers to be appointed by the Commissioner on the recommendation of the Director;
- (h) such other personnel as the Director may consider necessary."

So these are very robust committees and units, in which you see the basis for the incorporation of the personnel in these units.

You see clearly the basis for police officers; you see the basis for the inclusion of consultants, having the necessary qualification and experience; representative from the Ministry of Finance, from the Attorney General and so on, and it makes sense. What does not make sense is for this Bill to come before us today and tell us that, you know, we have a director and a deputy director and an appropriate number of staff. This is total disrespect to the Parliament and to the people of this country.

And even more so when we look at clauses 7 and 8 where the Bill before us outlines the function of the Financial Intelligence Unit, these are extremely important, extremely complex; there is a lot of information to be collected, to be analyzed, to be disseminated and so on. In clause 7 it states:

“The FIU shall be the primary institution for the collection, analysis, dissemination and exchange of financial intelligence and information among law enforcement authorities, financial institutions and listed business in Trinidad and Tobago and internationally.”

That is a huge task that would require a number of agencies and persons with a high degree of knowledge of these matters.

Mr. President: Did you say that was clause 7 or clause 8?

Sen. Dr. J. Kernahan: Clause 7(1) Part III, Functions and Powers of the FIU.

Mr. President: Then you have a different Bill from me.

Sen. Dr. J. Kernahan: Mr. President, I was dealing with the functions of the FIU and the FIU has to collect information, receive reports of suspicious activities. In addition to receiving reports of suspicious activities—this one is clause 8(1) and (2):

“(a) may request financial information from a financial institution or listed business in order to facilitate the exercise of its powers under the Act;”

They have to be able to have the personnel and the expertise to analyze and evaluate reports and information upon receipt and to determine whether there is sufficient basis to transmit reports for investigation by any local or foreign law enforcement authority.

Now this is a very important aspect of the work of the FIU, because they are the ones who now would determine, based on the information they have; based on the information they requested, if there is, in fact, suspicious activity. They have to evaluate the information they have and determine whether they would transmit this information for investigation.

So you cannot have people on this unit who do not know what they are doing, because they will be playing with people's lives, as so many Senators have said here this afternoon. We have to tread very warily, very carefully, because we are dealing with the constitutional provisions which protect people.

Therefore, you have to have people of the highest calibre, the highest qualification, who are able to do this job in a manner which would not prejudice the rights of our citizens. The work of the Financial Intelligence Unit is to make annual and periodic reports and these reports actually will be brought to Parliament. That is a whole area of other work that is very complex; that is very important; you need a lot of resources to be put into this institution to be able to generate these reports on a timely basis to be brought to Parliament, and so on.

In clause 9 of this Bill, they have to implement a system for monitoring the effectiveness of what they are doing. Clause 9 says:

“The FIU shall also implement a system for monitoring the effectiveness of its anti-money laundering policies by maintaining comprehensive statistics on—

- (a) suspicious transactions...
- (b) money laundering investigations...
- (c) property frozen, seized and confiscated; and
- (d) international requests for mutual legal assistance and other co-operation.”

3.15 p.m.

If we look at the role and functions as outlined in the clauses before us, we would know that the work of this unit is extremely important, complex, onerous and even dangerous as some Senators have pointed out. They have to be able to liaise with the Central Bank, financial institutions and other institutions in the society. We cannot accept this very weak description of the personnel that will comprise this authority. There is no comfort to us in this Bill before us that this authority will be given the required resources in terms of personnel that is necessary to do the work that it is required to do.

The Minister of National Security circulated 40 + 9 recommendations which all countries are asked to subscribe to by the Financial Action Task Force. Apparently, these recommendations were initially developed in 1990 by the G-7 countries. The Minister indicated that in addition to the Proceeds of Crime Act and the Financial Intelligence Unit Bill before us, he would also bring amendments to the anti-terrorist legislation which will come soon.

Among the 40 recommendations that were brought by the Minister, what interested me most was recommendation 37. It says:

“Countries should, to the greatest extent possible, render mutual legal assistance notwithstanding the absence of dual criminality. Where dual criminality is required for mutual legal assistance or extradition, that requirement should be deemed to be satisfied regardless of whether both countries place the offence within the same category of offence or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence.”

I want to end my contribution by saying that we are part of the developing world and we are called upon to link up to the huge globalized world and economy and be part of international conventions and agreements. What bothers me about this is the fact that sometimes the developing countries are held sometimes to even higher standards than the developed countries hold themselves to. We are called upon to agree to extradition treaties, proceeds of crime and deal with terrorist activities and supported terrorist activities. The fact is, that the developed countries do not do these things. They break the laws that they call upon us to observe.

I end by saying that it is ironic that on October 06, we have where recommendation 37 is being imposed on us, to implement an Anti-Terrorist Act which is a part of the Homeland Security Act of the United States after September

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2001; when a known international terrorist who was jailed in the Bolivian Republic of Venezuela is now free and being protected by a developed country; the United States. We are being called upon to observe this recommendation 37. This is blatant hypocrisy. We have to understand that when we are agreeing to these conventions and recommendations, there are double standards. Many of the standards that they want to hold us to and imply that we would be blacklisted, yet they blatantly violate their rules and standards.

Thank you. [*Desk thumping*]

Sen. Dana Seetahal SC: Mr. President, the temptation to sing that song, “Late Again”, is almost irresistible and other persons have made the point already, so I would not press on it. The Government has given us no reasonable explanation for that as they have not for many other things including the last amendment to the local government legislation. There are several issues in drafting alone which are involved. There are several errors that I have seen. Sometimes I have to wonder, is it that when these Bills go to the other place no work is done in those matters because they are secure in the knowledge that when they come here, we would spend time to pore over them?

If that is so, then—is lazy an unparliamentary word, Mr. President?—it must be that it is something of that ilk. If one looks at the amendments from the Minister of National Security yesterday, in relation to the connected Proceeds of Crime (Amdt.) Bill which is referred to in this legislation, one would see the wealth or the number of amendments and realize that they are such trivial things that any parliamentarian reading through them, ought to have picked them up, at least, comparing them with the original legislation. It seems to be that somehow before these Bills come to us that that is not done. In the past I have asked that when you circulate amendments that there be a table, hopefully, against which you can look and compare the previous legislation. This was done a couple of times, but then it all went to disuse, for want of another word. So, we do not know what is happening.

I move straight on to identify some of these little issues of drafting before I deal with the main thrust of my contribution. In this Bill there is reference to the Proceeds of Crime Act and in clause 2, the first statement is: In this Act, Act means the Proceeds of Crime Act. If “Act” rather than the words “the Act” means the Proceeds of Crime Act, then if one looks later on in the legislation at clause 3(1), the fifth sentence, “functions and exercising the powers vested in it under this Act,” then, one would be tempted to say under this and if “Act” means

Proceeds of Crime Act, it would be this Proceeds of Crime Act. Truly, you do not mean that. You mean this Financial Intelligence Unit of Trinidad and Tobago Bill which would become an "Act". It is really ridiculous to say "Act" means—I presume it means "the Act" if you are going to say that.

It is even more ridiculous when you look at the definition of "financial institution". "Financial institution" has the meaning assigned to it in the Proceeds of Crime Act. If Act means the Proceeds of Crime Act, if you were going to be consistent, why could it not have read, "financial institution has the meaning assigned to it in the Act"? Then, Proceeds of Crime Act would be the Act. If you look at "listed business", you see it means the business listed in the First Schedule to the Act. Do you mean the Proceeds of Crime Act there? Then you go back to proceeds of crime has a meaning assigned to it in the Proceeds of Crime Act.

If we are supposed to be legislators—making laws and that is what Parliament is about—it is inexcusable for the mover of a Bill not to have picked up something like this because it is not a very long Bill. Those are things that I would expect that, as a parliamentarian, he would have read and it would have been brought to his attention by his technocrats. I know that the Attorney General always refers to his technocrats as if they hold sway and we should be guided by them, take heed and do not argue with them. This is a very good example of the things that we see all the time and if we took it at face value, we would have ridiculous legislation. I make that point as an example of what passes for passing legislation in the other place.

In clause 2(2), there is an insertion:

“For the purposes of section 15, the Minister responsible for national security may by order prescribe the law enforcement authorities to which the FIU shall submit a report...”

My understanding of clause 2 of this Bill which is to become section 2 is in the marginal note "Interpretation". I fail to see what 2(2) which is a requirement to submit a report is doing in the interpretation section. Should that not be after 15? One logically, would think so.

I do not want to beat a dead horse because it is dead in the clarity of which this Bill is badly drafted. I think that these are such trite and obvious things that if you are coming to rush through something, at least spend the night rushing through it to ensure that it is logical, not ungrammatical and basically reasonable drafting.

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Moving along to my concerns, they are several but short, in the sense that I would like answers to these questions which some of my colleagues have mentioned already. Who is to be the head of the Financial Intelligence Unit? My understanding of what is happening now—you can correct me if I am wrong—is that currently there is a head of the Counter Drug Unit and some competition dispute concern as to who will head the Financial Intelligence Unit. My information from persons who have dealt with this unit is that over time the financial institutions of Trinidad and Tobago have dealt with members of that counter drug unit and established relationships, that the unit has as reputation for being discreet and engages in relationships with foreign authorities, because they work in relation to the Mutual Legal Assistance Treaties (MLAT) under those country to country.

I would like to find out something. One would not want to feel or have the members of the unit and others feel that this is to be a political or internal football where people are to be rewarded with being the head of this unit and the power that goes with it or whatever else as the title, head of the Financial Intelligence Unit, which is not deserving.

That brings us straight to the point. As you have heard already and persons have made the point that in this Bill, there is no indication as to who is to appoint the head. It is very unusual. There must be some reason unknown to us why this is so. Is it an intelligence secret that you do not want to disclose it?

I think that the Minister ought to make it clear why this is so. The Commissioner of Police is appointed by a specified person. Different persons, you see, are appointed by so and so. I am not suggesting that the Minister is the one responsible but at least you read it and you know what is going on. It is a veil hidden and it would not create confidence in the citizenry of Trinidad and Tobago, if we pass legislation which finally gives some teeth to what was the Counter Drug Unit, (now to be called the Financial Intelligence Unit) or at least, one part of it, and we do not have these matters clear. We are moving willy-nilly to satisfy that time limit.

It might be that we are moving willy-nilly to satisfy that time limit of Friday as Sen. Mark said, I believe. This is ridiculous if we do not know anything about the appointment of the head of the unit whose power according to the draft legislation before us, is that he will be responsible for the overall supervision of the department and the implementation of anti-money laundering policies in accordance with this Act.

3.30 p.m.

Mr. President, there are some concerns that I have on clause 5, apart from the generic matters that I have mentioned here and the issue of the failure to include who is to appoint. My colleague, Sen. Drayton, mentioned the establishment of the unit within the Ministry of Finance. It may be that there is a good intention, and it may be that others have done it, but we have the Customs and Excise Department within the Ministry of Finance and other such units. However, my knowledge of what passes for the FIU seems to have formed the view that this is more of an investigative—more intelligence and more police law enforcement oriented—and, therefore, the suggestion that it should be administrative which is just like collecting revenue which is what the Customs and Excise is about, and I see it, which is what the Ministry of Finance is about, but it certainly does not sit well with me.

Sen. Browne: With respect, Senator, the Ministry of Finance has within its core at the level of Customs and Excise, as well as in the Inter-Inland Revenue Service, competencies with regard to investigation and pursuit which are not well disclosed, but which do take place.

Sen. D. Seetahal SC: I am sure that within the bowels of every Ministry there must be some intelligence or investigative powers. In most ministries now there are legal counsels. There are lawyers within each ministry to advise, but when you want to have an expert opinion—I hope the Minister is listening to this. In his eagerness to have crosstalk, he would probably miss what I am saying—drawing an analogy, you do have an Attorney General's Department, the Director of Public Prosecutions Department and the Chief Parliamentary Counsel to whom they usually ask advise when the going gets tough. In my view, is this the kind of sub-police department you want to have the FIU reduced to? In my view, it will amount to that if it were to fall within the Ministry of Finance as a sort of semi-administrative/finance/with some investigative powers unit. Perception is important.

Under clause 4A which was an amendment in the other place, it is subject to being given directions of a general nature from the Minister as to the policy to be followed in the performance of its functions, as appears to the Minister to be required in the public interest.

Now, if this unit is to function in the way that UDeCott is functioning, for instance, then we would have little to fear, because it would be a body that does not take directions of a kind that it does not feel it should, that would interfere

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with how it wants to carry out its functions. If it is that unit is to function like that, I would have no fear, but I have a feeling that body stands alone. Perhaps, there is no one like UDeCott and, therefore, I fear for the FIU in its carrying out of its functions, if it is subject to taking directions which are said to be in the public interest.

Mr. President, this is not the Central Authority which is merely to collect information. This is a body that can demand information from a financial institution. This is a body whose members can walk into a financial institution; this is a body that does not need to get a search warrant to get your information; any bank that you have accounts with can be called upon to disclose information to the FIU. Presently, I am sure that the banks do this, probably if they have a relationship investigator or under sections 21 and 22 of the Evidence Act but, again, that is subject to some form of judicial control.

Mr. President, in the case of Williams, 1997 Privy Council case, it was said that the courts in relation to the issuing of a search warrant is an interpolation between the State and the citizens. In other words, it is making sure that the State does not abuse the powers that it has.

Now, what powers would this unit have? This unit has a power under clauses 8, 11 and 12 of the Bill to collect information from law enforcement authority. Under clause 11, there is another power where you can request further information. To cap it all, where the information is not provided within the time specified unless it is extended, the institution or business or a director or officer commits an offence. So, it is a criminal offence not to give information to this unit. The unit may instruct a financial institution to suspend the processing of a transaction and the person involved must go to court to get that stopped.

Under section 55(7) of the Proceeds of Crime Act—the two pieces of legislation are connected—this unit has the authority to enter into the premises of any financial institution to inspect any business transaction to determine whether or not there has been compliance—a separate issue—to inspect the record; client information.

So, I am a lawyer, and under the amendments that we passed yesterday, what can happen is that members of the FIU can just walk into my chambers and look at my record. They can just go to the bank and demand my record. There is nothing in this amended legislation which requires them to get, as is normal for police officers, a search warrant. There is no need to prove and show that you have information of a certain level. You can just do it. This is the unit that is to be appointed by unknown persons. This is the legislation that we must pass by Friday to be in compliance.

Well, according to what is here, they can walk in if they have to actually search, but they can request for information without a warrant. If they do not get that information then it is an offence. So, effectively they can get your records.

Under section 7 of the parent Act, there is provision about applying to a judge in chambers, but there is nothing under the current proposed law here in relation to the powers that are given to you. So, what does collection of information mean? If I ask you to give what is effectively here—all of these things—to inspect a business transaction, under this legislation you have to get a warrant to do that. Under this legislation, you do not have to do anything. So, looking at the two pieces together, there is no mention—unless I missed it somewhere and I do not think I did. Clause 8 is working with clause 11 and clause 12. Now, I went through the legislation and I did not see anything.

Now, the two pieces of legislation work together, but if you are talking about the wide terms of collecting information and requiring information, if you do not get it—the FIU's primary function is collection analysis, dissemination and exchange of financial intelligence. I am going to read that again—information among law enforcement authorities, financial institutions and listed business in Trinidad and Tobago.

How do they get my information? The Authority may request financial information from a financial institution or listed business. So they can request my information, and if I do not give it then it is an offence. So, effectively, it is the same thing; walk in physically. They can demand all of that of me. I am saying, unless the Minister can show it to me where it might be hidden in some other section, but I looked through the entire section, and there is no interpolation between the citizens and the State in relation to powers in clauses 8, 11 and 12.

Now, there is another point in relation to clause 15. This is actually an argument the other way. Clause 15 speaks about after the FIU has conducted its analysis or evaluation of a suspicious transaction, et cetera, a report shall be submitted to the relevant law enforcement authority to determine whether a money laundering offence has been committed or whether the proceeds of crime are located in Trinidad and Tobago. What exactly does that mean? There are two things: Here you are requesting information from a financial institution; you are disseminating things. Under clause 14, you have the power as to suspicious transaction. The person affected may apply to a judge to discharge the instructions.

So, just supposing you request information or having got that information you say that there is suspicious activity; suspend operations and the person goes to a

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judge and says that I want to start operations, and then after all of this you send it to the agency concerned, what is the point? By that time, all the information would have been destroyed, and the person would know of it. That is why retaining an investigative kind of unit would be of more use. If all of these things that you have to go through do not sensitize the possible culprit to what is happening, I do not know what else would. If that happens, then the chances of successfully prosecuting him or her would be reduced. So, I looked at that clause 15 and I ask: Why is it so long after everything that a report is now to be made to the police for the relevant law enforcement authority, whoever that is. [Interruption] It says after the FIU has concluded its analysis or evaluation of a suspicious transaction and where the director is of the view that the circumstances warrant. So, I am sure, like any other citizen, possibly persons can make reports to the police any time, but in the stream of life and in the sequence of this Bill, it sounds rather late in the day to me.

Those are my concerns, and the drafting errors that I saw. I do not know if I missed any, because all these pieces of legislation we have had before us, it is possible I would have missed some, but I think we need to go through these Bills with a fine tooth comb which I do not possess at this time; and then there is the powers that are to be given to the authority. As I said, under clause 8, point me to any warrant that you may see there, through you, Mr. President, to the Minister, and then I would agree that there is some protection, but other than that, I feel totally exposed now that this legislation applies to listed businesses—at least, when you amend the drafting errors it would—under the Proceeds of Crime Act which are very wide. So, all of us would need to have our information through the financial authorities exposed. That is what it is.

Thank you very much. [*Desk thumping*]

3.45 p.m.

Sen. Lyndira Oudit: Thank you very much, Mr. President. We come here today, just like yesterday; reference was made as to the long hours we had, and a point from yesterday was that in 1988 the Vienna Convention took place. We did not come here until 2000 under the United National Congress and only yesterday, again at the very last minute, we came for the Proceeds of Crime Bill, October 2009.

Now, we have a situation where on Friday, we would be blacklisted. Again, this is not even the last minute, this is worse than the last minute. We come here today, at the tip, at the very end, to do this Financial Intelligence Unit. We have calls on the part of the Minister, in his reference to the fact that we have

consultation, in response to a question from the hon. Sen. Wade Mark, about agencies being consulted, et cetera. The answer was that in his winding up, the hon. Minister in the Ministry of Finance, would give the indication as to which agencies were consulted.

I think we have the precedent here where, week after week we come, and I think for some reason the understanding is not there. This is truly the highest place in the land for consultation, and this your Constitution, with the Members of the Opposition and Independent Benches, are guaranteed. This is where we have consultation, but unfortunately when we come here—and this is probably why it is such a frustrating exercise at most—and hundreds of recommendations by Members of the Opposition are given, with a token acceptance at times from those on the Independent Benches, and simply because it is made by the Opposition, almost nil.

In fact, yesterday was a very, very critical example of that type of arrogance that takes place in this Senate, which ought to have been a house of consultation, where after so many recommendations were given, all in an effort to ensure that the maximum support comes out for legislation, you had Members of the Government team saying, well, we will take all of that, but you know what, we are not following your recommendations, we are not taking your amendments.

So, we come here today to deal with this FIU. We have had a call so far for those positions: the director and deputy director, et cetera, to be appointed in consultation with both the Prime Minister and the Leader of the Opposition. This Bill speaks to a number of positions: the deputy director; it talks about the director, public officers appointed, assigned, seconded, or transferred from another ministry or a statutory corporation.

In our own Constitution we have a number of appointments that are made in conjunction with both the Prime Minister and Leader of the Opposition and it says here, for example, the Ombudsman, section 91(2); the Chief Justice, section 102; Judicial and Legal Services, section 110(3), and the list goes on. Further to that, we have precedent that was set right here in this very Senate, in the Police Complaints Authority, 2006. It was in one of the most creative uses of language that this Senate has added, and I am quoting from Part II, clause 6(1):

"The Authority shall comprise a Director and a Deputy Director to be appointed by the President on the joint advice of the Prime Minister and the Leader of the Opposition."

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You know, too often we find that we are tied to dinosaurs; we are truly burdened. In legislation, we are tied to dinosaurs. What we find is that we refuse—as a people, as a country, as a government—to make changes that will bring us into this century. This piece of legislation, the Police Complaints Authority, this simple addition of those words "joint advice".

I would like to strongly, strongly urge the Government on the recommendation of not only the Opposition but Independent Benches as well, which made the call to be so careful in the appointment of those key positions as the director and deputy director as well as other key positions, that it should be in the legislation on the joint advice of the Prime Minister and the Leader of the Opposition.

The Minister of National Security indicated that this piece of legislation was really in keeping with the high standards set out by the Financial Action Task Force. This is why we cannot go back now and include any other thing or deal with anything, because this has already been compiled in accordance with high standards. When I looked at the 40 recommendations supplied by the Organization for Economic Cooperation and Development, which refer to these 40 recommendations of the task force, in the introduction it is very, very clear, so we have to be careful what we tell the nation. It says here:

"The recommendations therefore set minimum standards for action for countries to implement the details according to their particular circumstances and constitutional frameworks."

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

This is a mere guide; this is not the highest standard, as the Minister would like us to believe. So, the very task force has indicated it is really a minimum. One of the Senators earlier spoke about the lowest level. It is weak legislation; this is a low bar. We are not even attempting to meet high or middle ground. This is the lowest level, the minimum standards outlined in a document referring to minimum standards. So, we are minimum of minimum.

Mr. Vice-President, in this Senate today, we had the recommendation that we should include something like a sunset clause. While I really want to say that I agree with the need to have some form of revision, the Minister indicated that he is not including a sunset clause. I have to say that right now I do understand what the Minister is referring to, especially after the lunch break, when an opinion was given. This really is something we have to take into consideration, because certainly an FIU is dealing with local, regional and international agencies and financial institutions.

Once you have all sorts of contractual and legal arrangements, you really cannot put a sunset clause just like that, where you would end and be not effective, let us say this month, and by next month you have contractual arrangements and all of that. So, I understand that. However, I feel that with the accusation that this piece of legislation is weak as it stands, also with the recognition that we have come here at the very, very last minute, it is so blatantly a put together piece of legislation, just simply to avoid blacklisting, I think the idea is that we must find a way to plug the loopholes.

At this point, we still have the opportunity and the time to plug, maybe not all, but some of the loopholes. I would like to suggest that we look at plugging the loopholes. I would like to suggest here that when we come to the section that deals with reporting—I think it is clause 4—that probably the Minister could look at extending or inserting after clause 4 of the Bill, which talks about the implementation of policies, in accordance with this Act and any other law, to stick in somewhere there that you would review, based on, after a certain time, even if it is an annual review of some sort, so that you would take into consideration new and updated bits and pieces of activities.

Many people actually found—and we saw it yesterday when we were dealing with the legislation that in the Proceeds of Crime Act or in that particular Bill—the loopholes are well known and they are well used. The loopholes seem to be more used than the actual legislation. So, you find that so many people, if we do not set up this Financial Intelligence Unit in the manner that seeks to plug more loopholes than leave those open, then what we would find is that we are actually giving the same criminal mind avenues not only to continue but to probably expand.

Somebody mentioned a proverbial "gun to the head". Another Senator referred to the fact that it is not a gun to the head, but whatever the feeling, whether there is a proverbial gun, as the case may be, I think the whole idea is that we have come here and there is a lot of pressure on the part of Members in the Parliament today, to put together this piece of legislation.

This FIU is very important. This legislation is very important, but it is insufficient and it is inadequate as it stands, even the task force identifies a minimum threshold. We must find a way to include a form of review. It is given in the very task force and it says here:

"A key element in the fight against money laundering and the financing of terrorism is the need for countries to maintain, monitor and evaluate their systems, with respect to international standards."

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This very task force, the original recommendations were drawn up in the 1990s, as a direct result of the initiative to the misuse of persons using the established systems to launder money. In 1996, these exact 40 recommendations were reviewed, because you have what is called money laundering typologies. What that refers to is simply the new means that keep coming up. People are very creative and so from 1990, 1996, even in 2001, the task force identified that it needed to expand its mandate because of the issue of the financing of terrorism.

Again, in June of 2003, this Financial Act Task Force, the recommendations were again reviewed. If it is that we are now saying that we are using the recommendations of the task force and we are not willing to put in some form of review in our own legislation, then are we bigger than the very body that we are looking at, which has indicated that we must constantly maintain and review our pieces of information and our pieces of legislation?

Clause 4A of this Bill talks about giving general and strategic direction, which is to be given to the FIU. It talks about the Minister giving direction in the manner of strategic direction. How does the Minister give direction to the FIU, if we do not keep up with the typologies that are being used in money laundering?

4.00 p.m.

The criminals are very smart. The technologies are available in that this month you have something, next month it is outdated and two months from now you are going to find new technology. So, unless we put things in the legislation that will enable us to come back, then we have to say that we are setting it up to fail. We have to recognize that. We have to recognize that we have to put it in there because we do not want to tie ourselves to another piece of dinosaur, that, come six months down the road, this piece of legislation might very well be outdated, so we have to be very careful.

[MR. PRESIDENT *in the Chair*]

Even your Financial Action Task Force recommends that you constantly review and update. You need to monitor because of new things happening out there. We have only now started to scratch the surface when it comes to human trafficking. We have no clue when it comes to human trafficking.

Sen. Browne: If I might respond to that by directing you to clause 9, in particular, which says that:

“The FIU shall also implement a system for monitoring the effectiveness of its anti-money laundering policies by maintaining comprehensive statistics...”

The purpose of having the statistics and having those sorts of information is in fact to review it. The reason for joining and being a part of the Egmont Group is to ensure and to review practices in addition to which the recommendation also calls for benchmark reviews from time to time. I will address that particular aspect in the winding up, but that is one of the reasons why clause 9 is written in the fashion in which it is written. Thank you.

Sen. L. Oudit: I thank the Minister, through you, Mr. President, but this has to do with the detailed operations of the FIU. What I am referring to is the ability of this Parliament to come at, possibly, a scheduled time, or some sort of review session should have been built in.

Mr. President, we do not want to find ourselves in a situation where we put this in place—In fact, I referred to Caricom and in particular Trinidad under the Proceeds of Crime Bill yesterday. We have been identified as vulnerable and deficient. We have been identified in terms of the way that we have not been putting legislation to make us more compliant. I said that yesterday right here and we do not want to come in this 2009 to bring new legislation and find that three months down the road it is deficient.

Today, Senators in this honourable Senate are saying that it is a weak piece of legislation. Nobody is saying that it is not important. Nobody is saying that we do not need it. We all recognize that it is critical. We also recognize the foolhardiness in the Government reaching the point where it has to come abegging, and that is where we are, because now we face blacklisting, but you still want to have this position that, no, you do not wish to compromise. This is something, I think, a little tedious and it is beginning to be really troublesome.

In this Bill, clause 17(1) refers to publication of a list of countries identified as non-compliant. It says here in the Bill:

“The FIU shall publish—

(a) as frequently as is necessary...”

I know I heard Sen. Mark say that we should increase this, not to one newspaper, but to two at least,

“a list of countries identified as non-compliant or not sufficiently compliant.”

I would like to suggest to the hon. Minister here that not only that countries be listed in this particular circulation, but that companies, institutions and other agencies similarly non-compliant should be included.

Yesterday I made reference in the Proceeds of Crime Bill to a national database and this FIU is very interwoven with yesterday's Bill and you find that once this comes on stream—a national database of some sort—once you have companies that have been identified as non-compliant, not only countries, then it becomes easier to avoid complications by dealing with and making certain transactions with those agencies.

I looked at clause 18 of the Bill and while it does refer to the annual report of the FIU that the Minister prepares on the performance of the FIU which would cover statistics of suspicious activities, et cetera, in no way does it refer, again, to identifying which companies or which agencies have been non-compliant. We have a little practice among professional associations, for example, I have seen the dentists' association and a couple of associations, the legal fraternity, from time to time would publish a list of persons who did not pay their fees to maintain their annual membership.

I have always found that sometimes positive sanctions, while they work, sometimes associations need to do negative sanctions where we show and highlight, and I am almost certain that once those names are published many of the dues are paid very quickly. I would like to suggest that if we have a publication of non-compliant countries as well as companies and institutions, it is going to be easier to enforce requirements for compliance.

Recommendation 22 of the Financial Action Task Force refers to the application of principles which should be applied to branches and subsidiaries and I quote:

“Financial institutions should ensure that the principles applicable to financial institutions, which are mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply the FATF Recommendations,....”

Mr. President, there is no part of this Bill that refers to branches or subsidiaries abroad. Not right here in the country because certainly the laws of the country would guide within the country, but there is nothing that refers to how we manage or monitor those branches and subsidiaries that are outside of Trinidad and Tobago.

Clause 8(1) of the Bill in Part III refers to the functions of the FIU and it refers to the law enforcement authorities, financial institutions and listed businesses and I would have expected that if these three areas were identified as being a part of the Bill and a part of the legislation, I would have hoped that the Minister would

have included schedules at the end of this piece of legislation or to complete the legislation which would have identified which law enforcement agency you are referring to, which financial institutions and which are the listed businesses.

Now, we have a little situation here, where, for example, reference was made to SAUTT. Is SAUTT one of the law enforcement agencies that is legally able to collect or use the data in the FIU? Again, there is the promise that the required legislation would be brought to the Senate. We had a situation right here yesterday where some of these exempted institutions had to, almost in the committee stage, be added back into the wording of the legislation. So, my question is, as it comes to identifying those agencies of the functions of the FIU, in particular, the law enforcement authorities, the financial institutions and the listed businesses. I would have liked to see attached schedules indicating which of these were included.

In fact, we did the Financial Institutions Bill, I believe that it was the end of last year, where a number of agencies, institutions and financial intermediaries were actually left out and exempted. So, again we have to be careful that we are not providing an additional loophole that is under the Proceeds of Crime Bill, but because the two are separate pieces of legislation, [*Interruption*] Mr. President, through you, I understand what the Minister is saying that was dealt with yesterday. These are two separate pieces of legislation and it is not going to be in this legislation simply because we happen to do it within a 24-hour period. Nobody is going to remember, but it has to be included to make it a much more efficient and adequate piece of legislation.

Mr. President, as I talk about financial intermediaries, because whatever was exempted under the Financial Institutions Act would actually be referred to as financial intermediaries and I would like to refer to the final report on the Task Force and the Development Impact of Illicit Financial Flows. Again, this was submitted in November 2008. This task force was led by Norway and on page 21 of that report it says here:

“Intermediaries can be divided into (i) Financial institutions; and (ii) Designated non-financial businesses and professions.”

They referred to the blacklisting and it says:

“Intermediaries assisting foreign persons to violate foreign laws have to be publicized generally and brought to the attention of the international community.

One should focus on those intermediaries such as service providers which are not yet licenced or regulated and enforce control.”

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So while we dealt with some of those industries and businesses yesterday, the point is we need to include it in this piece of legislation to make this one more effective.

I would like to wrap up, but I would like to give a real suggestion. I think that the practice now in many parts of the world in large corporations, especially in the energy sector and in the energy field within recent times we have been seeing a lot of vacancies listing: Dubai, Qatar and all of these places, their key positions are being advertised. I would like to suggest that maybe we could look at that. Maybe we could look at the post of the director and the deputy director and some of the key personnel.

I was listening to Sen. Rahman when he made his contribution and while there was some concern about what he was saying, I think the point was critical that if we have—right now—problems identifying persons for the Integrity Commission could you imagine we have to get persons of such high calibre for a Financial Investigative Unit and we do not even have key positions in the Attorney General's office. We do not have key personnel in so many different areas. We do not have an Integrity Commission and here we are saying we have to get persons of high qualifications, high calibre and high integrity, but we do not have them, it seems, because so many of these positions are vacant.

So, it seems as if what might be politically correct in terms of a person may not be the right person for the job. So, we have to look at that and my suggestion here is that maybe we need to look at advertising these key positions internationally. You have some of the key positions in huge firms being advertised. In fact, if you go on the websites for Antigua; the Cayman; Barbados or Jamaica sometimes you see them in the newspaper here as well that key positions are advertised.

Open up those positions—and it is just a suggestion. Maybe we need to look at that and see how we can get the best people for the best position and the best job—the concern that was issued, that we have to have people of integrity who may not be putty in the hands of the political elite. So, one of the solutions, if you do get persons from the outside to fill the vacancies the chances are that you may not have that problem of being so corruptible, if you had to find these people from within your very environment.

So, Mr. President, with these few words, I would like to indicate that this is certainly an important piece of legislation. Yesterday I made reference of the Government coming kicking and screaming, being dragged by its legs, I think this

time it is not dragged by its legs, but in fact, I think you are being pulled by the hair, basically, just before Friday. So we have a very short 60 or 70-odd hours before this country faces some form of blacklisting.

4.15 p.m.

I am almost tempted to say that maybe we should not support it, that we should be blacklisted and let the country hold the Government and say, "You are responsible. Do not come here and say that the Opposition did not support it, or this was not prepared in time." The Government is responsible for why we have reached at this eleventh hour, eleventh and three-quarter hour; before we actually came here and brought this piece of legislation.

With all respect, Mr. President, you made reference to last night being a very long night and today again. I also heard another Senator say that we can go all night if we have to, but I hope we do not have to because I feel, in this place, that the reason that we have to go long nights in such quick succession and at a gruelling pace that for the last couple of weeks we have had in this Senate, is not because of the Opposition, it is not because of the people, it is actually because of the Government.

So please, I think we really need to get our acts together and I would urge the Government to take the recommendations as they are given to come up with the best piece of legislation.

I thank you. [*Desk thumping*]

Sen. Corinne Baptiste-Mc Knight: I thank you, Mr. President. I rise at this hour to intervene in this debate, not because there is any point that I am particularly concerned about that has not been exposed, but because, as I sat here listening intently to the debate, I got the distinct impression that on both sides of this Senate, we were talking at each other. I do not get the impression, from anything that has been said on the Government side since the Bill was introduced, that there has been a listening process; really listening to what we on this side have been trying to say. Now, much is being made of the fact that we are on the brink of the abyss, so to speak, but I feel that I need to point out that the responsibility for pulling Trinidad and Tobago back from the possibility of blacklisting lies with the Government.

Mr. President, this bit of legislation is at best minimalist. It is not worthy of the dynamic, innovative people that we in Trinidad and Tobago want to be recognized as in the world. We cannot on the one hand say that we are working towards

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being a developed nation by 2020, and, in 2009 produce a bit of legislation that can only be described as deficient. We need to do this now and I really think that it is very possible for the Government to achieve its stated goal of avoiding blacklisting because from this side of the Senate, there have been suggestions for amending this legislation that would allow it to get, I am sure, the required majority.

Now, I am very fearful that unless this listening and this decision to compromise happens at some point before Friday, the inevitable will happen. It is not rocket science. I have heard it said, every speaker on this side has expressed the view, with which I agree, that this unit, whatever you want to call it, should not be intricately interwoven with the Ministry of Finance; that it should be apart. The suggestion has been, to put it in the Central Bank. I feel quite sure that the Central Bank is a Government institution. There should be no problem about having this unit aligned to the Central Bank, rather than the Ministry of Finance. Why do I say that? Because it is difficult to assume an arm's-length relationship, when clause 4A gives the Minister the right to direct the FIU, and instructs the FIU that it must accept these directions.

That ought not to be there at all if this is supposed to be an autonomous body. We have the example of UDeCott running amok, but a Financial Intelligence Unit is tied to the apron strings of the Ministry of Finance. This cannot give people outside of Trinidad and Tobago the impression that we are seriously wanting this unit to pursue money launderers on its own, especially when later on and I think this must be a Freudian slip, you say there is a penalty for directors to disclose to the Minister. Hello, this ought not to be necessary at all, because reading the rest of the Bill, one assumes that if the director or any officer in that unit is aware of his or her responsibility, that would not enter into that person's mind.

Now, what is our experience? My experience here has been very short, not even two years, but yet, I am aware that the Government of Trinidad and Tobago established a Children's Authority and it identified who appointed the chairman, it identified the specific areas of expertise that must reside within this authority. But we are setting up a unit that is to satisfy an international body that we are serious about money laundering and dealing with proceeds of and support for terrorism, and all we can say is "suitably qualified officers". These suitably qualified officers are going to be identified by a permanent secretary who could be a Spanish honours graduate. These suitably qualified persons will come from public officers and other appointed officers. No, this does not give the impression that we are a serious people. We have to identify the specific areas of expertise that must reside in this unit in order for it to be dynamic, competent, able to do what it ought to.

Mr. President, I feel and I know that it will not be difficult for Government to accept these sorts of amendments to the specific clauses that would allow this Senate to be able to join them in passing a proper, a worthy money laundering Bill. This one, I am afraid, is not it.

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

Sen. Dr. Adesh Nanan: Thank you, Mr. President. I rise to make a contribution on the Bill to establish the Financial Intelligence Unit of Trinidad and Tobago for the implementation of the anti-money laundering policies of the Financial Action Task Force.

Mr. President, this will be a frightening Act when it is passed, or if it is passed, because we are hearing in this debate in terms of invasion of bank accounts. We have heard already of hacking into bank accounts and the possibility of that taking place. If you have that kind of intervention taking place—and it also draws a correlation, as you are dealing with the Ministry of Finance, with the Customs Act. We heard of invasion of bank accounts without any warrant by this Financial Intelligence Unit and, if I recall, under the Customs Act, customs officers have the power to go, if they have reasonable cause, without a warrant, onto people's premises. The question is, in terms of invasion of privacy: Does this Bill require a two-thirds majority instead of a three-fifths? We have serious questions here with respect to this particular situation developing.

What was interesting, Mr. President, is that we heard of the various models given by the Minister of National Security and the comparisons. The Minister of National Security talked about various models, and the hon. Minister in the Ministry of Finance mentioned the Bahamas model and that is what they used as a basis for this particular piece of legislation.

I went to the Bahamas—[*Interruption*] Well I just wanted to look at the Bahamas legislation. I would not go to the Bahamas legislation unless it was brought up in the debate.

4.30 p.m.

Mr. President, what is interesting in the Bahamas legislation is that it says:

"The Financial Intelligence Unit shall consist of—

- (a) a Director..."—and it is specified here—"appointed in writing by the Minister who shall be the chief executive officer of the Financial Intelligence Unit;"

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That is under the Bahamas Act. When I spoke about the Cayman Islands, I was told that because they were aligned to the British, it was the British that took precedence. Allow me to just look at the British structure, because that is important. If we are dealing with the British and their structure in terms of a model, we have to look at what is in place in that particular jurisdiction.

I am quoting from the Financial Intelligence Units: An Overview, International Monetary Fund, World Bank 2004, page 15:

"Structure:

The NCIS..."—which is the United Kingdom National Criminal Intelligence Service—"is a nondepartmental public body operating under the NCIS Service Authority."—so there is a service authority.

"the NCIS Service Authority reports to the Home Secretary;

the head of the NCIS is appointed by the NCIS Service Authority and reports to it;

within the NCIS, the FIU functions are discharged by the Financial Intelligence Division;"

We see that relationship, as Sen. Mark pointed out, with respect to a board. You could have a correlation between the board and the authority that is overlooking this particular intelligence unit.

Going back to the Bahamas legislation, with respect to that particular area, it also includes:

- "(b) a counsel and attorney appointed in writing by the Minister;
- (c) a public accountant appointed in writing by the Minister;
- (d) such number of consultants, having suitable qualifications and experience to provide services to the Financial Intelligence Unit, appointed in writing by the Minister;
- (e) such number of police officers appointed by the Commissioner of Police on the recommendation of the Director;
- (f) such other personnel as the Director considers necessary."

So in the Bahamas legislation it is clearly outlined; it is not vague as it is in this particular draft before us today.

It is also interesting that in this particular piece of legislation, apparently certain direct drafting was taken out, probably because of the harmonizing of legislation across the region. If you look at the directions of the Minister, in our Bill it says:

"The Minister may give to the FIU directions in writing of a general nature as to the policy to be followed in the performance of its functions as appears to the Minister to be required in the public interest or to materially affect the strategic directions of the FIU and the FIU shall give effect to those directions."

In the Bahamas legislation, directions of the Minister under section 5 states:

"The Minister may give to the Financial Intelligence Unit directions in writing of a general nature as to the policy to be followed by the Financial Intelligence Unit in the performance of its function as appear to the Minister to be requisite in the public interest and the Financial Intelligence Unit shall give effect to those directions."

Almost superimposed; the only thing that is missing in our piece of drafting are the words "to be followed"; we just have "followed in the performance of its function", but they have included "followed by the FIU in the performance of its function" and the change of the word "requisite" to "required", in that particular drafting.

Of course, we are supporting that, but I just wanted to draw reference to that area. We have amendments that would be circulated shortly with respect to that particular amendment.

It goes on. In the Bahamas legislation there is a clause just underneath clause 5, which is clause 6, which states:

"Notwithstanding the provisions of any other Act, no order for the provision of information, documents or evidence may be issued in respect of the Financial Intelligence Unit or against the Minister, Director, officers, or personnel of the Financial Intelligence Unit or any person engaged pursuant to this Act."

There is a no liability clause:

"No action shall lie against the Minister,..."—which I find strange—"Director, officers or personnel of the Financial Intelligence Unit or any person acting under the direction of the Director"—and this is interesting—"for anything done or omitted to be done in good faith and in the administration or discharge of any functions, duties or powers under this Act."

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This particular part, if you would recall, was in a piece of legislation that Sen. Mark objected to, the Emergency Ambulance Bill, which is now the Act:

"for anything done or omitted to be done in good faith and in the administration or discharge of any functions, duties or powers under this Act."

Again, this particular Act goes on to talk about the accounts of the FIU.

They even go further in this one:

"The Financial Intelligence Unit shall keep proper accounts and other records in relation thereto, and shall prepare in respect of each financial year a statement of accounts."

That is section 13(1). Under subsection (2) it states:

"The accounts of the Financial Intelligence Unit for each financial year shall be audited by an auditor to be appointed by the Director with the approval of the Minister.

(3) As soon as the accounts have been audited the Financial Intelligence Unit shall submit a copy thereof to the Minister together with a copy of any report made by the auditor."

I am just showing the chronological sequence of events in the Bahamas.

The Act continues:

"The Minister shall lay a copy of every such audited account before each House of Parliament, together with a copy of any report made by the auditor on the accounts.

14(1) The Minister, after consultation with the Financial Intelligence Unit, may make such regulations as he thinks necessary or convenient for carrying out or giving effect to this Act."

In terms of the Bahamas and our particular piece of legislation, we see some correlation with respect to certain clauses.

Mr. President, if you look at the Bill before the Senate this afternoon, you would see that clarification is required in that particular area. You could see that this legislation was rushed. I do not know how many of you have a copy here with pages 16, 18 and 17 stapled out of order. Bear with me, because I have to go back and forth with my particular Bill.

One question I see that needs to be asked is in clause 12:

"Where the information requested under section 11(a), is not provided within the time specified, unless the time is extended by the Director, the financial institution or listed business or a director or officer thereof, commits an offence."

There is no definition, except as we see down there, three working days, days or weeks; there is nothing. It just says, "unless the time is extended by the Director"; I do not know if it is on his own or what is the criterion for this director to act.

If you go to clause 13, there is another vague area there:

"...seek the approval of the FIU to complete the transaction and the Director may grant such approval with such conditions as he sees fit."

What does that mean, "as he sees fit"? What is important here is that all these little omissions could affect people under the listed business. This is trampling on their rights and freedoms. You are giving the director the power to extend the time for information that is requested. You are leaving everything up to the director. You also have another part which says, "if the Director sees fit", you would grant an approval; only if he sees it fit. What is the criterion being used there? We have to ask those questions.

We are not supporting clause 14, where it says: "...for a period not exceeding three working days..." in terms of the processing of a suspicious transaction. We are proposing, and we will make an amendment, 48 hours, because we recognize with financial institutions and transactions you need to have that very, very quickly, especially if you are talking about electronic transfers.

The question also has to be asked with respect to the time frames. I agree, if we are dealing with time frames—in fact, everything is coming in on the time frames, whether it is clause 12, clause 13 or clause 14. Sen. Seetahal SC made reference to clause 15, with respect to when the report would go to the regular law enforcement authority, again for suspicious transactions. In terms of a suspicious transaction, again we have to have an amendment for a definition of that particular wording "suspicious transaction".

Mr. President, I was looking through the Schedule and I saw the Oath of Office. It seemed like I was reading about a Member of Parliament, because of that Schedule. I am sure when we do take the oath, it is the exact oath we are talking about: "without fear or favour, affection or ill-will". It says:

"I bear true faith and allegiance to Trinidad and Tobago and will uphold the Constitution and the law..."

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I do not know if that particular oath has defined that particular position, in terms of the offices in this unit, to make them on par with Members of Parliament regarding integrity.

I just want to go back to the models, because I made reference to the Cayman Islands, and I was told that they were reporting to the United Kingdom (UK). But the Cayman Islands is a member of the Egmont Group. This group came about because the financial institutions wanted to have a sort of interaction, a little group, a so-called club. It came about because they met in Brussels. It is at the palace in Brussels; that is how they got their name, the Egmont Group.

What is interesting about this particular group is that there is no legislative requirement. It is just a group coming together, informally actually. There is a definition for that particular group, which is a group coming together for the exchange of information. The Cayman Islands is a part of that group. They have moved from their Financial Intelligence Unit to a Financial Reporting Authority, CAFIN. This particular authority is now under the Attorney General, who chairs an anti-money laundering steering committee.

4.45 p.m.

In fact, there is an anti-laundering committee with the same structure in terms of authority and a board as Sen. Mark put forward. There is this umbrella under this reporting authority that is the anti-money laundering steering group that is chaired by the Attorney General.

So we have a proposal from the Attorney General's Office for this particular Financial Intelligence Unit, but we will support the proposal put forward with respect to the unit being in the Central Bank because we have made statements with respect to the authority and its independence and its movement from the political directorate. So, if we look at how we are going to structure this particular Financial Intelligence Unit, whether it is located in the Ministry of Finance, the Central Bank or the Attorney General's Office, we are going to have a director and a deputy director.

If we look at the Bahamas legislation, they did not have any requirement for a deputy director, so I do not know why we are putting that in, in this particular unit. In terms of suitably qualified officers, what are the criteria for the director? Because this director under this Act will have supreme power and it is very frightening when you think of the operations of this Financial Intelligence Unit and the political power that can be wielded. We have seen in terms of the Government's

ability to utilize so-called offices to harass citizens, and because of that track record of the Government, we are very skeptical and we have to be very watchful on this side of any unit that is set up with this kind of wide-ranging power.

We know of the Government's ability to use the "Big Brother" approach in Trinidad and Tobago, and it is this we are afraid of especially when the Minister of National Security may be involved. Invasion of people's privacy, whether it is their bank account, or their homes in terms of these eavesdropping apparatus. We want to know and it is the Government's duty to tell us, Mr. President, that what they are setting up here under the anti-money laundering legislation will not be used as a tool for the upcoming general election.

I read in this Parliament already an affidavit which pointed to certain activities of the Government and because of that situation, we are not going to stand idly by and allow the Government to trample on certain citizens as a means of blackmail and harassment. We are the watchdogs of the public purse and we have seen through a commission of enquiry, evidence of mismanagement of funds and the ability to utilize state resources by the Government for other purposes and we are not going to give the Government any advantage in terms of setting up a Financial Intelligence Unit with such wide-ranging powers to go after any of their political enemies. We will not be responsible for that kind of action, we will not act irresponsibly in terms of our duty nationally, regional and internationally. So in terms of this particular unit, I will now go to its functions and powers.

Mr. President, clause 7 talks about the salaries and other conditions of service of the Director and Deputy Director shall be subject to review by the Salaries Review Commission and then we have a Permanent Secretary in clause 3(2)(b):

“officers and other persons appointed on contract by the Permanent Secretary of the Ministry.”

In my little estimation, what is the role of the Public Service Commission? Because every time we see contracts we have to be very guarded in terms of how the Government approaches these positions and the Salaries Review Commission is getting involved so what range are we talking about here for the Director and the Deputy Director? *[Interruption]* The Salaries Review Commission will decide? But we would also like to have an idea in terms of the salary being offered.

We are asking in terms of the Salaries Review Commission and these positions in accordance with section 141 of the Constitution. And when we see that and we see the positions and we see the oath, we have to be very careful in terms of the approach of the Government.

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Clause 8 quotes:

“This (unit) shall be the primary institution for the collection, analysis, dissemination and exchange of financial intelligence and information among law enforcement authorities...”

Mr. President, because of the important mechanism of our local banks and their affiliates internationally, they have already been reporting or doing this particular information collection with respect to the form that is being required to be filled out in terms of the large sums being deposited, and it is just a formalization exercise that is going to take place.

When you are dealing with suspicious transactions and listed businesses, it is so high ranging in terms of the listed businesses, that you are going to touch not only what was done before, it is now going to be expanded and all the citizens that are now dealing with jewellers, jewellery shops, wherever they are will be monitored. There will be a monitoring mechanism for all.

Pawn shops were mentioned in the debate, but it is not captured here in terms of exchange of precious metals and stones for financial gain. Jewellery shops are being monitored now. You are monitoring not only the jewellery shops according to the list of businesses; you are not monitoring lawyers, accountants and a whole range of other people. So you are going like an octopus with your tentacles now in almost the whole in terms of permeating through the entire landscape of Trinidad and Tobago.

Those are the consequences of that particular unit. It may be that in the reaching out, you have not reached out far enough, or the suckers on the tentacles are not enough in terms of capturing a wider range of individuals. Probably in your review, you might need to expand the listed businesses.

This legislation will improve financial record-keeping because in many situations developed especially in terms of tax compliance, one of the main reasons that is legal in terms of the non-compliance is poor financial record-keeping. And as a member of the dental fraternity, I am also guilty of poor record keeping.

So once you have that format taking place where there will be an upgrade in terms of record-keeping, then you will be able now to utilize a benchmark where you can actually spot at a glance any suspicious transactions. And it is because of the situation in the Ministry of Finance that we are in that position in terms of compliance. I heard the hon. Minister in the Ministry of Finance talk about his “hit hows”, so to speak in those units that are doing a very good job in terms of compliance.

Mr. President, I am concerned about the situation with clause 8(3)(b) and that particular part reads:

“(b) shall analyze and evaluate reports and information upon receipt thereof, to determine whether there is sufficient basis to transmit reports for investigation by any local or foreign law enforcement authority;”

What is sufficient basis? Those terms are so vague, Attorney General, that we need to get some clarity, "whether there is sufficient basis to transmit reports”.

5.00 p.m.

In this particular Bill, the Bill talks in clause 13:

"a suspicious transaction...or activity report has been submitted in respect of a customer or other person, who attempts a subsequent transaction,"

So in clause 13 the listed business, you have:

“(a) a transaction...appears to be suspicious; or

(b) a suspicious transaction or suspicious activity report has been submitted...”

So if somebody is coming in with \$60,000 to deposit, you have to fill out a form. Now if your information is insufficient, you may be classified as being suspicious. I do not know if there is a red flag now placed on this particular individual, because we heard in terms of the address of the person, the name of the person, the identification card, the passport or the driver's permit, so you will have details on the particular individual. Then you will have now, if that person comes back in with another deposit probably in a week with another \$60,000, another situation developing again, where a form is filled. The financial institution is not supplied with sufficient information and that goes to the FIU.

The question is: who determines the suspicious activity? Is it the bank or is it the Financial Intelligence Unit? Or is it both? So the bank has to have training in terms of determining—so that is another area in terms of the interface between the banker and the customer and you have a customer/client relationship that you are now breaching that is confidential.

I am dealing with checks and balances. I have a calculator in my hand; I am just making sure that everything is in place. So I am like the scale. Is it Libra? The Librans, yes. So that particular situation you should have either the banker or both with respect to the reporting of transactions.

Now let us just say that the banker, with all his training, suspects this is a suspicious activity and transmits the information to the Financial Intelligence

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Unit. What will they do at that point with that information coming to them? What will be different between this unit now, and the banker? The banker will only suspect and send the information; the banker he has already questioned with respect to the form. What will the unit do? What is different with that unit? What are the investigative powers of this Financial Intelligence Unit? How will they be different from the banker? Because you have the same information that the banker had that is going to this unit. Will the unit now call for the records of the bank? Now they have the power so they could call for the records. Or they could go into the bank. They do not even have to request, they could just go into the bank and say, "I want to see the records of this particular individual."

So we have to be careful. This is a very, very dangerous unit that is being set up in terms of how they can operate. That is why we are calling for the checks and balances, because once that report is sent to that investigative unit and the director sees it fit—I think that is what it was—in his determination that the prima facie case has been made out, and now he will consider passing the information on to the law enforcement agencies.

Now what will the law enforcement agencies do with this information? For him to pass information to the law enforcement agencies, he would have already gone to the bank and have the records. So he has the records with him. I do not know at this point in time if they have questioned the client. We need to know. If the person is depositing this \$60,000—I am just tracing to make sure that we have the checks and balances.

So we are at a point now where the police are involved. Mr. President, the question has to be asked; the ordinary man in the street needs to understand how this thing is going to operate. The person who is making his \$60,000 deposit, probably he just planted a whole crop of corn and he is going to the bank now with his sales and he is going to deposit the \$60,000 based on his produce that he worked day and night to plant and reap; the honest man.

So we have the gardener who planted his crops; he went to the market very early in the morning; 4 o'clock and 5 o'clock getting there, and sold his produce and was able to make the \$60,000 and then decides he is going to deposit it in an account. Now somebody suspects that this poor gardener, that particular transaction should be sent to the Financial Intelligence Unit. Then the Financial Intelligence Unit pulls the record of the gardener and says, based on all their qualifications and experience in that unit, this is suspicious and it is passed on to the law enforcement agencies.

We have a different arm of the State getting involved now. First we are dealing with this overwhelming power in the Financial Intelligence Unit, now we have to go to the police, and we have a situation with the police that I do not want to go into, that is propping up from time to time in almost every police station and all over the country with respect to police activity and bribe taking.

So now we reach a situation where the police is involved with this gardener and they go knocking on the gardener's door, based on the Financial Intelligence Unit report, and they arrest the gardener on a Friday. Of course, he cannot get any bail, so he is spending the weekend in jail. *[Interruption]*

Sen. Dr. Saith: That is a movie script.

Sen. Dr. A. Nanan: That is not a movie script.

Sen. Browne: It is a nightmare.

Sen. Dr. A. Nanan: It is a nightmare. That is what could happen. So this poor gardener who did all of that, made his money honestly, is now in jail because the police suspect that that is suspicious activity. Do you know why? The important part is the power of this Financial Intelligence Unit.

If you make a mistake here and pass it on to the police, the police would say, but that unit has been set up with all the qualifications under the anti-money laundering Act and all of that; they cannot be wrong. Once it is passed to me, I am going to lock up the gardener.

Now there is a provision under clause 14(2):

"Where such instructions are given, a financial institution, listed business or any other aggrieved person..."

"Aggrieved person", so this is the gardener:

"may apply to a judge to discharge the instructions of the FIU and shall serve notice on the FIU..."

Where is the poor gardener going to get any money for this particular part, to apply to the judge? Legal Aid?

So that is the point. The gardener now has to go before a judge and plead his case because the Financial Intelligence Unit gave instructions to the law enforcement agencies.

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Now it goes even further in clause 15:

“After the FIU has concluded its analysis or evaluation of a suspicious transaction...”

That is with the gardener;

"and where the Director is of the view that the circumstances warrant investigation, a report shall be submitted to the relevant law enforcement authority..."

So that is what took place with respect to the gardener. So we have a situation now where the gardener has to go before the judge and plead his case. Now what case will the gardener plead? It is just that the man made his produce and banked the money. But then you have all this evidence that they have gathered on the gardener. I do not know what this Financial Intelligence Unit—we do not know if they are going beyond bank records; we do not know if they are going to do other investigations. What is the investigative power of this Financial Intelligence Unit?

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

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

Question put and agreed to.

Sen. Dr. A. Nanan: I thank all Members for extending my time. I want to assure them that I would not take all of it.

You know, I was a little concerned about—the reason I entered into this debate was all concern for the ordinary man with this particular piece of legislation.

Sen. Narace: The gardener from Tabaquite.

Sen. Dr. A. Nanan: Are you against the gardeners? It is an honest living.

I want to deal with the offences and penalties because under clause 21(3):

"Where the offence is committed jointly by members of the Board or officers of a financial institution or listed business, they may be tried jointly or severally."

What that means is that we have to be extremely careful that with respect to a listed business, if it is a board of directors and you suspect one member, according to this, you either try them jointly or all of them as a body.

So, again, in a hypothetical situation, because it relates to—as you are now having listed business and you are having jewellery shops and accountants and

companies involved and law firms are going to be involved, that is under the Proceeds of Crime Act—in terms of this particular area of board members of a company and liability, we need to get some clarity there when you are dealing with that particular part, because we are not dealing with small fines. That is the problem with this legislation. If you get it right and you stop money laundering, we are very happy, but if you get it wrong and innocent people are being victimized, then there certainly needs to be some concern.

5.15 p.m.

I want to make reference to the fine that you have here. In clause 21(2):

“Where a person is a—

- (a) member of the Board of Directors;
 - (b) the Chief Executive Office or other officer;
 - (c) the owner or partner,
- of a financial institution or listed business...”

There are sole traders and their associates and partnerships especially in a dental office.

“and if that person knowingly authorized or ‘acquiesced’—nice word there—
“in the failure to provide the additional information required...”

What are the criteria there? What is the time frame that is to be given to these persons, the board of directors to provide the additional information? It is not the information that was taken before. It is additional information. What additional information is required? We will deal with that matter. The person commits an offence if he does not provide the additional information. You have not said anything about the requirements.

“the person commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for three years.”

I am querying the mechanism in terms of ensuring that you have the right people under this legislation. The additional information required, we need to have some clarity there. What does that mean?

In clause 22A

“The Director shall not disclose or cause to be disclosed to the Minister or to any other person, except in accordance with this Act...”

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If I remember correctly, the FIU tells the institution or gives information to the institution

“Subject to subsection (2), any person other than an FIU officer, who, in the course of his business obtains or receives information from the FIU about the commission of an offence, commits an offence if he knowingly discloses—

(a) the information to any person;”

This clause is saying that if you receive information from the—I need to find out if the bank is sending the suspicious transaction to the FIU, is the FIU going to report back to the bank, or is it a straight communication mechanism from the bank to the FIU?

Is the officer going to report to the banker and tell him that this is a suspicious transaction and he is investigating it? You are saying that if that banker tells somebody else that the FIU is investigating this person, that is against the law. Is that interaction taking place between the FIU and the banker? This is an area that requires some kind of clarification with respect to the relationship between the FIU and the financial institutions and listed businesses.

There is one more area of concern about which I was not sure when I looked at it. In terms of clause 8(3)(a):

“In the furtherance of the functions assigned to it under subsections (1) and (2), the FIU—

may request financial information from a financial institution or listed business in order to facilitate the exercise of its powers under the Act;”

Is that after the information has been transmitted from the bank to the FIU? Because the listed business or financial institution would be sending the suspicious transaction to the FIU. What financial information will the FIU want? Will it be the same bank record that they could go in and take? Are you saying that they could request but there is no provision if they do not get it in time what will happen? If they are requesting the financial information to continue with their powers and you did not say within what time frame they would act, that is why we are very careful with the Customs Act because if they do not get this requested information within a certain time frame, they could act directly and intervene. We would put in an amendment to that particular subclause.

With those few observations, I thank you. [*Desk thumping*]

Sen. Gail Merhair: Mr. President, thank you for the opportunity for allowing me to contribute to this debate. The first thing that comes to mind in reading this

Bill is that information is power. How we use that information determines how much power we have. It is an old saying and many people change it around. What I find happening is that again, I have a problem, like most other Senators on the Independent and Opposition Benches, in that the Ministry of Finance is going to house this unit. As far as I am concerned, when you deal with investigative powers and punishment of crime, I think that that should go in the Ministry of National Security or the Judiciary. I am even tempted to suggest that perhaps, the honourable Chief Justice should have this unit under his portfolio.

However, I tend to concur with my colleague, Sen. Drayton, in her recommendation that perhaps we should use the Central Bank. What has happened here is not about what is right or wrong, but the general perception. The general perception now in Trinidad and Tobago if you go on the streets and talk to most of the citizens, is that they do not trust the police. I am not saying that it is a right thing and I am not saying that it is a wrong thing. They do not trust many politicians. I am not saying that that is a right thing or a wrong thing. What is right and wrong now is irrelevant. The point of the matter is that the citizens have a problem with politicians controlling their information.

Although I understand and agree that this legislation is necessary and has long been coming, we need to be compliant. In terms of our international undertakings that we do from time to time, the point remains, are we caught between the devil and the deep blue sea here? Is it that we have to pass legislation to protect ourselves and citizens against money laundering and people who perpetrate against the citizens of this nation? In that way we are also opening the floodgates to have everybody's information in the public domain. Who this information rests in is extremely important.

I am extremely concerned about that because in the public domain we hear about eavesdropping and high tech devices. From time to time, even here, in this honourable Chamber, we hear that some Senators have even found things in their mailboxes. What are we supposed to do? The point remains that people's information is in the public domain from time to time. How does it get there? How does information that we deem confidential and private end up in other people's hands? I am not getting from the Bill when I go through it and from what has been articulated here by both the Minister of Trade and Industry and Minister in the Ministry of Finance, Sen. The Hon. Mariano Browne, and the Minister of National Security, Sen. The Hon. Martin Joseph, that things are put in place to protect individuals from these things and information going in the public domain.

The Bill in itself is also silent in terms of the qualifications and selection of the director and deputy director of the FIU. We have had legislation come before this honourable Senate and one that comes to mind is the Emergency Ambulance Services Bill in which I remember we went through tons of pages and each portfolio was listed and what they had to do and what was necessary. As a matter of fact, some of my colleagues spoke and asked the hon. Minister of Health why that was necessary and he had to put all those criteria in place. Here we have a Bill that seeks to investigate ordinary citizens, everyone in Trinidad and Tobago and we are not putting things in place to put this individual qualification, how the person would be selected and the criteria. We have nothing.

The Bill does not speak to any clause that regulates that. I am extremely concerned because when you are putting such an amount of power in the hands of an individual, then, I think that it is important that this honourable Chamber put in legislation the criteria and qualification for the selection of this individual.

Another thing that I saw in clause 24 is that the Bill does not deal with disclosures of investigation and is extremely silent on negligence. If we look at what was happening in the United Kingdom a while ago, some senior intelligence officers were charged for leaving sensitive documents? How many persons have left sensitive documents in their vehicles or brief cases? How many persons have left documents turned up on their desks and not turn them over when people come into their offices? What is going to happen in terms of reckless negligence? People's briefcases in cars get stolen. I have had my vehicle broken into and inside of my briefcase had people's telephone numbers. Cheque books and everything went missing. What happens here?

If I am the deputy director and I have confidential information in my briefcase and it got stolen, what happens? What are we going to do? Toss our hands in the air and say it is negligence? Who is to blame when you see your information out in the media and public domain? When people do in fact leave information about, the Bill does not say anything in terms of negligence. I am extremely concerned about that.

The FIU is a necessary instrument in protecting our citizens from crime, and as I understand it, in recovering money in cases of white-collar crimes. However, we must balance the rights of individuals as enshrined in our Constitution. The citizens of the Republic of Trinidad and Tobago expect nothing else from us.

5.30 p.m.

So, it is our right to protect the privacy of citizens. We must make sure that we do not allow our citizens to become, and I quote, *Enemy of the State*. I do not

know how many Senators saw that movie *Enemy of the State*. Will Smith acted in that movie.

Here we have rogue officials doing all sorts of things when they are given Government monitoring capabilities and government funds. We must always be mindful that power corrupts and absolute power corrupts, absolutely.

I urge the Government—I understand you need the legislation and I adhere to good policy making; I adhere to the whole legislation, but I am extremely concerned about where it is placed; who monitors our information; and what is going to happen in terms of negligence.

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

Mr. President: Hon Senators, we can take the tea break at this time and return at 6.00 p.m. The sitting is now suspended until 6.00 p.m.

5.32 p.m.: *Sitting suspended.*

6.00 p.m.: *Sitting resumed.*

The Attorney General (Sen. The Hon. John Jeremie SC): Mr. President, I want to begin by echoing the words of Independent Sen. Corrine Baptiste-Mc Knight. I, too, get the sense this evening that we have been talking at each other, and we have not sat and engaged in a dialogue with each other as to what we are trying to achieve. We have not made, perhaps, a good faith attempt at answering some of the very legitimate concerns which have been posed by some of my colleagues on the Independent Bench.

Now, the legislation has been variously described by colleagues on the Independent Benches as weak, invasive and rushed. If I could just speak to “the rushed criticism”, this legislation has been in the making for two years. It is not as if the Government sat three or four months ago and decided that it had to meet an October deadline and we, therefore, had to begin to draft the FIU Bill. That is not the case.

In November, 2007, the Government possessed the requisite majority in the other place to make the passage of this legislation easier, and this legislation was put on the front burner. So, it is really not true to say that the legislation is rushed. It is correct, and the Government must accept criticisms for bringing the Bill at a late hour, and that is not to say that it is rushed legislation. A great deal of thought went into the legislation, and some of the characterizations which I heard this evening really do not square with the facts and the hard work and involvement of the public servants who have sat together over the past two years and meticulously sought to bring us to the point where we are this evening.

Now, the other two criticisms are on either end of the spectrum. Sen. Ramkhelawan spoke to the legislation as being weak. He said that it was the weakest model. There are various types of models of FIU which are contemplated by FATF. There is the administrative model which is the one that we have selected; the judicial model; the investigative model and the hybrid model. The investigative model is where you have police powers being exercised by the FIU. The judicial model is where you have prosecutorial powers being exercised by the FIU. All of those other models involve a coercive element. The model that we have settled on is the administrative model and the reason for that harkens back to what we did last evening.

Last evening, what we did was to make money laundering, in and of itself, a crime which can be prosecuted in this country. That is not to say that the Proceeds of Crime Act which my predecessor, Mr. Ramesh Lawrence Maharaj SC, introduced in 1999 and 2000 did not seek to treat with money laundering. It did seek to treat with money laundering, but the Act had a major deficiency. It did not define what is money laundering. Last evening, for the first time, we defined what is money laundering. What we did last evening must be read in concert with what we are doing here today.

When we speak of the legislation as being invasive, it is invasive legislation in the sense that it is new and it makes what was hitherto not, a prosecutable offence. So, it is invasive in those two senses. It is a contradiction to describe the legislation as invasive and, at the same time, speak of it as being weak. I do not think that you can say both. We have very real concerns from the Independent Benches which suggest that the legislation is both; it is weak on one hand, and, on the other, as Sen. Seetahal SC has pointed out, it is invasive.

As a Government, for us to pass this legislation, we need the support of the Independent Benches. We cannot meet both of those poles; we cannot speak to both of those concerns at once—the legislation is weak and that it is invasive. The course we have adopted this afternoon is to settle on measures which are least violative of rights under our Constitution. That is what we have done. We have settled on the administrative model and that was a deliberate decision by us in recognition of the fact that money laundering is now a prosecutable offence.

What we have sought to do is to use the least invasive model; the one which does least violence to individual rights. That is the course we have set for ourselves. Is it the last word that we would speak on in this area? Probably not. We are prepared to give the undertaking which Sen. Ramkhelawan has asked for, and that is to review the legislation with a view to coming back with, perhaps, changing the architecture of the legislation fundamentally.

The point is that what Sen. Mark referred to with respect to the suspicious activity reports (SARS), you have a situation where you have quite a number of suspicious activity reports and, apparently, there is no correlation between the actual investigations. Even in that, there is an explanation in that most of what we see as suspicious activity reports is really repatriation of funds to South America and they come up as flags. They are not investigated because they are deemed to be repatriation of funds by persons who are working here and are sending funds back to South America. I am going to pause here for my colleague, Sen. Prof. Deosaran.

6.10 p.m.

Sen. Prof. Deosaran: Thank you, through you, Mr. President. The question of weakness and invasiveness, those are two issues, yes, to some extent, but one of the other bothersome issues was the political proximity between the FIU and the Minister, which creates a sort of moral and political hazard. That has been one of the most bothersome points in the debate as far as I gather.

Sen. The Hon. J. Jeremie SC: I intend to speak to that shortly, because I am speaking in general terms, then insofar as the unrevised *Hansard* is available, I intend to address each of your concerns individually.

The general concerns are that the legislation is weak on the one hand, invasive on the other hand, and that it is rushed. I have explained why we are here at this late hour, but I have said that it is not a rush job. So, we can strike that concern off. Now, I am speaking really in general terms to this dichotomy between legislation being weak on the one hand and it being invasive.

As a Government, we had a decision to make with respect to which of the available models we would seek to implement as our first pass at establishing an FIU. What we sought to do is to go with the administrative model because, in our view, it represented the least threat to the rights of the individual. There might be difficulties in terms of how some of the clauses are fashioned, and I will speak to those as we go along.

I want to remind this honourable Senate that when we first dealt with money laundering, somewhat ineffectively in 2000, it was in respect of the very FATF recommendations that we are looking at this evening. I have here the contribution made by then Attorney General, Ramesh Lawrence Maharaj. In it, after reading the long title of the Bill, he says:

"I am happy that this Bill, which is a Bill to give effect to the Vienna Convention on Drugs and the FATF recommendations, which this country and

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several countries of the World have committed themselves to, was unanimously passed in the other place. It is a Bill which comes to this House with the support of the elected representatives of the people. I have no doubt that the distinguished Independent Senators would recognize the importance of this Bill and would see that it has been long overdue in Trinidad and Tobago."

Those words might well have been written by the very authors of the speaking notes of the movers of the Bill today. Our objective is the same; we are trying to bring ourselves into compliance with the FATF recommendations. That is essentially what we are trying to do this evening.

Sen. Seetahal SC: Can I ask a question, please?

Sen. The Hon. J. Jeremie SC: Just hold on a second, I would give way. What we are trying to do is to bring ourselves into compliance with the FATF recommendations. It is wrong to say—and I will speak to Sen. Drayton's point—that we should have little regard to what goes on in other parts of the Caribbean. There is a Caribbean grouping, the Caribbean Financial Action Task Force (CFATF), which at this time, as we speak, is monitoring what we are saying; giving us feedback, and telling us, yes, you can make this undertaking; this is an undertaking which is not inconsistent with FATF obligations. They are providing guidance to us even as we speak.

I am speaking directly to Independent Sen. Corrine Baptiste Mc Knight, when she said we were not really engaging in a conversation. We are, and we did hear the recommendation with respect to the sunset clause, for example, and we did ask if that would be FATF compliant, and we were told, no; so, that has come back. There is a CFATF representative in the back and she is in contact with her head office and the lead agency, which is in the Ministry of National Security. So that we know what we cannot do, but we can undertake to come back and to have another run at the FIU.

Now, what I have said is that we have gone for the least invasive administrative model. I pause to allow my colleague, Sen. Seetahal SC.

Sen. Seetahal SC: Thank you very much, Attorney General. I just wanted to understand your premise of your argument, which is this. Having quoted from the former Attorney General's introduction of his Bill, I believe in the Senate, are you saying then by adoption of that, that once something is passed by the elected representatives, even if it makes no sense, even if there are errors, for example, of

placement as in clause 2(2) and of other errors of logic and grammatical errors, we should go along with it? And if you are not saying that, well what is the line that you divide based on your argument?

Sen. The Hon. J. Jeremie SC: I am not suggesting anything of the sort. I refer to it for two reasons. One, to show at the time—and this is a political point—that there was agreement in the other place between the Opposition and then government of the day, which was occupied by my friends, who are now on the Opposition Benches. That is the first point I wanted to make; that there was a consensus; that the FATF compliance was necessary and that we should all get together to ensure that the country, as a whole, was FATF compliant.

The second point that I wanted to make is that really, what we are engaged in at this late hour is precisely what they were engaged in, in 2000. That is to say, in a sense, we are here because there is an external agency, the FATF, which is allied to the International Financial Institution, which is overseeing, auditing our laws and telling us you are deficient in respect of X; fix your law to bring yourself into compliance. Those were the only two reasons. I meant to cast no aspersions on my colleagues on the Independent Bench.

If I can just deal with Sen. Drayton's concerns first. She made the point that she did not wish to feel that we had a gun to her head. The point is that in a sense we are under duress, in the sense that as a state, we are required to be FATF compliant. Now, the Government has selected the FIU model. All of the Independents might not agree on the type of model that we have selected. We have no way of knowing and canvassing each and every one of you to find out what would be acceptable to you, before we get here and we begin to debate.

What we do, we ask our technocrats to ensure that having regard to basic principles, as a responsible Government, we say, do not go further than is absolutely necessary in terms of derogating from the sections 4 and 5 rights. Those are the instructions which we give. We oversee the work of the technocrats; they obviously show us what is available in terms of the various models, but ultimately we took the decision that we wanted to go with what Sen. Ramkhelawan has described to be the weakest model. I have given you the reason for that and it is a deliberate decision to go with the model which is least invasive of rights.

Sen. Ramkhelawan: Thank you, hon. Attorney General. The question I have for clarification is that you mentioned a short while ago that you were prepared to give the undertaking to relook this piece of legislation in due course, but are you prepared to relook the legislation within a one-year period?

Sen. The Hon. J. Jeremie SC: I was not clear what the time period was. Again, I heard six months from one; I heard one year from another. I think an undertaking would readily come from this side. We do not think that we have all the answers. This is our first run at the FIU, and I personally think that a one-year review is not an unreasonable thing. I think that I can commit the Government to reviewing the legislation within a year. Now, that is not to say we would bring new legislation within a year. We would look to see how it operates within a year and then decide whether or not it is achieving its intended objectives.

If I could go back to Sen. Drayton's contribution. She made the duress point and I have conceded. In a sense, the legislation is not driven by a domestic agenda, primarily; it is driven by an external agency, which has audited our laws and said you are not FATF compliant. There is, of course, a huge benefit to be derived by having legislation which is FATF compliant. The reason we are here now, a week before the FATF does its country assessment, with respect to Trinidad and Tobago, is because of an external agency. It is not driven by our domestic circumstances.

PROCEDURAL MOTION

The Minister in the Office of the Prime Minister (Sen. The Hon. Dr. Lenny Saith): Mr. President, I beg to move that the Senate continue sitting until the completion of the debate on this Bill.

Question put and agreed to.

FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO BILL

Sen. The Hon. J. Jeremie SC: Thank you, Mr. President. Sen. Drayton said that the FIU has to meet various tests. It has to meet the test of credibility in compliance; it has to meet the test of robustness in the fight against money laundering and terrorist financing; it has to meet adequacy of government structures in the context of the IFC, as an instrument of economic diversification. I would leave the latter point to my colleague in the Ministry of Finance.

6.25 p.m.

In respect of money laundering and terrorist financing, the fact is that the legislation, even if it is part of an administrative model, would be robust enough for us to satisfy the CFATF and FATF compliance materially. Not all of the 40 + 9, but materially, so with this legislation and with the Financial Obligations Regulations which are to be laid before the end of the week, we should be more than 50 per cent of the way to the 40 + 9 compliance threshold.

Now, you might make the point that we want to be the best in the world and that is our ambition, but for us to get there we have to begin somewhere and we are beginning from a place where we are at this time far behind the curve. So, what we seek to do this evening and this week is to bring ourselves materially some distance towards full compliance.

The terrorist financing bit is going to be addressed in the Anti-Terrorism Financing (Amdt.) Bill which is ready. It is being drafted as a suite of legislation, I cannot promise when it will be laid because there are various Cabinet subcommittees which have oversight of legislative matters. That piece of legislation will carry us even further along. It would move us further from the 26 compliance towards that point in time where we will be 40 + 9 compliant.

My suggestion is that we begin somewhere and that we enact what we have before us with an undertaking, which we are prepared to give in respect of reviewing the legislation. We understand that it is our first run at it and if it is necessary, if it is not working, then obviously we will need to come back. Even if you do not trust us. This is the sense I have been getting, not only from the Opposition, but from some of my colleagues on the Independent Benches. In respect of this matter, there is a punitive sanction for inaction on the part of the Government. If the Government does not act robustly in respect of anti-money laundering, we are going to hear from this agency. They audit us on an ongoing basis.

Sen. Drayton: With respect to the review, I think what would give a sense of comfort is if the language in the Bill is as such that it is mandatory that you come back for a review in 12 months. It cannot just be a situation where the Government says that it will come back with a review because that would not be acceptable.

The other point is with respect to FATF, in their guidelines they have specifically stated—I think they went at length to speak to the distance between the FIU and the political directorate. I think we need to be given some measure of comfort in that regard. Those are our concerns, major concerns.

Sen. The Hon. J. Jeremie SC: Sen. Drayton, we are prepared to put some concrete provision into the Bill and with respect to the question of autonomy and independence versus accountability, what we have in the legislation as it is drafted is not novel to Trinidad and Tobago. It is not the Government saying that we are going to devise this measure to take advantage of citizens of Trinidad and Tobago by putting in a mechanism which would allow us to get up to mischief.

There is legislative precedence in other parts of the Commonwealth. There is legislative precedence in other parts of the Caribbean for precisely the type of

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distance that we have established in this legislation and if our word and if our actions are not sufficient, there is a penalty, there is a big stick which is the FATF. So what we have done today in terms of striking the balance between independence, autonomy and accountability on the other hand is compliant with the FATF guidelines.

We know that otherwise we would not have brought the legislation. We would be shooting ourselves in the foot. In other words, if we bring legislation which offends against the FATF guidelines, we might as well not be here, because we would have failed our assessment.

We are in constant communication—I must reiterate that point—with the CFATF, which is the Caribbean arm of the FATF, so we have a good idea of what is acceptable to the FATF, what their standards are and the standards which we are prescribing in the legislation.

Now, with respect to the Proceeds of Crime Act, which I referred to before when I spoke about Mr. Maharaj's contribution, the point is that that Act, in section 33, allowed for powers in respect of the issuance of a search warrant on a very low threshold. It was new legislation, it was challenged, despite the fact that it was passed unanimously in the other place. Everyone got together and passed that legislation—and I have not checked this point—but I believe that it was passed by a unanimous Senate as well.

Now, in spite of that fact, a single judge of the High Court decided that the legislation was not consistent with what was reasonably required in a society that has a proper respect for the democratic process. A single judge made that decision. The State was unable to use the legislation between 2002 and when I was actually involved in the matter and on the losing side before the judge—I was for the State—Justice Jamadar, as he was at the time, struck down the legislation. He said that it does not conform to what is reasonably required in a society that has a proper respect for the democratic principle and that is his entitlement.

So, at the end of the day if we do anything which is too invasive, there is that power in the Judiciary to say that you have crossed the line and they are not hesitant to exercise that power. Now, as fate would have it, that decision was reversed in the Court of Appeal. The Court of Appeal found in a proceeds of crime case and—perhaps, I can refer to it specifically—this is the case of Northern Construction Limited, which my friends on the other side should be very familiar with. [Laughter] It dealt with the airport fraud and it dealt with the execution of a search warrant, I believe at the premises of Northern Construction which was owned by Mr. Galbaransingh who is well known to my friends on the other side.

Now, when the matter went up to the Court of Appeal, it says at paragraph (2) in the judgment delivered by the Chief Justice in February of this year—quite recently that:

“The appellant succeeds on the appeal because none of the matters complained of renders the meaning or operation of section 33 uncertain or arbitrary, nor do they individually or cumulatively constitute an erosion of or derogation from protected fundamental rights that is arbitrary, excessive or disproportionate. The trial judge wrongly focused in his analysis on the potential for abuse and failed to give adequate consideration to the fact that the issue of the warrant was subject to the judicial oversight....”

Now, he also went on to say that:

“The (Proceeds of Crime) Act is based on a model developed in the 1990’s and adopted by several commonwealth jurisdictions. As was demonstrated, it therefore contains provisions that are very similar to those found in other jurisdictions and section 33 is by no means unique”—and I speak to Sen. Seetahal SC here—“in so far as most of the alleged ‘defects’ are concerned.

The model legislation”—because it was model legislation at that time just as we have model legislation here—“was developed because of the realization that cross-border cooperation was essential in combating money laundering, which was international in scope. It was therefore desirable to encourage comity between nations and to attempt to achieve some degree of consistency in their respective legislative regimes.”

This is February 27, 2009, the present Chief Justice. Now, what the present Chief Justice is saying is that it is a good thing to have legislative arrangements which reflect those in other Commonwealth territories. That is one of the grounds on which he reversed the trial judge. So what we have here today, although you might say that you do not want to hear what Antigua is doing, or what the Bahamas is doing, or what St. Kitts and Nevis is doing, we are all together in the CFATF and we need to cooperate. We need to cooperate, first of all, because generally, we all have the same types of constitutional protection and we need to cooperate because we want to pass legislation, not only to achieve the desired objective, which is to combat money laundering, but also to pass the constitutional threshold.

That is why when we say, yes, there is a concern which you articulated about the distance between the political directorate and the director, but it is a distance which is tested by the fact that it is present in the laws of other Commonwealth

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Caribbean territories. So CFATF has said to us, that is fine, and if there is a problem in terms of abuse we no longer live in silos. The world has changed. We live in an international village where, if we do something which is contrary to fundamental rights, we do something which is scandalous in this country, the country gets a reputation. We might not be blacklisted but we get a reputation. There are several countries in the world which have poor reputations in respect of corruption and Trinidad and Tobago has not, thankfully, got to that stage just yet.

So I refer to the Northern Construction case to make one point really and one point alone, that is that there is a necessity for us—this is what the Court of Appeal is saying in the Northern Construction case—to look to legislative precedence elsewhere when we are passing legislation like this, which seeks to derogate from the rights and freedoms of the individual.

6.40 p.m.

Sen. Seetahal SC: Well, actually my colleague and I were discussing a matter. We agree with you entirely about the perception and reputation, and we are saying is that not a position that is kind of inconsistent with the whole fiasco of UDeCott and we were wondering how we look to the rest of the world and the Caribbean with that kind of scenario?

Sen. The Hon. J. Jeremie SC: Mr. President, with your leave, I would not address that question. We are dealing with the FIU Bill and the issues surrounding UDeCott, are issues of concern to all of us as citizens of this country. Okay? So that is all I will say on it.

Mr. President, there are, as I have said, four models: the administrative model, the judicial model, the investigative model and the hybrid model. Some people are further along the legislative road that we seek to embark on this evening. They are experimenting and they are doing innovative things with their FIU, but they started somewhere and we make that first step this evening, and we make that first step in a manner which is least invasive of the rights of the individual.

Now, I want to move on from Sen. Drayton to speak to Sen. Seetahal's comments. I would allow my colleague, Sen. Mark to intervene. But if you could just hold your fire until I complete my submission with respect to Sen. Seetahal SC. I am not about demolishing anybody. We, on this side, are lovers. [*Laughter*] [*Desk thumping*]

Sen. Piggott: There goes. There goes. There goes the evidence.

Sen. The Hon. J. Jeremie SC: We do not demolish. We make love to our Opposition and we make even greater love to those on the Independent Benches.

Sen. Seetahal SC, my colleague and good friend, made reference to the Minister's ability to give directions to the FIU. Now, if we adopt as we have done, the administrative model, and we decide as we have done, that the FIU must, as a consequence, be in a government department, than immediately brings into relief section 85(1) of the Constitution, which says no more than what is reflected in the legislation. Section 85(1) of the Constitution—this is our supreme law, Mr. President—says:

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

Now, it is in that context that the amendment at clause 4(3) was prepared, so that what we have sought to do is consistent with the administrative model which we have decided on, and which we have said is least invasive of rights—that is what we were about—we put it in a Ministry. In this case, we have chosen to take it out of the Ministry of National Security because the FIU which operates now, as an ad hoc FIU—I know that is a bad word in Trinidad these days, but it is an ad hoc FIU in the Ministry of National Security—is a hybrid model. There are officers from the Customs Department, and various law enforcement agencies and they do work which is coercive in nature.

Now, what we are doing this evening, is pulling back somewhat. We are going forward, yes, but we are going forward on a different basis. We are not using the coercive powers which now reside in the Ministry of National Security. This is purely an administrative FIU. All it is doing is collecting information and analyzing information. Now, if it wants to do anything more than that, it goes to the police and the Director of Public Prosecutions, the two arms of the State which have coercive powers. So that really and truly, what we are seeking to do is to do minimal damage or to intrude to the least extent on the rights and freedoms of our citizens. That is the purpose of what we seek to do.

Mr. President, Sen. Seetahal SC also made a point in relation to clause 55.

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. L. Saith*]

Question put and agreed to.

Sen. The Hon. J. Jeremie SC: Thank you, Mr. President. The point is that there is a typographical error and which brings me to, what is section 12 should really read section 11, which provides that the designated authority in order to exercise powers given under subsection (7), shall apply for and obtain an ex parte Order of a judge of the High Court. That Order shall constitute a warrant for the designated authority to enter the premises.

Sen. Seetahal SC: [*Inaudible*]

Sen. The Hon. J. Jeremie SC: Yes. So there is in fact a typographical error there.

Now, in respect of the point made by my friend, that the department is an entity in the Ministry of Finance, I leave that for my colleague, Sen. Browne to deal with in his winding up. I will deal with Sen. Mark shortly.

Now, those are the unrevised *Hansards* which I have been provided with. In respect of Sen. Merhair's contribution, if my memory serves me correctly, the Senator had identified a concern as to where the FIU was located. That too will be dealt with by my colleague. The Senator had also made the point I think, that this was a body which was going to be given enormous powers, and that we have to be careful when giving those powers to an entity. We have to exercise care, and I think the correlation to that would be, that we must do no more harm than is necessary. I think what I have said so far in respect of our compliance with section 13 of the Constitution, which says that even if we breach the rights in sections 4 and 5, which we must do to pass the FIU, we must do what is reasonably required in a society that has respect for the democratic processes. That is precisely what we have done by using the legislative precedence which is available in the CFATF countries first, but also in the wider Commonwealth. That I hope treats with your fears.

These are real fears. We on this side appreciate that these are real fears, but there are fears which existed I suspect, in 2000, when that Proceeds of Crime Act was passed, which allowed for the issuance of a search warrant on very minimal standards. It was on that basis that the Act was invalidated at first instance. Because the judge at first instance had trepidation, in a finding that such a power could be given to the police in this country by virtue of legislation. The threshold was reduced beyond what was commonly the norm, so that you allow the police to go in, under the Proceeds of Crime Act, to enter premises on a basis which was far less than had been required before 2000. That is how the Act of 2000 was framed.

So what we are engaged in this evening, is really making money laundering a prosecutable offence, and that is the same sort of revolutionary step which my friends on the other side took in 2000 when they enacted the Proceeds of Crime Act to make themselves compliant with the FATF guidelines.

Hon. Senator: Country.

Sen. The Hon. J. Jeremie SC: Country, I stand corrected—compliant with FATF guidelines. Now, that is what we are seeking to do.

There are some other measures in respect of the FATF suite of legislation, which we on this side are thinking seriously about, we have serious reservations about. There are provisions which would allow for forfeiture in respect of assets on a very low threshold. We do not know if one, as a society, we are quite ready to make that step, and two, exactly how that sort of measure would fit into our jurisprudence. But it is an FATF recommendation, and at some point in time if we want to be fully compliant with the 40 + 9 recommendations, we will have to bring legislation to Parliament which speaks to confiscation on a lower threshold than we have known up to this point in time.

So what I am saying to the Independents is that, yes, there is a need to exercise caution. Yes, there is a need to be concerned, because this legislation is not legislation which we have had in this country before, and it is legislation which infringes on basic fundamental rights. But no, we have not gone too far, and the reason I can say that with confidence is because we have the FATF practical guidelines which have been—there are so many other countries which have raced ahead of us. That might be a bad thing, in that we allowed ourselves to be overtaken, but it is a good thing in the sense that we have precedence on which we can build. We know that other territories in the Caribbean have legislative models which are identical to those which we bring before you this evening.

So it is with that confidence that we can say, that we are doing the least harm to persons' fundamental rights, whilst still complying with the FATF guidelines.

6.55 p.m.

Sen. Prof. Deosaran: You are making an impressive explanation, but since you have an interest in the thinking of the Independents, for myself, on the invasiveness side, you could apply some due process provisions to see about that; on the weakness side, you could improve the strength of FIU. The concern I still have is the apparent cosy proximity between the Minister, as a political agent, and the FIU. If you could just clarify as to what intentions you have to create a

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distance or a substitute arrangement, for example, for the Central Bank, or if you feel you have said enough on that issue, I would really like to know so I could decide how my response would be.

Sen. The Hon. J. Jeremie SC: I could just recount to you what we have done. That amendment came in the other place, out of a concern that there needed to be, in a sense, some sort of check and balance in respect of the rights and functions of the director. It is okay to talk about independent offices, and it is a good thing to have offices which are independent, but they must be accountable. I think my colleague would speak about Mr. Hoover in the United States who could not be removed. He had an office that he could not be removed and he could not be questioned.

We have adopted a model which does not allow for the FIU to do anything in terms of prosecution. It is not the prosecutorial body. It is not a hybrid model in the sense that it does not even have the power to go out and investigate; it just gathers data and analyses it. That is all the FIU does. It would send the information on to the authorities that are constitutionally established to take action; that is to say, either the police or the DPP; so that in itself you have no danger of harm to the individual. You have no danger of persecution or prosecution by this FIU, because that is ultra vires the FIU; it has no power to prosecute.

Sen. Mark: I just wanted to know if I heard you properly and correctly earlier on, when you say that the Government, in fact, provided us in the Parliament with a definition of "money laundering" in the Proceeds of Crime (Amdt.) Bill.

I took the opportunity of getting all the amendments submitted by the hon. Minister of National Security. There is no definition. It is something I would really like to suggest that we put into the current legislation, a definition of money laundering, because there is none, either in the Proceeds of Crime parent legislation, this amendment or in the Bill that is before us. So I think the time has come for us to put a definition so we could have a good understanding of it.

Sen. The Hon. J. Jeremie SC: I am told by my technocrats that we have a definition, but that is something we could clear up shortly.

Mr. President, I want to reiterate the point and to comfort the anxieties which I have heard from the Independent Benches, from Sen. Prof. Deosaran on the left to Sen. Merhair on the right.

What we are seeking to do is no different to that which has been done in other CFATF jurisdictions. The relationship between the director and the Executive is an arm's length relationship; it is no different from that which, at present, obtains in

other jurisdictions which have followed the administrative model. There is no danger to any individual's rights and freedoms. There is no danger of prosecution or persecution, because this body cannot prosecute. It cannot do anything, except gather information and analyze it. It then passes the information on—and that is the important point—to the police or the Director of Public Prosecutions, both of which are well established, well entrenched and well recognized as possessing police powers to charge, in respect of the police, and that power in respect of the Director of Public Prosecutions.

That is the extent of my contribution, which really speaks to the constitutional test that we have satisfied under section 13 of the Constitution. We are seeking to pass a law which is reasonably justifiable in a society that has a proper respect for the fundamental rights and freedoms, on the one hand, and to balance the requirements of the FATF, which are increasingly strident and stringent, on the other hand. That is the balance which we seek to strike, by providing you with what is the least invasive of the four models which were open to us. *[Interruption]*

Concerning the definition of money laundering, I have just been passed this by my technocrats, it seems to be section 42(a), which we inserted in the legislation we passed yesterday.

Mr. President, that is my contribution.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, after that erudite and strong contribution of the Attorney General, which I think has answered many of the points raised, both by the Opposition and the Independents, I just have one or two minor points to clear up.

I would like to start by thanking all the hon. Senators for their contributions and for the points which were made in the course of the debate. That is the way in which we are meant to approach. I also want to thank the Senators for making the point that we need to speak to each other rather than at each other.

In that context, I would like to say that the Government certainly did not, at any time, ask for support on the basis of the fact that we were short on time or that we were about to be blacklisted. In fact, having researched the contribution of the hon. Senators on this side of the House, no one made that point. I have to thank and really congratulate Sen. Mark for the power of his speaking, *[Desk thumping]* and certainly the dramatization, because he has managed to drum it into everybody's head that we were about to be blacklisted and that we were coming at the eleventh hour. In fact, that is contained in the second paragraph of his

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contribution, and certainly seemed to be repeated throughout his contribution. So it has been deemed to be part and parcel of the Government's approach. We have not said anything of the sort!

We have said that we would like to have this legislation passed. On the basis of the contributions which were made before, he has admitted to that fact. We have not asked for support on that basis. We asked for support on the basis that this Bill needs to be passed! Yes, we are late.

We would like to point out that the Proceeds of Crime (Amdt.) Bill was introduced in the Lower House on May 22 and was debated there. In fact, the completion of that debate did not take place until last week, because there were a number of points made, which needed to be clarified, certainly with the Opposition, given the fact that we needed to have the three-fifths majority for its passing. That took quite some time and also got caught up in the business of the budget debate. That is one of the reasons we are this late. It certainly was not intentional and it certainly was not the intention to bring any additional pressure to bear on Members of this House to give us their support.

Somebody did ask the question about the effects of it and what actions had been taken in the past. Anti-money laundering and the provisions of anti-money laundering, although not legislative, have been with us for quite some time. The banks have been very much aware of its requirement, and have all, over the last 15 to 20 years, developed compliance departments and guidelines for detecting money laundering or matters of that nature.

Exactly what does it mean and what are the implications for the country? The implications for the country and trading are dire. Under existing arrangements, even without the passage of this Bill and without any countervailing actions, all banks in this country are required by their correspondent banks to have in position anti-money laundering guidelines. Failure to have those anti-money laundering guidelines could result in your not having a corresponding banking relationship. Not having a corresponding banking relationship means, in particular, that there would be significant difficulties in being able to effect international trade; that is the reality.

Under the Patriot Act, which is one of the most relevant examples, any bank in Trinidad and Tobago dealing with a North American institution must complete a questionnaire. I think at this stage of the game it is a questionnaire, but the intention is that it should go a little further to actually a compliance visit, which

documents what your existing compliance routines are. That questionnaire is completed either annually or triennially, when you review your correspondent banking relationship.

A correspondent bank is one which, for example, honours your international cheques or international money orders, which says that, "I promise to pay, would you please pay X, Y or Z", in another jurisdiction or other jurisdictions abroad in which you may have a corresponding banking relationship, in which we do not. The importance of keeping the anti-money laundering in position is simply that it is the bedrock of international trade; failure to do so means that you could have your trade ground to a halt or, alternatively, the practical alternative to sanctions as, for example, the sanctions that have been applied under the rubric of the UN to countries such as Iran. It could be that robust. It may not be, but it certainly could be.

There are some practical difficulties to actually operating under some of the other models which were pointed out. As you are well aware, I ran financial institutions in another jurisdiction somewhere in the region of 15 years, where anti-money laundering legislation and the administrative mechanisms had been used under a separate authority. In fact, Sen. Seetahal SC actually raised an issue at clauses 14 and 15 with regard to the operation of the investigations, and if not the investigations, the issue of directions.

One of my practical difficulties as an organization was very simply that at one time we operated a mechanism for moving money in-between countries a little faster than correspondent banks do; this was to use Western Union. Western Union is, in fact, micro money; it really covers transactions up to about \$500 at best, but it could go beyond that. One of the issues which was raised by the Financial Investigations Unit at the time was that they would come to us all the time and say, "There is a transaction that you need to watch out for." My response would always be, "Well if it comes, what do I do?" We never got directions. We were never given directions; we were always put in that funny position that we would be told that something was about to take place, but never told what our response should be, even though we were to ask for directions.

In those circumstances, inasmuch as we were not an investigating authority, all we could simply do was to submit the forms in accordance with the requirements of the Act and wait to find out exactly what would take place.

It was a situation which we found very difficult, but certainly there is an improvement covered in our legislation, which gives the FIU the authority to take and give certain types of advice.

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7.10 p.m.

Now, I think one of the other critical things to put on the record is the fact that we have had a Financial Intelligence Unit which has been—I think as pointed out by the Attorney General and I would like to use a different word from the phrase that he used. I would say that we have had an administrative unit which has been functioning since 1997 on the basis of Cabinet's authority.

This unit fell under the administration of the Ministry of National Security and actually operated as a Counter Drug Crime Task Force and it undertook the receipt, analysis and sharing of information with regard to suspicious transactions, and I did indicate when I was piloting the Bill that we were compliant in one area and one area only and that was, in fact, our ability to share information.

The fact is that we had been sharing information with all the international agencies, so they knew exactly what our position was. We have in fact been treating with the Caribbean Financial Action Task Force as well as the wider jurisdiction, so that they were always aware of where we were. In point of fact, part of the reason for us moving in this direction and bringing this Bill is clearly to create a legal framework which would serve to identify it, to bring it under a proper rubric and to give it legal status, give it cover of legislation, so it could do all the things that it was currently doing or was doing previously, but do it under the rubric of the law so it will be recognized internationally as satisfying the criteria. I see the Senator wants to ask a question, but I am going to get there.

What we have attempted to do and I think the Attorney General has been very clear in trying to point out the element of what we were requiring to do in terms of balancing, being invasive and at the same time judgmental to undertake all our requirements—

Sen. Ramkhelawan: Thank you for giving way, hon. Minister. I have two concerns and the first is: If the legislation is passed—I tried to get a commitment from the Attorney General that he would bring it back within one year and I did not get that unequivocal commitment. But if the legislation is not supported and passed, what is the implication for blacklisting? I think Sen. Mark spoke about it, but you said that is not so. What is the implication? Is there a time line over which we can be blacklisted?

Sen. The Hon. M. Browne: I think there is a process with regard to blacklisting, but it is reasonably immediate in these circumstances. It is a question of beating a test. The 40 recommendations as you pointed out—yes, we will be blacklisted. The answer is yes. I did not think there was any question about being

blacklisted or not. The answer is yes, we would be blacklisted. I was talking about what it would mean in terms of the very practical implication of blacklisting and I tried to identify what blacklisting meant and what it could mean and it has several implications.

The dire one, as I pointed out, is that it could literally throw a spanner into the works of the international payment mechanism, which essentially underlies all trade and all movements, both of goods and invisibles, and that would do substantial damage to the country of Trinidad and Tobago, which is critical. There is no understating that one.

From another perspective, blacklisting could also have the reverse consequences of affecting your international credit rating and, by definition, the extent to which we could in fact participate in the international capital markets and the cost at which we would operate in those markets. It has implications for OPIC, for example, in terms of how we do trade credits with our major partners. So for every major trading level which involves the movement of funds, blacklisting has a very heavy impact, and that is the position in which we find ourselves.

The other point I wanted to make is that—in addition to the fact that we have had a financial institution of FIU, albeit administratively, and by administratively I mean differently in terms to the administrative set up, that will do investigations under the rubric of the Ministry of National Security—it was not clothed in legislation, it did not have legislative effect. So what this Bill does is, in fact, give us a mechanism to so do, and that leads us to an explanation of clauses 3 and 4. But before we get there, I also wanted to make the point to Sen. Oudit that the FIU was also being presented as part of a package in that the Proceeds of Crime Act does not operate without its counterpart legislation, in this particular instance, the Financial Intelligence Unit of Trinidad and Tobago Bill, that is to give it life, to give it body.

Sen. Seetahal SC made reference to that in clause 2, which contains in the preliminary section, in terms of the legislative drafting improvement, what she would like to see to give it strength. So the Proceeds of Crime (Amdt.) Bill, which was passed yesterday, which was introduced, as I said before, earlier this year, is very important legislation and they work together.

I think it is Sen. Oudit who also asked the question about—and Sen. Mark also made the point in his introduction as to whether there was any form of collaboration and discussion. I think that question was asked of the Minister of National Security and I undertook to deal with that in my winding up.

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We have had ongoing compliance training with all the institutions, insurance companies, real estate companies, money remitters—this would be Money Gram as well as Western Union—the accounting sector, credit unions, banking institutions and, in that period of time, certainly over the course of somewhere in the region of the last two years, approximately 2,400 members of staff of those institutions had in fact been trained in the relevant legislation and the compliance and reporting regime for the Proceeds of Crime Act and then by definition, the anti-money laundering legislation.

A point was also made as to where this unit should be housed and many people have asked that question—I think the Attorney General's Office, it was raised by the Opposition; Ministry of National Security in one instance, or some other independent body. Suffice it to say, and I made the point I think when Sen. Oudit gave way, that the Ministry of Finance includes among its many branches certain parts of our tax authorities. Whilst this is not part of the tax authorities, we do have experience in handling matters of this kind, so we are not without experience. In particular, I refer you to Chap. 78:01 of the Customs Act where officers essentially have the same powers. I think that was the point made by Sen. Dr. Nanan.

Customs Officers have the same powers as police officers and they hold membership in international and regional customs organizations and share intelligence informally across all these organizations, and, in fact, are very much part and parcel of regional training programmes as well to improve our border protection capacities.

I would also like to make the point—because the question was asked at several points, why would we not want to house this particular entity under the heading of the Central Bank—that no country in the Caribbean actually has such an entity. It is not housed anywhere under any central bank and that is because the central banks have all agreed that they do not want it, and do not consider it the relevant place to put it. That is also a particularly important point because they do not necessarily think that they have the power to investigate it on that side, and it also derogates from the other areas of supervision which they currently have. So it is a matter which they would prefer not to.

One of the other reasons for putting it in the Ministry of Finance is that we do happen to have a relationship with financial institutions and, more generally, entities in terms of law enforcement professions on either side which covers finance, crime and investigation. The Ministry of Finance does have those capacities, not well known, but we do have them, so it is not a fit which does injustice to the model.

One of the other points that was made, was the question of minimum recommendations. I think what you have in front of you are simply the 40 + recommendations. On the website, you will also find a document which talks about assessment criteria, which sets out, under each particular recommendation, what they deem to be essential points, and you may, if you want, put additional elements. Each individual recommendation varies depending upon its importance. For example, recommendation 26, as well as most of the recommendations between 26 and 32, this Bill satisfies, not merely the recommendations, but all the approximately 10 sub-elements.

As was pointed out by the Attorney General, there is an ongoing dialogue and part and parcel of the technical team which has been assisting us in the development of this legislation is a representative from the Financial Action Task Force who has given us the technical advice in terms of our commitment and adherence to these principles.

So one of the fundamental reasons once again for choosing the Ministry of Finance would be the fact that it is a good middle ground for housing the unit, and the fact that it already has such a capacity. In part and parcel of our position in terms of introducing this Bill, there were approximately four elements or parts of the foundation elements for putting this institution into position. One was the public awareness and I think the Minister of National Security identified some advertisements which were moved in that direction, and I have also identified the issue of the training which took place across the institutions.

So there was not just simply an imposition, the Act was passed today and tomorrow it has to be implemented. A fair amount of work has gone into preparation and getting organizations and businesses prepared for us to get to this position. One of the other issues, of course, is the business of enforcement and we must be serious about getting it in position and that also requires us to spruce up the enforcement agencies as we move forward. I think that is a matter that has been addressed and also the Minister of National Security has indicated that additional legislation will be brought before the end of the year which will address some of the other issues of enforcement and the other recommendations specifically dealing with terrorism.

With respect to a risk-based approach, Sen. Mark, in looking at the country report, also indicated that there was a need for us to improve on the methodology that we were using. That point was made, I think, elsewhere in contributions. I also want to point out that there is a commitment and an agreement that a vulnerability assessment is planned for 2010. In other words, we introduce the

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Bill, make the necessary changes and a vulnerability assessment will be done in short order to determine exactly where we are, what is our level of compliance and how well have we done it.

Of course, there is the issue of international cooperation as a fundamental pillar under which our anti-money laundering and compliance arrangements will move forward. That is aptly demonstrated simply by the fact that there was a country assessment report and the fact that we are committed to do another country assessment report in 2010.

So it is not just simply that we are bringing the Bill to Parliament and leaving it as it stands. There is, in fact, going to be follow-up work which is done to see exactly, not only how we have complied, but what we have done in terms of bringing the model into position. Several commentators have also made the point with regard to—and I think it was aptly dealt with both by the Minister of National Security as well as by the Attorney General—the type of unit that we propose and why we propose it. As was indicated before, approximately 70 per cent of the 116 jurisdictions that do have FIUs actually use the administrative model, and I think some examples of the countries that were given include all the larger countries.

7.25 p.m.

So that we felt on the basis of what our experience was and on the basis of where we were, that this was the model that is for us. It is to be noted that, for example, FIUs could either be attached to a regulatory, a supervisory authority, such as a Central Bank or a Ministry of Finance and to operate as an independent administrative authority.

In view of all the circumstances we opted for the Ministry of Finance. I gave the reason why not the Central Bank before and, as we know, there are other things and we wanted to create a clear distinction between the investigative arm and the prosecutorial arm to follow through, so that the FIU is to do the initial work and not to actually follow it through. Let the other law enforcement agencies follow it through.

I will not necessarily speak to the issue of other jurisdictions. I think that has been dealt with before and I think it is clear from the work that has been done on the Opposition side, that they are fully aware of the various models that have been used elsewhere.

With respect to the specific clauses that have been identified, there is some legal drafting work that Sen. Seetahal SC identified, certainly clause 2. Some question was made with regard to clause 3 with regard to the appointment of

suitably qualified officers. Given the fact that we actually have had an FIU which has been operating administratively but not under the administrative model, we already have a number of people that would qualify. That is one of the reasons that under clause 3(2) it says which shall consist of:

“public officers, appointed assigned, seconded or transferred from another Ministry or statutory corporation to the FIU;”

That is one of the mechanisms it envisages. It does not envisage that we are going to start recruiting people who have never had this experience. The idea is that we do have people who have experience, who have been located in another ministry and that certainly that is where the bedrock will come from. So they would not be green. They would be able to hit the ground running. I think that is an important point.

The reason as to why “appointed on contract” by the Permanent Secretary of the Ministry, “officers and other persons appointed on contract...” and may “include”. That is so that you do not narrow your scope of possibilities. It is clear that this is an organization, even though we have been doing it and in a sense you can say we have been practising; now we are going for the full-blown action.

These are new skills. I want to make that point, because the idea was, why were these skills not identified. These are new skills that in a developing country do not necessarily come in the same combination that they would be available in other countries. For example, it is useful to note that you ought to find people—and you would see it in terms of the sort of qualifications that are being followed. Ten years ago, for example, there was no Institute of Internal Auditors. Now we do have it. Now we also talk about accountants who are trained with forensic accounting. There is an understanding that given the developments that are taking place in the world, we need additional skills which allow us to be able to track information in a manner which we did not before. The paper trail by itself is insufficient.

So that there are a number of skills which exist but do not necessarily exist in the right combination at this point in time. We do anticipate that those skills will come, either by way of practice and/or by way of the fact that we may be sending people on scholarships to get there. But that in combination, if we were to set out, for example, a rigorous set-up of what the suitably qualified officers would be, it could give us a little bit of difficulty, so we opted for a level of flexibility here and also to operate within, what one can consider a reasonable approach to ensuring that we staff the organization up over time and as things get better. Then, by definition, the level of qualification and the type of individuals that we would be moving into this organization, will also improve. That is really for flexibility.

Financial Intelligence Unit
[SEN. THE HON. M. BROWNE]

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I think that the Attorney General has also given a specific reason for the clause 4A which many people took exception to, and indicated that under our existing Constitution, under section 85, once the unit falls under the heading of a ministry, then by definition this is a constitutional provision which is virtually axiomatic. So I do not think I need to say much more on that.

There are one or two other points I believe which will come up during the committee stage which we will address. There is certainly willingness and an indication on our part, certainly to review the legislation and I think the commitment was 12 months. I think also Sen. Seetahal SC indicated very clearly as to why we could not have sunset legislation here. Of course, sunset legislation would not fit the Bill from an international obligation perspective, in that it means that you would be only obligated for a particular period of time and it would fall out.

One of the other points I think I need to make, in closing, is with reference to the recently concluded G-20 meeting. One of the declarations—I think it is declaration 5—talks about a commitment to move forward and it does talk about the strength of the international financial system and making commitments to making it stronger. Those commitments were not only about capital adequacy ratios; they were also talking about money laundering and making the systems generally cleaner.

That point, actually, has been pervasive during the course of the debate both yesterday and today, where a number of people have asked: why do we find ourselves in a situation where some of these changes are being wrought or being brought upon us by international organizations? The answer to that is that we live increasingly in a global interconnected world and the two best examples—or three best examples—of that interconnectedness and the reason by which states agree to operate in accordance with global convention are: one, the nuclear non-proliferation treaty; two, the world trade mechanism; and three, the Bank for International Settlements.

What do those three do? Well, essentially—and there is a fourth and the fourth one has to do with climate change. As much as it may be difficult there is an increasing recognition that what we do in one country affects the rest of us in another, so that we need to come together to make agreements so that we would be prepared to live in accordance with certain types of conventions to which we would all adhere.

Now those enforcement mechanisms internationally may not be robust as this one is, but certainly they are indicative of a willingness and an understanding of the nations of this world that we all live in a single space, and as much as we

think that we are separated by water, our individual and collective actions can affect the world in which we live. That is demonstrated by a whole other number of international organizations and conventions to which we agree and adhere.

So that it is not simply an imposition; it is an understanding that in the world of commerce, if you squeeze the market tightly in one place, then, by definition, people will move. That is why I started off my presentation yesterday with there are two kinds of money: money that is taxed and not taxed and all money is looking for a home. The reality is that if you tighten the market in one place, people will look for regulatory arbitrage in another.

So it is for that reason that we share information and we agree to be bound by certain conventions and to act in accordance with those conventions. In some instances, those conventions are, in fact, supported by a certain level of reasonableness and the reasonableness has to do with the ability to enforce certain provisions, and in this particular instance, the very real provision of blacklisting which does carry with it a financial and an economic cost.

So it is clear that criminal proceeds can seriously compromise national economies and contaminate financial systems, particularly in these difficult times and it is with that intention that this Bill is brought before this House as a partner legislation to the Proceeds of Crime Act and I recommend it to this honourable Senate.

I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Mr. Chairman: We have some amendments proposed by Sen. Mark.

Sen. Mark: Mr. Chairman, I would like to suggest—

Sen. Jeremie SC: I do not seem to have those amendments.

Sen. Mark: I am sorry. They were circulated.

Sen. Jeremie SC: I see Sen. Mark has been his usual diligent self.

Sen. Mark: Mr. Chairman, can I proceed?

Mr. Chairman: Yes.

Sen. Mark: Mr. Chairman, I would like to ask the hon. Minister in the Ministry of Finance that wherever the Director and Deputy Director appear in clause 2, we should, in fact, either here or later on, indicate the following:

Director means a person with at least 15 years experience:

- (a) as an attorney at law;
- (b) as an accountant;
- (c) a police officer not below the rank of inspector.

And in terms of a Deputy Director, I am suggesting:

The Deputy Director means a person with at least 10 years experience as an attorney at law or as an accountant.

Mr. Chairman, the reason I am advancing these points is to ensure that whoever becomes the Director, there are qualifications attached to that individual who is taking up the position. So those are two proposals in terms of clause 2 that I would like to begin with for the Government's consideration.

Sen. Seetahal SC: Could I say something, then, please? With due respect to Sen. Mark, I understand what he desires, but you cannot say "the Director means a person with a qualification, because every single person in the country who has 15 years' qualifications as a lawyer would be a director. What you need to say in the content of the legislation, probably in clause 4, where you talk about the two posts, say something to the effect as, "to be qualified to be a director a person must have so and so", something like that. It must be in the substantive legislation where you are talking about qualification for those posts; it cannot be in the interpretation section.

Mr. Chairman: So we will deal with that later then.

Sen. Mark: Yes, Sir, I am guided Sir. May I continue?

Mr. Chairman: Yes.

Sen. Mark: If you go to prosecutorial authorities, you would see on page 10 of the legislation, that is clause 8(g), the expression "prosecutorial authorities" but there is no definition in the section dealing with definitions at to what this really means.

7.40 p.m.

I ask the Attorney General to put some meaning to that, whether it is the DPP or the Commissioner of Police, so that we would know exactly when we talk about the prosecutorial authority, which is in the legislation. We need to define that.

Sen. Jeremie SC: I disagree because we know what a prosecutorial authority is. The only body or entity which can prosecute in respect of criminal—

Sen. Seetahal SC: I believe that what the Attorney General is saying is that under the Constitution the person who is in charge of it is the Director of Public Prosecutions. Then you have for example, the police officers who can be delegated with powers to prosecute. By virtue of being police officers or custom officers they can carry out cases. If you did that you would be narrowing the scope bearing in mind under section 90 of the Constitution, the DPP can take away any of those. You truly share it with the DPP and probably, other authorities who may prosecute like the police, but you do not want to specify, because he has the ultimate responsibility.

Sen. Jeremie SC: The point I was making is accurately captured by my good friend. This is a term of art in the profession. We know what prosecutorial authorities are.

Sen. Mark: Mr. Chairman, I withdraw.

Amendment withdrawn.

Sen. Mark: In the legislation we talk about suspicious transactions and activity reporting or reports. There is no definition in the interpretation section of the legislation to guide people of this country as to what these terms mean. I have sought—based on the model legislation that the United Nations has put out as well—the legislation out of Mauritius. These definitions that I have of "suspicious transaction" as well as "law enforcement authority", I would like the Government to consider incorporating them in the legislation.

Sen. Browne: If I could speak to that, one of the specific difficulties in terms of defining "suspicious transactions" is that the whole purpose of money laundering is to make the transactions normal. There is a difficulty in determining a suspicious transaction per se. You have thresholds. One threshold that is used is \$10,000. If you go in the United States of America they ask you to declare if you have cash above \$10,000 because by definition it is unreasonable to assume you will want to walk with "X" amount of cash unless you are going to do something that ought not to be done through the financial system. There is a difficulty.

If you had to put a "suspicious transaction" definitionally, it would change over time because people find different avenues and methodologies to use. It will always be difficult if you have it in the definition section of a suspicious transaction. You would have to amend the definition on an ongoing basis to take account of current practice. That is one of the reasons that definition has been left, if you want, without a firm definition in the definition section.

The second part about that is that it is normal for the Central Bank to issue guidelines of what is deemed to be a suspicious transaction on the basis of practice and experience. The Central Bank does have such a listing on an ongoing basis which it issues. For that reason we have not included the definition of a "suspicious transaction" under the definitional section to give us a little more flexibility in terms of identifying a transaction.

Sen. Mark: I understand what the hon. Minister is saying but we have it in the body of the legislation. The citizenry ought to have an appreciation. I looked at Mauritius and they fall under the same Egmont group. They are part of the FATF family. In their legislation there is provision for this. I also looked at the model of April 2009, which the United Nations Development Office has put out. They have defined "transaction" and said that bodies and countries ought to take those things on board. I understand what the Minister is saying but I still believe that we ought to have something to guide us in the legislation. We could always alter if it becomes necessary.

Sen. Jeremie SC: Sen. Mark, we are saying that you speak of Mauritius and the UN draft model legislation, but you cannot view the draft model UN legislation in isolation. Our legislation has to be read in the context of our body of laws. The Central Bank as the Minister said, is the entity which has expertise in relation to determining the question of what constitutes a suspicious transaction and general oversight. They produce a list of examples on an ongoing basis. I do not think that it is static. It is done on a periodic basis.

Sen. Browne: It is on the basis of best practice and interaction with other jurisdictions in terms of what experience has taken place. That point came through. One way to satisfy your requirement, however, would be to include a clause which will say in determining what is a suspicious transaction or activity, a financial institution or listed business shall be guided or shall follow the guidelines issued by the Central Bank from time to time.

Sen. Mark: Okay.

Sen. Seetahal SC: Has it been defined in some other case?

Sen. Jeremie SC: I am not aware of any.

Sen. Browne: It is a new area. In instances where these matters have come up it has hinged less on the definition of the activity than the purpose for which the funds were being used or hidden.

Sen. Ramkhelawan: Is it the intention that we enjoin the Central Bank and require them to produce guidelines periodically or is it an ad hoc arrangement?

Sen. Browne: It is not an ad hoc arrangement. The Central Bank is part of another organization which is called the Bank for International Settlements and every governor is required to attend. The Bank for International Settlements is responsible for the issuance of guidelines which is known as the BAL Conventions. The BAL Conventions have been updated from one to two to now three and the operational guidelines do include as part of its operational effectiveness, the issue of operational standards which cover for example, anti-money laundering guidelines and so on. There is an international flavour as well.

Sen. Ramkhelawan: The remit of the Central Bank in this case may be expanded. When we define financial institutions in the Proceeds of Crime Act, it was not only the financial institutions under FIA but also the insurance and credit unions. If all those things are going to be covered that is fine. I think you are dealing with a wider ambit.

Sen. Browne: The issue here is one of practice. The Central Bank by definition will cover a substantially large volume of financial transactions which would be covered under the rubric of the commercial banks, trust companies, the mortgage finance companies which it also regulates and the insurance companies, both general as well as life. It issues a guidance principle which would satisfy that definition.

Sen. Mark: I would go along with what they have.

Mr. Chairman: What about your definition for "transactions" and "law enforcement authority"?

Sen. Mark: I do not know if the Minister is saying that we should not incorporate this definition or whether he has a suggestion.

Sen. Seetahal SC: In terms of transaction, normally you do not define something that is supposed to be known, unless the meaning is unusual. You do not define court unless you are going to say court means family court only. For transaction it would be the dictionary meaning.

Sen. Mark: I am guided.

Mr. Chairman: What about law enforcement authority?

Sen. Mark: I will like to stick with it, Sir.

Sen. Browne: Could we settle on the definition for "suspicious transaction"?

Sen. Mark: Yes.

Sen. Browne: The suggestion is that we include a new subclause (2). We will deal with that other one. Renumber. In determining what is a suspicious transaction or suspicious activity, a financial institution or listed business shall follow the guidelines issued by the Central Bank of Trinidad and Tobago or other supervisory authority.

Sen. Seetahal SC: If you say "from time to time" will one set of guidelines supersede the other?

Sen. Jeremie SC: Yes. It should be from time to time.

Mr. Chairman: We insert a new subclause (2) which reads as follows:

"In determining what is a suspicious transaction or suspicious activity, a financial institution or listed business shall follow the guidelines issued by the Central Bank of Trinidad and Tobago or other supervisory authority."

Question, on amendment, put and agreed to.

Mr. Chairman: Law enforcement authority.

Sen. Mark: I am supporting what is in the definition in clause 2 but I am incorporating maybe, through an oversight on the part of the Government, the exclusion of the Comptroller of Customs and Excise which has to play a very important role in this matter as well, as the chairman of the Board of Inland Revenue.

7.55 p.m.

According to what I am reading here, it is confined to the police or to any law enforcement body prescribed by the Minister with responsibility for National Security. The Minister of National Security is not responsible for the Customs and Excise Department; that is the Minister of Finance. In the case of the Board of Inland Revenue, the Minister of National Security is not responsible for the Board of Inland Revenue; that is the responsibility of the Minister of Finance. These are very important agencies to deal with the fight of money laundering.

Under the Proceeds of Crime Act, we have VAT, income tax, corporation tax and so forth, and fraud could be involved in these areas. So, the role of the Board of Inland Revenue Department, the role of the Customs and Excise Department and then the person who would ultimately prosecute is, in fact, the Director of Public Prosecutions. So, you need to bring that person in as part of the law enforcement authority. I could not understand why it was left out. I am suggesting that it be incorporated.

Sen. Seetahal SC: I share Sen. Mark's concern, but not to the extent to include the Commissioner of Inland Revenue or so, because they are not law enforcement agencies. If one looks at where it is used in clause 15, it talks about if the FIU has concluded that there is need for further investigation, "a report shall be submitted to the relevant law enforcement authority to determine whether a money laundering offence has been committed". What body determines that? It is not the Customs and Excise Department; it is not the Board of Inland Revenue; so it would have to be the Commissioner of Police or the Director of Public Prosecutions. This would probably be consistent with the amendment we made yesterday which says: "or any agency of the State lawfully vested with investigative powers similar to those exercised by the police appointed by the Police Service Act, 2006." So, it would have to be the Commissioner of Police, the Director of Public Prosecutions and what we have defined as "a police officer" yesterday.

Sen. Jeremie SC: If I could just shed some light as to why the clause was drafted in this restrictive fashion, going back to the points which I made, we felt that because we were creating this new agency and we were giving it new powers to go into people's personal bank accounts and so on, to gather financial information on individuals, we were concerned about the potential for leakage; the potential that information could be disseminated. That is why we did not give the power to an agency in the police service or to the police generally, but we located it to the Commissioner of Police. We made it specific to the Commissioner of Police so that there would be as little possible violation of an individual's rights to privacy as guaranteed under sections 4 and 5 of the Constitution. We studied the clause and it was drafted in a much wider fashion. As you can see, it is in bold here. The amendment was made in the other place, because we wanted to make it less potentially violative of an individual's rights.

Sen. Mark: What we have currently here, in addition to the Commissioner of Police is, "...or any law enforcement body prescribed by the Minister". What are we talking about here?

Sen. Jeremie SC: At the present time, there are no prescriptions, but we contemplate that at some point in time, consistent with the undertaking which we will give to Independent Senators and, in particular, Sen. Ramkhelawan, is just a first step. We contemplate that there might be, at some point in time, a Financial Intelligence Bureau, and it was in that context that we felt that the Minister should be given the power to make a prescription which would, again, not be violative of rights.

Sen. Drayton: Is there any conflict or could there be any potential conflict with clause 2 and clause 4A? Clause 4A gives the Minister—I take it as the Minister of Finance here—the power to give the FIU directions of a general nature as to the policy to be followed, but it goes on to say:

“...in the performance of its functions as appears to the Minister to be required in the public interest or to materially affect the strategic directions of the FIU and the FIU shall give effect to those directions.”

Could the Minister of Finance, in relation to clause 2, indicate at any point in time that it is not in the public interest to pass this on to the Minister of National Security for investigation? I just want to know if there is any potential conflict there.

Sen. Jeremie SC: I do not see it. What we have in clause 2 is a mechanism for who should receive information coming from the FIU, and that would be the Commissioner of Police or any law enforcement body as prescribed by the Minister with responsibility for National Security.

Clause 4 allows the Minister of Finance to give the police directions which a Minister will normally have under section 85 of the Constitution, which I have referred to.

Sen. Seetahal SC: Why have it in clause 4A if it is the same power? That is one point, but getting back to what you just said in terms of the Financial Intelligence Bureau and so on, by then we would probably have to come back with legislation, so we could define a law enforcement body to include that. Presently, as it stands, which is what we are dealing with, a law enforcement authority must include a person who has the authority to determine whether a money laundering offence has been committed. In my view, it should, at least, include the Commissioner of Police and the DPP.

Sen. Jeremie SC: That is permissible in the sense that the DPP is a constitutional office holder.

Sen. Seetahal SC: It will be the same thing we had yesterday for the definition of police officer or an agency of the state lawfully vested. If you are saying that you want narrowness, let us leave it with the Commissioner and the DPP.

Sen. Jeremie SC: We want to keep it as narrow as possible, and to have little potential for violation of an individual's rights.

Sen. Seetahal SC: When you say "commissioner" you mean his clerk, his driver and probably many other people.

Sen. Jeremie SC: That is why we stipulated the commissioner and not the police. We are prepared to make the amendment with respect to the DPP. We expect that people would behave responsibly with respect to information like this.

Mr. Chairman: Clause 2(1) is amended by including the word "Director of Public Prosecutions" after the word "police".

Sen. Seetahal SC: I think we should delete the rest. At the present time, there is nobody, and people could take that to mean that secret service that falls under the Minister of National Security—Special Branch and so on. I think we should just say Commissioner of Police or Director of Public Prosecutions.

Sen. Jeremie SC: I think you have given the Minister of National Security the powers which he does not have.

Sen. Seetahal SC: Could we just say: "the Director of Public Prosecutions" and delete everything else.

Sen. Browne: Before you go there, the point is being made by my adviser that the DPP is not a law enforcement officer.

Sen. Seetahal SC: The DPP for the purposes of this legislation would be. It does not mean that he has to be in general life. Your definition is: "law enforcement officer" and under clause 15 you say "to determine whether an offence is being committed".

Now, law enforcement authorities under Trinidad and Tobago, the person who actually has the ultimate responsibility for determining that is the DPP before charging. I am saying for the purposes of this Bill, since you gave that power under clause 15 to the law enforcement authority to so determine, and the DPP is the one who is going to advise the people to do that eventually, I think for the purposes of this Bill, you could include anything for a law enforcement authority under this Bill. It is not going to be outside of this Bill.

Sen. Jeremie SC: Under the Constitution the DPP has the powers under section 90 where he could begin, institute, take over or discontinue criminal proceedings. I am not certain that it is consistent with what we intend for it to be. For example, the DPP has no powers to investigate crime. That is outside his remit and, really, the FIU would be providing data to someone for investigation.

Sen. Seetahal SC: A report shall be submitted to the relevant law enforcement authority to determine whether money laundering offence has been committed or whether the proceeds of crime are located in Trinidad and Tobago. So, if it is that a report shall be submitted for investigation in order to determine that, then that is another matter, but the person who determines whether an offence is being committed, ultimately, is the DPP and it goes to the jury. If you want to rethink or redraft clause 15, then by all means, do it.

So, it could be in clause 15—after the FIU has concluded its analysis and evaluation and feels that the matter requires further investigation refer the matter to the relevant law enforcement agency for investigation and with a view to—

Sen. Jeremie SC: I think the intention is captured in the marginal note which says “investigation”. So, after the FIU has concluded its analysis or evaluation of a suspicious transaction and where the directors are of the view that the circumstances warrant investigation, a report shall be submitted to the relevant law enforcement authority. So, what we are speaking about is really investigation as opposed to prosecution. Now, you cannot change what follows to determine whether a money laundering offence has been committed. That would fall within the class of money laundering as I understand it. The DPP's powers are in respect of prosecution. He can institute, take over, or discontinue prosecution, but the police have the power to institute prosecutions. Obviously, that is part of the police power. What is contemplated is that the chain of the movement of information would go from the Director of the FIU to the police for a police investigation.

8.10 p.m.

It is part of this notion that the director himself merely collates and assesses information. That is all he does, collates data and makes an assessment, so, that if a police investigation is warranted, to keep faith with the tenor of the legislation, it goes to the constitutionally established entity to do that, which is the police.

Sen. Seetahal SC: The Attorney General said many things but he has not answered the simple point that in clause 15(1), it does not say it is being sent on for investigation. It just said it is being sent on to determine whether money

laundering offence has been committed, which would suggest to me that all of the evidence you have, you make that determination on that. So, it should be: "A report shall be submitted for further investigation in order to determine". That is the point I was making. I thought I was clear but maybe I should repeat myself. My lack of clarity undoubtedly has led to this confusion. "Submitted to the relevant law enforcement authority for further investigation to determine". If you put that in then you do not need to include—

Sen. Jeremie SC: That is the change that we propose to make to the clause instead of putting the DPP in.

Mr. Chairman: Right, so there is no change?

Sen. Jeremie SC: Yes, there is a change to the clause. It is going to be read by my colleague. The point is that we are not changing clause 2 because we will change clause 15 when we get to it.

Sen. Mark: Mr. Chairman, I am not convinced that the DPP ought not to be included in this section here. I have my doubts about this Commissioner of Police right now, and I am saying I vest no confidence at this time. And to narrow this down to just the Commissioner of Police and the Attorney General is saying well, we want to narrow it down to his office, because you do not want the information to spread. That does not make sense to me, particularly at a time when there are doubts about this Commissioner of Police. We are not in support of leaving out the Director of Public Prosecutions. We believe the Director of Public Prosecutions should be there.

Mr. Chairman: Only that?

Sen. Mark: Yes, I am prepared to concede the rest.

Sen. Dr. Nanan: Mr. Chairman, I have a concern. We heard about "further investigates", but the Attorney General said that the FIU did not have power to investigate. Would it be "further investigate" or just "investigate"?

Mr. Chairman: That is done in clause 15, so we would deal with that when we get there. The question is that clause 2(1) be amended at the definition of "law enforcement authority" by:

Inserting after the words "Commissioner of Police" the words "Director of Public Prosecutions".

Question, on amendment, put and negatived.

Sen. Seetahal SC: Mr. Chairman, I have a few suggestions. I made them in my thing and nobody has attempted to clean them up. In “financial institution” there is reference to the Proceeds of Crime Act, the definition there. If you say in the definition of listed businesses there is reference to the Act and in definition to proceeds of crime there is reference to the Proceeds of Crime Act, and I would think that one ought to be consistent, because if you look at clause 2(1), the first thing is "Act" means the Proceeds of Crime Act. So, I am saying, first of all, that should be amended to say "the Act", not "Act", because you have two Acts you are talking about here. So, include the word "the" there and later on either decide if you are using "the Act" or the "Proceeds of Crime Act", and I suggest it should be "the Act". What is the point of having that if you continue to say "Proceeds of Crime Act"?

Sen. Browne: So, that would mean that we move "Act" in the Proceeds of Crime Act from where it is?

Sen. Seetahal SC: No, the amendment reads to amend in clause 2(1) just before "Act" to include the word "the Act". That is the first amendment. The second one, under financial institutions, to delete the words "Proceeds of Crime" and similarly under proceeds of crime to delete the words "Proceeds of Crime".

Sen. Dr. Saith: Replace by?

Sen. Seetahal SC: No, well, it would be left with the word "the Act". You do not have to replace anything, because if you look you would see you have "the Act".

Mr. Chairman: The question is that clause 2(1) be amended as follows:

In the definition of "Act" include the word "the" before the word "Act". At the definition of "financial institution" remove the words "Proceeds of Crime". At the definition of "proceeds of crime" remove the words "Proceeds of Crime" immediately in capitals before the word "Act".

Question, on amendment, put and agreed to.

Sen. Seetahal SC: One final matter in that interpretation section. In the next clause there is this reference to ministry, but there is no definition of ministry. And by implication one would imagine it means Ministry of Finance, but we are going by implication. So, we either include Ministry of Finance in clause 3 or in the definition say what ministry means; ministry means Ministry of Finance. In clause 3 in the included new subclauses 2(a) and (b), you see the word "Ministry"? Ministry could be—

Mr. Chairman: Yes, it is from another ministry or statutory corporation.

Sen. Seetahal SC: Which one do you mean? Permanent Secretary of the Ministry? Do you mean Ministry of Finance? All I am pointing out is, so the second one you mean Ministry of Finance, so I am just making a kind of cross check. So we would come to that then.

Sen. Mark: Mr. Chairman, this clause 2(2), for the purposes of clause 15, the Minister with responsibility for National Security may by order—I do not understand, on the one hand we are being told that you want to confine it to one person; on the other hand the Minister has broad authority to prescribe the law enforcement authority to which the FIU would send its report. It is confusing. You want to confine it to one in one clause, then in another clause you are saying you want to give the Minister the power to, by order. So, delete that.

Sen. Dr. Nanan: Mr. Chairman, it is not related. This one is law enforcement authorities.

Sen. Jeremie SC: At the present time there is only an intention to give to the Commissioner of Police, but we want to make—you see it is in bold again—So, this is an addition. We looked at clause 15 and we said that at some point in time there might be a specialized body, quite separate and apart from the Commissioner of Police. For example, you might have a financial investigations bureau; you might have SAUTT with a specialization. At some point in time SAUTT is going to be—it is already legal—incorporated by legislation, so that there might be a desire, and what you do in legislation is give yourself maximum flexibility within the constraints of the parameters which you have established. So, the intention at the present time is to restrict it to the Commissioner of Police, but if to deal with money laundering in a more aggressive way, to speak to the point made by Sen. Ramkhelawan that this is weak legislation.

If at some point in time we have a specialized investigative body to deal with financial crime—the Minister is saying when—we do not at this point in time but we do not want to have to come back to legislate, to give the Minister that power if we do have that investigative body at some future point in time.

Sen. Mark: Mr. Chairman, if the Minister is going to give an undertaking to this Parliament that within one year the whole regime is going to be reviewed and we are going to relook at it, then I am saying delete this and when you come back within one year you would address it.

Sen. Jeremie SC: But we put it in downstairs to meet a particular point and I have explained the point. It is a logical point. Yes, our objective is to make this

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information available for purposes of dissemination to as few persons as possible. We have restricted at the present time to the Commissioner of Police. We are saying not the entire police service. That is our intent; it is clearly articulated there, to give the Minister the flexibility—I say if, he says when—the legislation is strengthened by perhaps the creation of a specialized bureau, then there is in the legislation as it has been amended. This was not there before. I mean, suppose the Minister brings SAUTT into being and—he says he is going to do it in two months—SAUTT has a specialized agency, or there is a financial intelligence bureau, which is established, then he wants to have the power to be able to transfer whatever. He says two months? I know that we have been trying to do SAUTT for a period of time and it has not yet happened, so I am little less optimistic.

Sen. Dr. Nanan: Attorney General, I do not know if you want to put there in the amendment to clause 2; prescribe the relevant law enforcement authority as you have in clause 15.

Sen. Seetahal SC: Actually I was going to suggest that you move that former subclause (2), because it is no longer subclause (2), to clause 15, because it has no place there.

Sen. Jeremie SC: It would have to change, it would no longer be subclause (2) because we have a subclause (2)

Sen. Seetahal SC: Right, that is what I am saying, but in any event I am saying to you and I said it before that this refers back to clause 15 and this has nothing to do with definition, so why is it here? This should be clause 15(3) if anything.

Sen. Jeremie SC: We are amenable to putting it under clause 15.

Sen. Seetahal SC: Moving it; so we remove this from here.

Mr. Chairman: Is that the amendment to subclause (2) that is being renumbered as (3).

Sen. Browne: If we are moving it to clause 15 we would need to change, so I would suggest for the time being that we could delete this subsection. We have already inserted clause 2(2), which is the definition to deal with suspicious transactions.

Mr. Chairman: But you would insert one at clause 15(1).

Sen. Browne: What exists now as subsection (2) we would move and change.

Mr. Chairman: The question is that clause 2(2) be deleted.

Question put and agreed.

Clause 2, as amended, ordered to stand part of the Bill.

8.25 p.m.

Clause 3.

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

Sen. Mark: Mr. Chairman, I am suggesting that this entire section be recast, because we would like to have some independence as far as it is practicably possible so that we have checks and balances. In this regard, we are suggesting, consistent with what we have in the Police Complaints Authority Act, that we have the director and the deputy director of this unit being appointed by His Excellency on the joint advice of the Prime Minister and the Leader of the Opposition.

We believe that this is very serious legislation. We have a very serious resistance to having this matter housed in the first place in a Government ministry. We have very strong reservations about that, but, give or take, we might want to look at that again. However, you see when it comes to the appointment of the officers—director and deputy director—under no circumstances are we prepared to leave that in the hands of a Minister of Finance and a Cabinet and to put anybody on contract. We want tenure; we want a minimum of five years and we want this person to declare his assets among other things.

So our proposal is consistent with the need for checks and balances and to have an arm's length approach as far as it is practicably possible.

Mr. Chairman: Well, let me put the question then.

Sen. Mark: No, I am saying contract officer for these people, director and deputy director.

Sen. Dr. Saith: They are not public officers.

Sen. Mark: They are what?

Sen. Dr. Saith: They are not contract officers.

Sen. Mark: Yes, but I am just making it very clear in my definition.

Mr. Chairman: What does the Government say?

Sen. Mark: No, before you put it, I would like to hear the Attorney General's position or the Minister's?

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Sen. Jeremie SC: We think that the post of director and deputy director are not greater, they confer no greater powers than that of the Commissioner of Police. This is not a Commissioner of Police. Under our Constitution, as it has been amended now, there is provision for parliamentary oversight in relation to the appointment of the Commissioner of Police. That is the Constitution as amended, you agreed to it.

Sen. Mark: No, Mr. Chairman, let me just make my position very clear, we have looked at various pieces of legislation throughout the world involving this same matter and this is something that is in existence in many countries and the model we are looking at is Mauritius and you have the Prime Minister and the Leader of the Opposition involved. We are dealing with a very sensitive office here and we are not prepared—we are going to have a break on this one—to allow any Cabinet to appoint any director and any deputy director. We are saying this is too important a matter. It involves the lives, safety and security of hundreds of thousands of people and we are not prepared to allow a political body, like the Cabinet, to take that responsibility to appoint any director and any deputy director.

We are saying, to have balances and to have checks we must put that in the hands of His Excellency on the joint advice of the Prime Minister and the Leader of the Opposition. If the Government is serious about getting consensus here this evening, they will consider this proposal very seriously.

Sen. Jeremie SC: Sen. Mark, the present position in the legislation is that these office holders will be either appointed by a service commission—

Sen. Mark: They will be what?

Sen. Jeremie SC: They will either be appointed by a service commission, which, as you know, is a constitutionally established body which enjoys independence—

Sen. Mark: Yes, but what you just stated here?

Sen. Jeremie SC: Or by contract.

Sen. Mark: No, no, that is watering it down. Mr. Chairman, we are very serious about this proposal and if the Government wants to reject it, well, we start the war from here.

Sen. Jeremie SC: We would not join a war with Sen. Mark.

Sen. Ramkhelawan: Mr. Chairman, the legislation as drafted is not very clear as to who is going to appoint the director and deputy director. I think for

purposes of clarity it would be essential to have the persons named who are going to make this appointment. I support Sen. Mark up to the extent that we need clarity as to who is going to make the appointment.

Sen. Browne: Precisely, because it is a government department, the presumption would be a service commission.

Sen. Ramkehelawan: No, that is a presumption.

Sen. Browne: That it is a service commission?

Sen. Ramkehelawan: You are creating legislation for—

Sen. Browne: Once it is a department it cannot be done. What other ways do you appoint somebody outside of a department?

Sen. Mark: Many government departments have workers on contract. I know under a government department you can have contract officers at the highest level if you want, so not because it is a department does it automatically mean that the Public Service Commission will appoint them. Put that in the legislation if you are serious.

Sen. Seetahal SC: In that regard, Sen. Mark, you have here in itself two alternative ways of appointing the other suitably qualified officers. You have said it can be by persons who are assigned for transfer or by contract, but you say nothing of the director or the deputy director. My understanding of how the public service operates, because I know people have had to look for their post in this book that you have, if you have no post of director or deputy director, how can you say it has been the public service? You know that blue book that you had? I do not know if you knew about it, maybe you were away, but there are posts, so if there are no posts there you have to bring it in by legislation.

Sen. Mark: Very good point there.

Sen. Seetahal SC: You must say who is going to appoint them—the director and the deputy at least.

Sen. Browne: The advice is that Cabinet creates the post but does not appoint, the service commissions appoint or, alternatively, the CPO under contract.

Sen. Drayton: Well, could we clarify which one in the legislation, whether it is going to be a service commission or whether it is going to be the Chief Personnel Officer? Could we specify it?

Sen. Seetahal SC: I think we have done a piece of legislation recently where we said the “terms and conditions”, I think we even went on to say salaries and all

of that—some legislation that was brought here not so long ago. Not that I am suggesting that we go so far, but I am saying some inclusion—somebody could be drafting that while we deal with the other section, but it has to happen that there should be something saying who is appointing the director and the deputy at least. What adds force to the argument, in the repealed proceeds of crime—

Sen. Jeremie SC: I think the rationale for this is that we wanted to give ourselves the flexibility to appoint someone who might not be a national of Trinidad and Tobago.

Sen. Mark: Well advertise it.

Sen. Jeremie SC: If it is done that way it would have to come from outside of the public service.

Sen. Mark: That is not what you want, come better than that please.

Sen. Drayton: That being the case, since a commitment was given earlier on that a specific clause will be included in this legislation with respect to a review in one year, then I want to suggest that any recruitment, therefore, should not be more than a period of one year.

Sen. Joseph: You are not going to get anyone to come from abroad for one year.

Sen. Jeremie SC: You might not get anyone to serve for one year. It might be impossible to fill a post for one year.

Sen. Browne: You would not get anyone.

Sen. Drayton: Okay, but whatever the situation is, however you want to recruit that should be specified rather than leave it. I understand the need for flexibility, but if you are going to be reviewing this legislation within a year and based on what you have said about the unit probably evolving into a specialized unit, you would not want to lock yourself into a long-term contract.

Sen. Seetahal SC: I do not understand why we are talking about contract, because Minister Browne is saying it is going to be the public service, so it is not a contract. I am hearing contradictory things here.

Sen. Browne: We said it could be two things. We said that since it is a government department it could be by the service commission. We have said that it could also be by contract. *[Interruption]* Just let me explain, we have a number of positions within the public service at the moment that are filled by contract. The contractors or the persons filling those positions by contract do not

necessarily come from outside the public service. In fact, what happens is, for example, I have three directors who report to the Permanent Secretary in the Ministry of Trade; of those three positions, three are by contracts. All three contracting parties come from inside the civil service. They came from other positions within the service where they have responded to competitive ads within the civil service, but they are contract employees under that definition. Their substantive positions have been suppressed in other ministries, but that does not make them strangers to the Government or strangers to the public service. I just want to make that point, so it is not necessary or clear that because you are a contracted employee then by definition there is some magic in terms of how you are being appointed.

Sen. Seetahal SC: Minister in the Ministry of Finance, I do not know if you are aware, but the perception is that persons appointed on contract in top level positions are usually political appointees and political hacks. That is the perception in this country at that level. So, to say that you want to have the leeway to put persons there who may:

1. not be nationals; and
2. may be appointed on contract,

is suggestive or reinforces that perception, which is why people are so concerned about who is to appoint when you have a piece of legislation that is open and there is no indication at all how the people in these posts which are going to be intrusive to our privacy are going to be appointed. That is what I really have to say on that.

Mr. Chairman: You want to come back to it?

Sen. Browne: Yes, we do not have an answer to this question at this stage and what we propose to do is to move onwards and we will return to this later.

Mr. Chairman: All right, we will come back to clause 3.

Sen. Mark: Mr. Chairman, before we go on, I also want to advance in this section a director, to be qualified to be a director I want to advance—and they have the drafts people there—that person must be an attorney-at-law for 15 years or an accountant and in terms of a deputy director, that person to be qualified to be a deputy director must be an attorney-at-law of 10 years and also an accountant. I would like those things to be included—

Sen. Jeremie SC: Engineer.

Sen. Mark: All right! What I am saying is you could say engineer. All I am saying, Mr. Chairman, is that we need to have qualifications and we need to have it established. That is in all the Caribbean legislation, it is in legislation in Mauritius.

Sen. Browne: No, it is not in all of the Caribbean legislation.

Sen. Mark: Well, I am saying Bahamas has it, and therefore, what I am suggesting is that we include qualifications. You cannot be bringing legislation here of this nature to invade people's privacy, violating constitutional rights, sections 4 and 5 and you want to leave it open and feeble and saying you want flexibility. Who do you think you are dealing with here? This is the rights of people that you are dealing with here and we are not going to support that.

Sen. Jeremie SC: Okay.

Sen. Mark: You must have qualifications!

Sen. Jeremie SC: Can I just say—

Sen. Mark: This is law and finance.

Sen. Jeremie SC: Mr. Chairman?

Mr. Chairman: Go ahead, Attorney General.

Sen. Jeremie SC: Thank you. I think we should all take a deep breath after Sen. Mark's contribution, but there is no insidious intention here. There is legislative precedence, which is precisely as we have drafted ours—that is to say, we will get the legislative precedence for you—but importantly, if we are to put in the prescriptions which you have suggested, the present director is out of a job, because he is not an attorney-at-law, he is not an accountant—

Sen. Seetahal SC: I think he is an accountant.

Sen. Jeremie SC: No, he is sitting in the back there and he is shaking his head. He is not an accountant.

Sen. Mark: Is he a police?

Sen. Jeremie SC: He is not a police officer.

8.40 p.m.

Sen. Mark: So what is he?

Sen. Browne: An immigration Officer.

Sen. Jeremie SC: He is an immigration officer. He has been doing his job for a considerable period of time, with a great deal of success. He has—*[Interruption]*

Sen. Mark: Where? Not in the report that we have here.

Sen. Jeremie SC: Sen. Mark—

Mr. Chairman: Senator, please allow him to finish his sentence.

Sen. Mark: Sorry, Sir. Sorry, Sir. I withdraw. I apologize.

Sen. Jeremie SC: I am not going to make any aspersions on a public servant. He is sitting right in the back there.

Sen. Mark: I withdraw and I apologize.

Mr. Chairman: All right, I heard you the first time.

Sen. Ramkhelawan: Mr. Chairman, if I may? I agree we should remain a bit calm; it is a bit late. But the point is we are putting in legislation which we did not have before. We are putting in legislation. We are putting in two clearly defined positions, and I think if we put in two clearly defined positions, there should be minimum qualifications of these persons. Does it mean that a director could have five O levels? That is the point. If we were putting in legislation, let us be clear about the appointment and the qualification of the person. I do not know whether it is 15 years whatsoever, but it cannot just be at the whim and fancy of whoever is making that. We do not even know who is appointing.

Sen. Browne: But it is also true that an attorney with 15 years experience or an accountant with 15 years experience may not be the right person.

Sen. Ramkhelawan: I did not say that. I just said let us have the basis on which the person—

Sen. Browne: Or a police officer with any amount of experience might not be the right person either.

Sen. Ramkhelawan: It could be an immigration officer with 10 years, if you so want. But let us define some qualifications.

Sen. Seetahal SC: In all of that, you see, Mr. Chairman, it neglects the fact that under the original Proceeds of Crime Act where you talked about the designated authority or person authorized—that is under section 55(5), those powers, which are now repealed—you no longer have designated authority. You have an FIU, but designated authority means a person or meant, with at least 10

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years of experience as an attorney-at-law, an accountant, or a police officer “not below the rank...” The point is under the Proceeds of Crime Act, you had a definition of a designated authority to mean, attorney-at-law, 10 years; accountant, 10 years; police officer, inspector, which should probably be over 10 years anyway, and you replaced that definition in yesterday's Act.

You no longer have designated authority. You now have FIU, so it would seem consistent with it. Whether you say, or a public servant with 15 years experience, something like that, but the point is, if you had before—I do not know if the head was supposed to be acting under this Act as a designated authority, but if he was and he did not comply, well then—The fact is you had something there, you said you are strengthening the legislation, so strengthen it.

Sen. Jeremie SC: We are strengthening the legislation. That is clear.

Sen. Seetahal SC: Well, be consistent with your strengthening position.

Sen. Oudit: Mr. Chairman, when we did the Family Court Act recently, the Attorney General would know that there are qualifications and requirements for the Court Master, the court appointed attorney and all of that, including over 12 years of service. So to come and say now that you cannot find attorneys, and that is hard to find with that length of service should not really be an—[*Interruption*]

Sen. Browne: We did not say that we could not find an attorney with that length of service. We did not say that. We said it may not be with relevant experience. In an individual case, I think that there is a little bit more evidence and experience under that particular Act, for that definition to apply in terms of practising people. Our difficulty has been, as I have pointed out, that the relevant combination of experience—we will expect in time, that we will get people with the relevant combinations. But at this point in time, the relevant combinations that will be required for this position will be difficult to find.

Sen. Oudit: Well, put something there.

Mr. Chairman: In any event, we said that we would leave this clause and we will come back to it.

Question put and agreed to.

Clause 3 deferred.

Clause 4.

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

Sen. Mark: Mr. Chairman, under clause 4—are you on clause 4A or just clause 4?

Sen. Seetahal SC: Clause 4.

Question put and agreed to.

Clause 4 order to stand part of the Bill.

Clause 4A.

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

Sen. Mark: Mr. Chairman, we are proposing that clause 4A be deleted.

Sen. Seetahal SC: I agree.

Sen. Drayton: Mr. Chairman, I would like some clarification here as to whether this clause is meant to be the Minister giving policy direction, or the Minister giving direction that could materially affect the operations and the strategic directions of the FIU?

Sen. Browne: This is policy direction, as distinct from operational direction.

Sen. Seetahal SC: Well, since it is already in the Constitution, why do you want it here?

Sen. Jeremie SC: What the technocrats are saying, is that their concern is that, yes, they are setting up an FIU within a Ministry, but it is a new institution and they want to ensure that there is a balance struck between independence and accountability. Yes, it is achieved by section 85 of the Constitution, and in the case of subsisting departments in ministries, section 85 of the Constitution would automatically apply. But because we are setting up a new institution, it was thought that—as you see, this too is in bold—this amendment was thought to be prudent in the other place to ensure that you have a proper balance struck between accountability and independence.

Sen. Seetahal SC: Are we going with it because the other place thought they should put it, and they mixed up so many other things already in this Bill? If you are saying, Attorney General—and you are the legal advisor to the Government of Trinidad and Tobago—that we do not need it because it is in section 85 and you are saying in your explanation we do not need it, I do not see why we should just put it in there to create more confusion. That is my view, but I think one of my colleagues—*[Interruption]*

Sen. Drayton: I just wanted to add here that section 85 says specifically that the Minister is not only giving general direction, but has control over the

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department. So where is the distance in terms of the FIU and the political directorate? I am trying to establish the balance.

Sen. Jeremie SC: You read from—

Sen. Drayton: Section 85.

Sen. Jeremie SC: Oh, the Constitution.

Sen. Drayton: The Constitution gives the Minister the rights of control over a department in the Ministry. So if you were saying that there is some balance, you are implying that there is some distance between the political directorate and the FIU, but the Constitution does not say that. The Constitution says specifically, the Minister is in control.

Sen. Browne: Speaking from experience, my limited experience, the concept of control as specified in section 85, is a general one, not with regard to any specifics, and all the regulations that I have seen, say that the specific directions come from the Permanent Secretary, not from the Minister. So the Permanent Secretary actually runs the various departments and issues directions and instructions. The direction or the interface in terms of the administration of any department is between the Minister and the Permanent Secretary, not between the Minister and the director, or the Minister and X, Y, Z. And there are actually other provisions under the Civil Service Regulations which deals with that. I am sure Sen. Corinne Baptiste-Mc Knight could speak to that.

Also too, I just simply wanted to point out that clause 4A is counterbalanced by clause 22A, and the purpose of including clause 22A is precisely to balance it, and to balance it legislatively. If you look at clause 22A, clause 22A restricts, prohibits and inhibits the director from making disclosures to the Minister or any other person, except in accordance with the Act. So the idea was to ensure that there is a legislative barrier as well, so that the operational aspects of the running of the department will not be controlled or be interfered with by the Minister.

Sen. Mark: That is assuming—[*Interruption*]

Sen. Jeremie SC: Can I just interject at this point in time on the section 85 point. I have just looked at my Constitution. It is getting late, so I had put it away. The section says:

"Where any Minister has been assigned responsibility for any department of government, he shall exercise general direction and control over that department; and, subject to such direction and control..."

Now, the word "such" must relate to the "general direction and control". So it is general direction and general control. You cannot say general direction and general control. It is general direction and control over that department; and subject to such general direction and control. This is not greater than what is in the preceding clause. It is such direction and control which is general in nature.

Sen. Ramkhelawan: Mr. Chairman, there is another aspect of this as you bring up 85, because under clause 22, the director appointed does not have to give out particular information to the Minister. But the way it is worded, he may have to give out information to the Permanent Secretary. I do not think that was the intention.

Sen. Jeremie SC: That is definitely not the intention.

Sen. Ramkhelawan: But since he is reportable to the Permanent Secretary, he will have to do it.

Sen. Jeremie SC: I think the section says—

Sen. Ramkhelawan: It only excludes the Minister. It only excludes providing information on persons to the Minister, but it is silent on the Permanent Secretary.

Sen. Browne: Read again. It says the "Minister or to any other person". "Any other person" includes the Permanent Secretary.

Sen. Seetahal SC: Yes, once you see "any other person", it means in general.

Sen. Jeremie SC: We are on clause 4A, that, I think is covered in clause 22.

Sen. Baptiste-Mc Knight: Mr. Chairman, please. Clause 4A seems to go further than 85. Clause 4A seems to allow the Minister to interact, in a most direct manner with this director, bypassing, ignoring or whatever nice word you would like to use, the Permanent Secretary. It goes further to say that the unit "shall give effect to those directions". I do not think that this is proper. When you have this direct relationship between the Minister and the unit, to come back and say that the director cannot give the Minister any information, is a non sequitur. It makes the thing just look foolish.

Sen. Mark: "Ol' talk".

8.55 p.m.

Sen. Baptiste-Mc Knight: There is nothing that we could do here that would remove those, therefore, there is no need to put it here again.

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Sen. Jeremie SC: We agree; we will take it out.

Mr. Chairman: The question is that 4A be deleted.

Question put and agreed to.

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

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

Sen. Browne: Mr. Chairman, I beg to move that we report progress of the Bill to the Senate, in accordance with Standing Order 53(12).

Senate resumed.

PROCEDURAL MOTION

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, I beg to report that the committee of the Senate has met to deliberate on the Bill and we have reached clause 7. I ask for leave for a break of approximately 15 minutes.

Mr. President: Hon. Senators, we will suspend the sitting for 15 minutes, until 9.15.

8.59 p.m.: *Sitting suspended.*

9.15 p.m.: *Sitting resumed.*

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Sen. Browne: Mr. President, I beg to move that the Senate do now resolve itself in committee to consider the Bill clause by clause.

Committee resumed.

Clause 8.

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

Mr. Chairman: We have a proposed amendment at subclause (3).

Sen. Browne: Mr. Chairman, in clause 8(1) the wording: "The FIU shall be the primary institution for the collection, analysis", that "collection" does not agree with "among law enforcement authorities." It has been suggested that clause 8(1) should be adjusted to read that:

"The FIU shall be the primary institution for the collection of financial intelligence and information and the analysis, dissemination and exchange of such among law enforcement authorities."

I will read it over:

"The FIU shall be the primary institution for the collection of financial intelligence and information and the analysis, dissemination and exchange of such among law enforcement authorities."

The rest would remain as normal. [*Interruption*] It has been suggested that after such there should be repeated the phrase, "of financial intelligence and information".

Sen. Seetahal SC: That is usually good drafting, but I did not want it to be longer, so I just said "such".

Mr. Chairman: Is that how it should read? The question is that clause 8(1) be amended by deleting the words "analysis, dissemination and exchange" and inserting the word "such" after the word "of"; and after the word "information" inserting the words "and the analysis, dissemination and exchange".

Sen. Browne: "of such financial intelligence and information".

So it would read:

"The FIU shall be the primary institution for the collection of such financial intelligence and information and the analysis, dissemination and exchange of such financial intelligence and information among law enforcement agencies."

Mr. Chairman: We have an amendment to 8(3)?

Sen. Mark: Mr. Chairman, my amendment to clause 8(3) reads as follows:

Insert the following new sub-paragraphs:

- (j) shall retain a record of all information that it receives for a minimum of five (5) years after the information is received;
- (k) shall inform the public and financial and business entities of their obligations under measures that have been taken or might be taken to detect, prevent and deter the commission of the offences specified in the Second Schedule.

I am suggesting that we just add two additional functions to that already outlined. I am suggesting the two that I have circulated be considered, in that regard, that this organization would have the responsibility of retaining all the information it has received; a minimum period of five years is being suggested, as is the standard, and that this organization has a duty and responsibility to inform the public, financial and business organizations or listed businesses, we could always

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amend that, of their obligations under measures that have been taken or might be taken to detect, prevent and deter the commission of offences specified in the Second Schedule.

I believe this is another way of giving this institution the function of keeping the public apprised, keeping the financial institution up-to-date with what is taking place through education and public awareness programmes.

Sen. Seetahal SC: You cannot just state measures like that. If you are imposing on a body a duty to inform the public of obligations under measures, you have to say what you mean or have something specific. If you mean financial institutions, then you need to say that. Do you mean financial institutions? It is a very general piece of drafting there.

Sen. Mark: And listed business.

Sen. Seetahal SC:—"of their obligations under measures"? Do you mean, "shall inform the public of their obligations"? Is it the public or the financial institutions and the listed businesses, because the public does not have any obligations?

Sen. Mark: I think the public should be aware.

Sen. Seetahal SC: That is the law; everybody is supposed to know the law.

Sen. Jeremie SC: Everyone is presumed to know what the law is. [*Laughter*]

I think Sen. Mark enjoys being here; there is no disrespect. He gets more alive as the night goes on. Most of us get tired, more tired the longer we stay here, but Sen. Mark enjoys keeping us here. His lunch is packed up in the tea room; [*Laughter*] I saw it just now, Mr. Chairman. [*Crosstalk*] He does not mind how long we stay here.

Sen. Seetahal SC: The problem I have, Sen. Mark, is that if you impose on this unit the duty to keep the public informed of their duties, the businesses and so on, then every single agency that you have, you would have to go back and do that.

Sen. Mark: I withdraw "public" and I would just deal with financial institutions or listed business, and that would be adequate for me.

Sen. Jeremie SC: The principle is that everyone is supposed to know the law and that publication or gazetting, as the case might be, gives notice to the world. Do you not accept that principle? You do not accept the principle that once you publish the law that is supposed to be sufficient, especially if the law is touching sophisticated institutions?

9.25 p.m.

Sen. Mark: The reason I am saying this, Chairman, this is something that I have extracted looking at the experience in the Bahamas as a Caribbean territory and that is one of the functions and duties of this particular agency and I believe as we are now starting, we should give them that responsibility.

Sen. Jeremie SC: Part III, Functions and Powers of the FIU at clause 8(3)(i), I think what you are seeking to do is capture "providing assistance".

Sen. Seetahal SC: I think so, because assistance is wider than what you are saying there, Sen. Mark.

Sen. Mark: What about the record keeping, where is that captured?

Sen. Jeremie SC: That is something that we do not have.

Sen. Seetahal SC: I do not think it can be all information, because you get a lot of rubbish. If you want to say "shall retain records", you have to say "pertinent information" or something.

Sen. Browne: Mr. Chairman, I do not think we have any problem with the insertion of (j) as amended.

Sen. Seetahal SC: I think Sen. Mark is willing to withdraw.

Sen. Mark: I withdraw (k).

Sen. Seetahal SC: So (j) will read:

"shall retain all pertinent records or records received."

Sen. Jeremie SC:

"shall retain a record of all pertinent information that it receives for a minimum of five years after the information is received."

That is how it should read.

Mr. Chairman: A record of information is different from the information.

Sen. Seetahal SC: That is what I am asking, do you have a record? It could be in computer form. Do not put the words "after the information is received," just say "a minimum of five years."

Sen. Browne: The Financial Obligations Regulations speak to six years, and to be consistent, we should say six.

Sen. Mark: Okay.

Sen. Seetahal SC: Six and you do not put it in brackets.

Mr. Chairman: How is that going to be worded exactly?

Sen. Jeremie SC: We are adding a (j) to clause 8(3) which reads:

(j) shall retain a record of all pertinent information that it receives for a minimum of six years.

Sen. Dr. Nanan: The Chairman made reference to a list.

Sen. Seetahal SC: There is another amendment that I brought to the attention of the Minister during the break. At 8(3)(c) where you have inclusions from the other place, sections 16 and 17. There is no mention of annual reports on 16 and 17, I do not know where that came from, so it is really 18.

Sen. Browne: It says delete sections 16 and 17 and insert the words 18.

Clause 8(3)(c) be amended by deleting the words "16 and 17" and inserting the word "18".

Question put and agreed to.

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

Clauses 9 to 14 ordered to stand part of the Bill.

Clause 15.

Question proposed, That clause 15 stand part of the Bill.

Sen. Browne: The amendment we had suggested that was discussed was to delete the last two sentences and in the third to last sentence delete the words "determine whether a money laundering" should be deleted and a full stop inserted after the word "offence". It reads as follows:

"After the FIU has concluded its analysis or evaluation of a suspicious transaction or activity report and where the Director is of the view that the circumstances warrant investigation, a report shall be submitted to the relevant law enforcement authority to investigate the offence."

Sen. Seetahal SC: You cannot have a report to investigate, for investigation or something like that.

Sen. Browne: All right, sorry.

Sen. Seetahal SC: Or with a view to investigation of the offence. And you do not know if it is an offence, so with a view to "investigation to determine whether". You see, if there is no offence, how can you say to investigate an offence?

Sen. Browne: Okay.

Sen. Seetahal SC: It should read.

"a report shall be submitted to the relevant law enforcement authority for investigation to determine whether a money laundering offence has been committed."

Sen. Browne: But we just took that out.

Mr. Chairman: So we are just including the words "for investigation" then?

Sen. Seetahal SC: Yes, and delete the words "or whether the proceeds of crime", or do you want to leave that?

Sen. Browne: No, we will delete the words "or whether the proceeds of crime are located in Trinidad and Tobago." Because that will come out under the investigation, will it not?

Sen. Seetahal SC: Yes, because money laundering has to do with proceeds of crime.

Sen. Browne: The argument, Sen. Seetahal SC, is that there is a separate section under the Proceeds of Crime Act.

Sen. Seetahal SC: I agree, I am saying it is the same thing so therefore we delete it.

Sen. Browne: My advice is that the investigation is one item to investigate whether a crime was committed, and in the second instance to determine where the funds are located as being two separate steps.

Sen. Seetahal SC: So you are leaving it then?

Sen. Browne: Yes.

Sen. Seetahal SC: So we are just including the words "for investigation."

Sen. Browne: Yes, everything else will remain the same rather than deletion, Mr. Chairman.

Mr. Chairman: Clause 15(1) is amended by including the words "for investigation" after the word "authority".

Question, on amendment, put and agreed to.

Sen. Dr. Nanan: Mr. Chairman, I had some concern with clause 13.

Hon. Senator: We pass that.

Mr. Chairman: I think we should press on.

Sen. Seetahal SC: We are now into clause 15(3) which we are bringing from 15(2). Mr. Chair, the new 15(3) will be what we had before, but would start after the word 15, so it would read:

The Minister with responsibility for national security may by order prescribe the law enforcement authority to which the FIU shall submit a report within the context of its subject matter.

Sen. Jeremie SC: It should begin "For the purposes of subsection (1)."

Sen. Seetahal SC: No, because you are putting in section 15(3), so you do not need to say "For the purposes of subsection (1)." You could say "For the purposes of this section" or something like that.

Sen. Jeremie SC: So we need something to tie it into the section.

Mr. Chairman: The question is to insert a new subclause (3) at 15 to read as follows:

"For the purposes of this section, the Minister with responsibility for national security may by Order prescribe the law enforcement authority to which the FIU shall submit a report within the context of its subject matter."

Question put and agreed to.

Clause 15, as amended, ordered to stand part of the Bill.

Clause 16.

Question proposed, That clause 16 stand part of the Bill.

Sen. Dr. Nanan: I have a question with respect to 16(c). I think we need some clarification there.

Sen. Jeremie SC: It is clear. I do not understand what the problem is. You are saying that the FIU may cooperate and liaise with other authorities and persons. That is what the marginal note says, and that is what the section seeks to do; the Central Bank, relevant authorities, any other person who in his opinion may assist.

Sen. Seetahal SC: I do not see the problem, because if you are trying to get information you must determine whether or not there is some offence, should you not be able to liaise? You are not putting the onus on the person to cooperate, you are saying give me—it is like foreign governments, the mutual legal assistance, that kind of thing.

Sen. Oudit: Mr. Chairman, in 16(c), could we not delete the last three words? Because it is saying: in the opinion...is able to assist in the provision of information relevant to...and then you end by saying "or other information". Could that part be deleted?

Sen. Seetahal SC: The other information would be similar to intelligence, it is called the *ejusdem generis* rule when you have something they mention, it means that what follows afterwards will be akin to it. It would not mean people's private, personal business in a wide sense.

Question put and agreed to.

Clause 16 ordered to stand part of the Bill.

Clause 17.

Question proposed, That clause 17 stand part of the Bill.

Sen. Mark: Mr. Chairman, I suggested to the hon. Minister and the Attorney General where we have at least one newspaper, we put two instead because the *Gazette* is not widely read and at least two newspapers could in fact be accessed rather than one. So I will like to suggest that we increase it to two.

9.40 p.m.

Question. on amendment, [Sen. Mark] put and agreed to.

Sen. Mark: Mr. Chairman, 17(2), I could not understand here why we are giving this FIU, which is not accountable to the Parliament, except if you go to a joint select committee which we would discuss later—but the question here is that the Minister, for the time being, given what we are saying is the person under section—is it 85(1) or 75(1)?

Sen. Browne: Section 85(1).

Sen. Mark: Section 85(1), is responsible for general direction and control. Therefore, I am suggesting that we repeal this particular subclause and put in its place "the Minister" instead of the FIU. You say "the Minister by Order and subject to affirmative resolution of the Parliament set out the measures that may be utilized by a financial institution or listed business against such countries."

So at least you have the Minister being accountable to the Parliament rather than the FIU just doing its own thing.

Sen. Browne: This is in accordance with the recommendations under FATF. I will get the specific FATF recommendation for you. But in essence, essentially,

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countervailing measures are available to the FIU and the FIUs under the various recommendations, recommended that they take these actions and without recourse, or if you want, to the Parliament for publication of those measures. I will get the relevant recommendation but it is in accordance with the recommendations which are established under the guidelines.

Mr. Chairman: You are not accepting it?

Sen. Browne: No.

Sen. Seetahal SC: The thing, though, is, if I may just ask Sen. Mark. It is just notification, you know; it is not really any kind of power. It is going to be a sort of a notification and a body like the FIU has the power to make orders because it is a public body that has the power.

Sen. Mark: Mr. Chairman, I wish to withdraw.

Mr. Chairman: Very well.

Question put and agreed to.

Clause 17, as amended, ordered to stand part of the Bill.

Clause 18.

Question proposed, That clause 18 stand part of the Bill.

Sen. Mark: Mr. Chairman, I am sorry that I did not incorporate this amendment. I do not know how it missed me, but I did raise it in my contribution and with your leave I would like to raise an amendment to clause 18(1).

Mr. Chairman: Clause 18?

Sen. Mark: Yes, clause 18(1). Mr. Chairman, my amendment that, in fact, I forgot to circulate but I did raise in my contribution, reads as follows:

"The Director shall submit before the 1st of October in each year an annual report to the President on the performance of this organization..."

So in terms of clause 18(1), consistent with my earlier proposal, I am suggesting that the director shall submit before the 1st of October in each year an annual report to His Excellency the President. And in clause 18(2):

"The President shall cause the report to be laid in both Houses of Parliament within 60 days thereafter."

Those are my suggestions in the context of having that report submitted, Mr. Chairman.

Sen. Ramkhelawan: Mr. Chairman, in terms of the reporting relationship, since the reporting relationship runs through the Minister, I think the sort of—while I agree with Sen. Mark that we want to put some restriction in terms of the time for laying in the Parliament, that could be done by establishing with the director a time line such that if it is within two months or within three months of the end of—if you want to choose the fiscal year or the year. So what it means, it does not leave open-ended the time line for which the director can report. We tie down the Minister to two months of receiving the report, but I think we should tie down the delivery of the report to within two months after the end of some period, whether it be the financial year or whether it be the end of the calendar year.

Sen. Browne: With respect, Mr. Chairman, it is a department in the Ministry of Finance and all administrative reports would run on the financial year of the Government, which would end in September. The standard rule, for example, is 90 days. So if you wanted to put, for example, within 90 days at the end of the financial year, I mean, that—

Sen. Ramkhelawan: That is fine, but I support the route of going through the Minister into the Parliament.

Sen. Mark: I am listening, but this is consistent with an earlier proposal that I had advanced and, of course, the Government has to come back to that particular proposal. But I understand what my colleague is saying. He is proposing 90 days after the financial year, and in terms of the Minister laying that report, it would be, what, within one month?

Sen. Browne: No, no. "The Minister shall within 90 days of the end of the financial year"—

Sen. Seetahal SC: "The Director shall submit an annual report to the Minister within 90 days of the financial year". And "The Minister"—already it is there—"shall within two months of the receipt of the report...lay the report in Parliament". I think it comes to Parliament anyway.

Sen. Jeremie SC: The only thing that happens to the report is that it comes to the Parliament. That is the only thing that happens.

Sen. Seetahal SC: It is just the conduit you are talking about. What difference does it make who is the conduit?

Sen. Jeremie SC: The Minister cannot hold on to it; it has to come to the Parliament.

Sen. Mark: Yes, but what I am saying is that if the person is submitting the report within a 90-day period after the financial year to the Minister, why should it take the Minister two months thereafter?

Sen. Browne: And we agree. The idea would be that you would want to have it laid in Parliament within 90 days at the end of the financial year. Within the period of time, 90 days is it from the director, the director produces, gives it to the Minister, it is laid in Parliament, 90 days.

Sen. Seetahal SC: Well look at what you have here, two months.

Sen. Mark: So we could say "within one month".

Sen. Seetahal SC: One month after receipt from the director; that is what he is asking you.

Sen. Browne: Yes. We need to tidy up the wording.

Sen. Seetahal SC: It is not any tidying up; it is just one month or two months. I do not think there is any tidying up. Is it that we are going to say, one month? You want less time?

Sen. Jeremie SC: It should go to the Cabinet and then it comes here. It is a conduit. The Minister does not do anything without Cabinet.

Sen. Browne: So what we are just suggesting is that within 60 days at the end of the financial year, the director submits the report to the Minister and the Minister must submit it within 30 days.

Sen. Seetahal SC: Within one month.

Sen. Browne: Within one month. That would satisfy the 90-day period.

Sen. Seetahal SC: So what is the amendment then?

Sen. Browne: I am working on that now.

Mr. Chairman: The question is that clause 18(1) be amended by including the words, after the word "submit" the words "within sixty days at the end of the financial year". And in (2), by deleting the word "two" and inserting the word "one".

Sen. Seetahal SC: Or maybe we should say "thirty days" because if we are talking about days we should really say the days. Say "within thirty days". Delete "two months" and substitute the words, "thirty days".

Question, on amendment, [Sen. W. Mark], put and agreed to.

Question put and agreed to.

Clause 18, as amended, ordered to stand part of the Bill.

Clauses 19 to 26.

Question proposed, That clauses 19 to 26 stand part of the Bill.

Sen. Merhair: Mr. Chairman, clause 24, I had asked about the negligence part; should negligence happen. Could we put that in somewhere?

Sen. Browne: Negligence with respect to what? Just remind me.

Sen. Merhair: Negligence with respect to documents that might have been left unattended.

Sen. Jeremie SC: I know that we can conceivably criminalize negligence, but criminal conduct is usually something that—

Sen. Browne: Deliberate.

Sen. Jeremie SC: Yes. The criminal lawyers would say that you have to have mens rea.

Sen. Seetahal SC: Negligence is not an offence. Negligence is mens rea. What the Senator probably means is an offence of leaving your documents. But you see, that would be so general. You cannot have an offence of negligence. Your mens rea would be negligence but you have to have an act. So what would be the act to determine this? You have to have an act. You have to say "any person who leaves" so and so. But then it would become specific and then you would have to look at, probably, other pieces of legislation and people might be stopped.

So you probably have to look and see if clause 24 does not cover that, because this includes who discloses the fact for investigation, which will include, like if he left documents in his car and through this way it is disclosed, then he would be caught here because it is a strict liability offence. If by leaving it there somebody gets hold of it, he will have to bring a defence and say they broke into his car or something. But in this way he has disclosed it, but it does not say knowingly. So I think that would take care of it.

Sen. Dr. Nanan: Mr. Chairman, clause 21.

Sen. Jeremie SC: We passed clause 21.

Sen. Seetahal SC: We passed all of that already.

Mr. Chairman: No. It was clauses 19 to 26. Go ahead, Senator.

Sen. Dr. Nanan: In clause 21, I was pointing out to provide the additional information required, there was no time with respect to that particular provision there.

Sen. Browne: Which one?

Sen. Dr. Nanan: That is clause 21(2) and it relates to (c) actually:

"the owner or partner,

of a financial institution or listed business, and that person knowingly authorized or acquiesced in the failure to provide the additional information required..."

There was no time.

Sen. Seetahal SC: Clause 12 talks about a time period, you know; if you go back to clause 12. You have to look at the legislation that went before. It is "the time specified" and that would be a time specified here.

Question put and agreed to.

Clauses 19 to 26 ordered to stand part of the Bill.

Clause 27.

Question proposed, That clause 27 stand part of the Bill.

Sen. Mark: Mr. Chairman, I would like the Government to consider inserting after "Minister" the words "after consultation with the FIU". Because, you know, depending on the Minister in question, he might just go about, but if you put in the legislation, "after consultation" I would like to suggest that be considered.

Sen. Jeremie SC: Mr. Chairman, the Government does not agree. Maybe that is what Sen. Mark used to do when he was a minister, but we do not do that.

Mr. Chairman: So you do not agree?

Sen. Jeremie SC: No, we do not agree.

Sen. Seetahal SC: What I do not understand is, why would the Minister not consult with the FIU? Because if he is making regulations and it is about them, I would think that that is automatic.

Sen. Jeremie SC: That is precisely what I thought, the Minister would consult.

Sen. Seetahal SC: Because, in fact, those Ministers do not do anything—not that they do not do anything; they do not do these things themselves. They usually have the specific agency do it. That is my understanding of the practice.

Sen. Jeremie SC: Exactly.

9.55 p.m.

Sen. Mark: I am sure that the Attorney General will support me firmly on this one, that the regulations under this section shall be subject to an affirmative resolution of Parliament.

Sen. Jeremie SC: He spoke to me. He knows the answer. We had this debate last night about negative and affirmative resolution. I will not repeat it tonight. It is 10 o'clock.

Mr. Chairman: You are not in favour?

Sen. Jeremie SC: No. We are not in favour. Our position is as it was before.

Sen. Mark: I am firm on this one.

Sen. Jeremie SC: As you were firm last night and did not vote because of it.

Question, on amendment, put and negatived.

Sen. Mark: I want a division on that, Sir.

Sen. Jeremie SC: No, no, no, no. No way.

Sen. Mark: I feel strongly about that.

Mr. Chairman: You do not need to do that. Sen. Mark, do you want to insert a new clause 27(3)?

Sen. Mark: Mr. Chairman, I propose a new clause 27(3) which reads as follows:

- 27(3) Without prejudice to the generality of sub-section (1) such regulations may in particular—
- (a) Require financial institutions and listed businesses as may be prescribed to establish and maintain procedures relations to the identification of clients, the keeping of records, the making of reports and training;
 - (b) Provide that in determining whether a person has complied with the Regulations the trial court shall take account of any relevant guidelines issues by the FIU;
 - (c) Prescribed all matters required or permitted by this Act to be prescribed.

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The FIU shall from time to time issue, in respect of each financial institution and listed business to which the Act applies guidelines—

- (a) Setting out any features of a transaction that may give rise to a suspicion that the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act, 2000;
 - (b) Setting out any circumstances in which a suspicion transaction report relations to such a transaction may be made orally;
- (2) Suspicious transaction or suspicious activity guidelines shall be issued in such measure as the FIU shall from time to time determine;
 - (3) The FIU may from time to time issue an amendment or revocation of any suspicious transaction guidelines.

I did not see any guidance under the regulations as to some of the areas that ought to be considered. These are some of the concerns I had and I felt that the Government should consider placing after 27(2) of this particular provision. It is guiding the particular body that is supposed to be dealing with this.

Sen. Browne: With respect, Mr. Chairman, the anti-money guidelines are clear with regard to these provisions. There is no need for us to repeat them in the body of the Bill. On that basis we will not support it.

Sen. Mark: Mr. Chairman, I will not quibble over that. I withdraw.

Amendment withdrawn.

Question put and agreed to.

Clause 27 ordered to stand part of the Bill.

Mr. Chairman: We need to revert to clause 3.

Clause 3 reintroduced.

Sen. Ramkhelawan: Before you revert to clause 3, there was some undertaking to put in a clause with regard to review within one year.

Sen. Browne: Given the comments which have been made, our proposal would be to make the position of director and deputy director public officers subject to appointment by the public service.

Mr. Chairman: Do you want to give me some wording for that?

Sen. Browne: Given the difficulties with regard to the questions which were raised with regard to the appointment of the director and deputy director, we

suggest that these positions be made public officers which would be fulfilled under the recruitment provisions of the Public Service Commission.

Sen. Ramkhelawan: If you do that, do you not tie your hands in terms of compensation within the public service scale? You would lock out a number of people that you would want to attract.

Sen. Browne: It does create difficulties.

Sen. Seetahal SC: You can say what level and give different allowances.

Sen. Browne: Even within that rubric, it can also make it not necessarily fully competitive, but it would give a greater degree of freedom or latitude with regard to the specification of compensation. That may raise some issues as well. Given the comments which have been made, we can find no real accommodation outside that provision.

Sen. Ramkhelawan, with respect to the point that you were making, you are right. The practical difficulty with making this position a public service position means that the highest paid grade that this could go to is that of a highest paid grade that it could go to. This does not mean that that would be recommended or would finally take place. There is a limitation in terms of what your recruitment would be like. It provides certain limitation in terms of whom you can attract for the position. That is the difficulty in which we found ourselves and that is one of the reasons, in a sense, the provisions were not defined. This was to give flexibility to find the right level of skill, person and pay grade. Once you bring it into the public service ambit there are constraints.

Sen. Ramkhelawan: I agree with you. If you wish to do it that way it would solve the qualification issue. Once it falls within the public service qualifications and so on would be determined by DPA.

Sen. Browne: We do not have an issue with regard to determination of qualification. Within the Ministry of Trade and Industry the directorial position reports to the Permanent Secretary. Those positions were in fact recruited from the public service employees by way of a competitive process. The skills and determination of requirements would have been set by CPO.

Sen. Ramkhelawan: While you tie your hands in terms of the compensation, the question of qualification will go through the wringer of the public service. They will set certain standards whereas if you left it out with no qualifications you would have a difficulty in terms of qualifications. I am agreeing with you.

Sen. Browne: The wording suggested is: “The FIU shall consist of such number of suitably qualified public officers including a director and deputy director as may be necessary for the performance of its functions.” The rest of the clause is to remain unaltered. This speaks to the staffing.

Clause 3(2) be amended as follows: Insert after the word “of” the words “such number of suitably qualified public officers including”

Delete the words “and such appropriate number of suitably qualified officers”.

At 2(b), include the words, “of Finance” after the word “Ministry”.

Question put and agreed to.

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

New clause 11.

Mr. Chairman: Hon. Senators, there is a new clause 11 to be proposed by Sen. Mark.

Sen. Mark: Mr. Chairman, I propose a new clause 11 as follows:

“The funds and resources of the FIU shall consist of any moneys as may from time to time be provided by the Parliament.”

New clause 11 read the first time.

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

Sen. Mark: Mr. Chairman, we are of the view that this particular unit, for it to function efficiently and effectively, even under a department or Ministry, should be allocated resources via the Parliament on an annual basis. I do not want to go into clause 12—it is separate but it follows on clause 11, that the FIU, not to be starved by the Minister of Finance, should be able to have its allocation determined by the Parliament and approved by the Parliament but it will fall within the ambit of the Ministry of Finance.

Sen. Jeremie SC: Okay. That is an impossibility. I mean, even the Judiciary has to be budgeted for.

Sen. Mark: The what?

Sen. Jeremie SC: Even the Judiciary which is a separate arm of the State.

Sen. Mark: Yes. So what? We setting precedent here.

Sen. Jeremie SC: We setting a new precedent. Okay. We cannot accept that change.

Sen. Mark: All right. Well you cannot accept it. All right. That is my proposal there.

Sen. Jeremie SC: I feel that is his excuse not to support—

Sen. Mark: You can vote it down if you wish.

Sen. Seetahal SC: Well actually, if I may say, if one carries that definition of that section to its natural conclusion, since we come to Parliament with a budget and all of those things are annexes to the Bill, is that not what happens anyway? If you put FIU there like a department you see like how you put Customs—do they get money anyway? Well then we would have to put that in for every single department.

Sen. Mark: What is the problem?

10.10 p.m.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and negatived.

New clause 12.

Mr. Chairman: New clause 12, as drafted by Sen. Mark, reads as follows:

“The FIU shall prepare for each new financial year an annual budget of revenue and expenditure which shall be submitted to the Minister at least two months prior to the commencement of the financial year.”

New clause 12 read the first time.

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

Sen. Mark: Mr. Chairman, again, to maintain some degree of independence within the ambit of the Ministry, I am also saying that this particular unit should be able to prepare, at the end of each financial year, its budget of its revenue and expenditure which must be submitted to the Minister, and the Minister will present it to the Parliament during the budget on an annual basis.

Sen. Jeremie SC: Mr. Chairman, no, we cannot respond. Sen. Mark was a Minister, and he knows how the budget operates and how ministries operate.

Sen. Mark: That is my position, Sir.

Question put and agreed to.

Question proposed, That new clause 12 be added to the Bill.

Question put and negatived.

New clause 13.

Mr. Chairman: New clause 13, as drafted by Sen. Mark reads as follows:

- “(1) The FIU shall keep proper records and accounts in relation thereto and shall prepare in respect of each financial year a statement of accounts.
- (2) The accounts of the FIU for each financial year shall be audited by the Auditor General.
- (3) As soon as the accounts have been audited the FIU shall submit a copy thereof to the Minister together with a copy of any report made by the Auditor General.
- (4) The Minister shall lay a copy of every such audited accounts before each House of Parliament together with a copy of any report made by the Auditor General on the accounts.”

New clause 13 read the first time.

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

Sen. Mark: Mr. Chairman, I am also suggesting, consistent with my earlier proposals, that this unit be charged with keeping its own records and have them audited by the Auditor General. That report must be submitted in its audited accounts as part of its annual report to the Parliament. That is what the new clause 13 is about. [*Interruption*]

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and negatived.

New Part IV.

Mr. Chairman: New Part IV, as drafted by Sen. Mark, reads as follows:

“The FIU shall be administered by a Board which shall consist of —

- (a) a Chairperson, who shall be a person who has
- (i) served as a Judge of the Appeal Court;
 - (ii) served as a Magistrate or been a Law Officer or practised as an Attorney-at-Law for at least 10 years.

- (b) Two other members of high reputes of whom one shall be a person with substantial experience in the legal profession and the other shall be a person with substantial experience in the financial services section industry.
- (2) The Chairperson and Members of the Board shall be appointed by the President on the joint recommendation of the Prime Minister and the Leader of the Opposition.
- (3) The appointment of the Chairperson and each Member of the Board shall be such terms as may be specified in the instrument of appointment of the Chairperson and each such member.
- (4) The Board may act notwithstanding the absence of one of its members.
- (5) The Board shall determine its own procedure.

New Part IV read the first time.

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

Sen. Mark: Mr. Chairman, I am suggesting that the FIU be administered by a Board, and that is consistent with most of the legislation that I have looked at. I believe to ensure that there are checks and balances, we are proposing that we establish a board in Part IV. I do not want to detain the Senate, because this was circulated and I want to take it as being read.

Sen. Jeremie SC: Mr. Chairman, it was read, no.

Question put and agreed to.

Question proposed, That the new Part be added to the Bill.

Question put and negatived.

New clause 28.

Mr. Chairman: New clause 28 reads as follows:

“There shall be established for the purposes of this Act, a Joint Committee of Parliament to be known as “The Joint Parliamentary Committee on the Financial Intelligence Unit of Trinidad and Tobago”.

New clause 28 read the first time.

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

Sen. Browne: We had made a commitment with regard to the review of the Bill, and this will form the new clause 28.

Sen. Mark: This is consistent with what we had agreed on, in terms of the proceeds of crime, but not only the proceeds of crime, but also with the financial intelligence.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and negatived.

Clause 9 recommitted.

Question again proposed, That clause 9 stand part of the Bill.

Sen. Browne: We are proposing that we create a new subclause 9(2) and 9(3). I apologize for not reading it. This is pursuant to the comments that were made with respect to the review provisions. The new clause 9(2) would read—

Sen. Seetahal SC: You are proposing that the current clause 9 be subclause 9(1) and then you are making a proposal to add a new subclause 9(2).

Sen. Browne: Yes. Thank you. I am sorry. We are proposing that the current clause 9 be 9(1) and that there be added a new 9(2) which reads:

In furtherance of the responsibility of the FIU under subsection (1), the Director shall make recommendations to the Minister on measures that may be taken to strengthen the effectiveness of anti-money laundering policies being implemented by the FIU.

Sen. Seetahal SC: Why do you have that last part: “being implemented by the FIU”.

Sen. Browne: The new clause 9(3) reads as follows:

“The Minister shall as often as necessary review this Act in the light of any recommendations made by the Director and any other policy considerations to ensure that this Act is in keeping with international anti-money laundering guidelines and technological developments.”

This is what we are proposing.

Sen. Drayton: We had asked whether some level of comfort would be given, because of our concern with respect to the location of the FIU. That has to do with some distance between the FIU and the political directorate. My understanding was that a review would be done. We had indicated some level of commitment where this Act must come back to Parliament within a year for review. That is what we said.

Sen. Seetahal SC: Without it being a sunset clause, could we just not put a new clause 28 which reads something like: "within a year of the coming into the operation of the effect of this Act the Minister shall report to Parliament...."

Sen. Jeremie SC: Okay, we would look at that.

Sen. Seetahal SC: Rather than saying a sunset clause—

Sen. Jeremie SC: A sunset clause is out.

Sen. Seetahal SC: I am saying this is the alternative for my colleagues, in order to require—

Sen. Jeremie SC: The Minister to report back—

Sen. Seetahal SC: When are you going to come to it? It is 10.21 p.m.

Sen. Ramkhelawan: I thought that the undertaking would have taken the form that the legislation would be brought back for a review in one year. Nothing in that clause 9 says that.

Sen. Browne: I think Sen. Seetahal SC just tried to explain that. The way it is written as it stands, it could be deemed to be a sunset provision.

Sen. Ramkhelawan: What is contained in the clause 9 seems far removed from what we suggested.

Sen. Seetahal SC: I am saying that it should be something of the nature "within a year of the coming into operation of this Act, the Minister shall report to Parliament or both Houses of Parliament as to the implementation of this legislation..." [*Crosstalk*]

Sen. Dr. Saith: You have made the positions public service positions and you have made it clear that with the Permanent Secretary, the closeness that you saw between the Minister is now removed.

Sen. Drayton: I am not comfortable with that. That is not the level of comfort we asked for. We have gone all the way and you have brought this now. That was not my understanding.

Sen. Jeremie SC: We are going to look for a form of words which would be acceptable. Our communication with CFATF is that they were concerned that we should not do anything that would cause the legislation to come to an end or that will create an impression of impermanence—you have passed the legislation, but you undertake to do a review—but it is legislation which is enacted and enforced.

Sen. Drayton: Will Parliament have an opportunity to review?

Sen. Jeremie SC: Yes.

Sen. Drayton: If that is the case, then I am satisfied. If you are saying that it is just a question that the Minister would submit a report for review, that is not satisfactory.

Sen. Browne: That is why the new subclauses that we are inserting, we have included the word "review" as distinct from "report".

10.25 p.m.

Sen. Ramkhelawan: But the director will be reviewing his own work. The director is reviewing and the Minister is reviewing, but the comfort level is Parliament to review.

Sen. Mark: Mr. Chairman, may I submit a proposal? Could we just pause for 15 minutes, so we can put our heads together?

Sen. Jeremie SC: No. Is the requirement that Parliament review this entire Act after one year? I think that that is a sunset clause.

Sen. Ramkhelawan: Mr. Chairman, that was my understanding of the undertaking, not that the director would or the Minister would, because it does not necessarily have to get back to the Parliament.

Sen. Browne: The difficulty with setting up a specific term has as its attendant difficulty the determination. This legislation, by the way, is subject to review by external third parties, to determine whether it fits the definition, the requirements and the recommendations. The provision that we are putting in with a deliberate timetable for review, has as its underlying downside the fact that it could be termed a sunset clause position. That is what you said.

Sen. Ramkhelawan: They are not saying that the Act would expire at any point in time. I think what we need to find is the elegant wording to reflect that, but not that the Minister of the director would report.

Sen. Browne: In the same way that you feel uncomfortable with that, an independent third party reviewing that provision could take the same view that you are taking, that it might be intended to be a sunset clause. That is the advice we have been given.

Sen. Drayton: No, where I have a problem and which is not making sense, you are saying that as an independent nation that this Parliament is subjected to some international body and it cannot undertake a review of its own laws in the Parliament? That is not making sense.

Sen. Browne: No, I did not say that.

Sen. Ramkhelawan: That does not reflect the undertaking.

Sen. Jeremie SC: We are looking for a form of words, which we hope will be acceptable. Can I just point out that a motion could be brought by any Senator.

Sen. Ramkhelawan: But, hon. Attorney General, the point is you are giving us this undertaking. I understand that a motion could be brought by anybody, but you are giving us this undertaking.

Sen. Jeremie SC: And we wish to find a form of words that is acceptable to the Independent Bench, and also one which is consistent with our CFATF undertaking.

Sen. Baptiste-Mc Knight: Mr. Chairman, can I suggest that you say that Parliament will review with a view to strengthening the legislation where necessary?

Question put and agreed to.

Clause 9 ordered to stand part of the Bill.

New clause 28.

Sen. Seetahal SC: Could I just suggest, so it would be a new clause, again, you can work it out. Clause 28(1) should be: "Within a year of the coming into effect of this Act, the Minister shall return"—or another word—"to Parliament for a review by Parliament of the operation of this Act." You could neaten it up. Clause 28(2) should be: "This review shall be debated by Parliament—or you could say both Houses of Parliament—with a view that such amendment of the Act may be deemed necessary to strengthen this—well I did not want to use strengthen this provision, but something of that nature is what I am gathering that my colleagues want. I am not seeing anybody coming up with any other.

Sen. Rahman: May I suggest, Sir?

Sen. Jeremie SC: Let us repeat what is appropriate for the Independent Benches.

Sen. Seetahal SC: I do not know about caucusing here, I am merely saying my view of what I interpret my colleagues want, and we are still tidying it up. This is clause 28(1):

“Within a year of the coming into effect of this Act, the Minister shall return to Parliament for a review by Parliament of the operations of this Act.”

Clause 28(2):

“This review shall be debated by both Houses with a view to any amendment of the Act that may be deemed necessary.”

Sen. Rahman: May I propose an amendment, Sir?

Sen. Jeremie SC: Could I just get the form of words down?

Sen. Rahman: May I suggest a shorter version to that, Sir?

Sen. Browne: Pursuant to the conversations we were having, what we propose is a final clause, which would read:

“(1) Within a year of the coming into effect of this Act, the Minister shall return to Parliament for a review by Parliament of the operations of this Act.

(2) This review shall be debated by Parliament with a view to any amendment of the Act that may further compliance with the Financial Action Task Force obligations of the State.”

New clause 28 read the first time.

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

Sen. Seetahal SC: There is a word missing. [*Crosstalk*]

Sen. Browne: "This review shall be debated by Parliament with a view to any amendment of the Act that may further compliance with the Financial Action Task Force—"

Sen. Seetahal SC: Whatever you read there was not grammatically correct.

Sen. Browne: We are using further as a verb in these circumstances.

Sen. Seetahal SC: Or, that may further compliance. You did not emphasize it correctly. You should say probably "further the compliance".

Sen. Browne: "further the compliance with the Financial Action Task Force obligations of the State".

10.40 p.m.

Sen. Ramkhelawan: Mr. Chairman, I believe that fits basically with what we wanted to get.

Mr. Chairman: Let me just put the question. I have to put two questions. That the new clause 28 be read a second time, we just had a discussion of it and let me read it:

“Within a year of the coming into force of this Act the Minister shall return to Parliament for review by Parliament of the operations of this Act.”

Subclause (2) reads:

“This review shall be debated by Parliament with a view to any amendment of the Act that may be deemed necessary to further the compliance with the Financial Action Task Force obligations of the State”.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and agreed to.

New clause 28 added to the Bill.

Sen. Seetahal SC: Mr. Chairman, we still have not finalized clause 9, because remember we abandoned it.

Sen. Mark: [*Inaudible*]

Sen. Seetahal SC: So, therefore, clause 9 remains as is. I am just making sure.

Sen. Mark: Have you completed all of mine, Mr. Chairman?

Mr. Chairman: I believe so. [*Laughter*]

Sen. Browne: “All yours”. All of yours’.

Sen. Mark: All of mine? And you all rejected all of mine?

Hon. Senator: All! [*Laughter*]

Mr. Chairman: I believe so. We have a new First Schedule to be inserted.

First Schedule.

Question proposed, That the First Schedule stand part of the Bill.

Sen. Mark: Mr. Chairman, is it mine?

Hon. Senator: You withdraw?

Sen. Mark: Yes, because given what has happened it would be a bit redundant at this time. I withdraw it, Sir. We would love to include it, but I withdraw it, Sir.

Question put and agreed to.

First Schedule 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.

Mr. President: This Bill requires a special majority and a division will be taken.

The Senate voted: Ayes 27

AYES

Saith, Hon. Dr. L.

Jeremie, Hon. J.

Browne, Hon. M.

Joseph, Hon. M.

Manning, Hon. H.

Piggott, Hon. A.

Narace, Hon. J.

Gronlund-Nunez, Hon. T.

George, W.

Rogers, L.

Hadeed, G.

Financial Intelligence Unit

Tuesday, October 06, 2009

Lezama, Miss L.
Melville, Miss J.
Cummings, F.
Gayle, N.
Mark, W.
Nanan, Dr. A.
Kernahan, Dr. J.
Rahman, M. F.
Oudit, Miss L.
Gopaul-McNicol, Dr. S.
Seetahal SC, Miss D.
Ramkhelawan, S.
Baptiste-Mc Knight, Mrs. C.
Nicholson-Alfred, Mrs. A.
Drayton, Mrs. H.
Merhair, Miss G.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister in the Office of the Prime Minister (Sen. The Hon. Dr. Lenny Saith): Mr. President, I beg to move that the Senate do now adjourn to Tuesday, October 13, 2009 at 1.30 p.m., at this time we propose to deal with the Bill entitled, “An Act to amend the President's Emoluments Act” and, if time permits, we will continue on the Bill to amend the Evidence Act listed as No. 6 on the Order Paper.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 10.48 p.m.

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Lyndira Oudit:

**Firearm User Licences
(Details of)**

186. Could the hon. Minister of National Security indicate to the Senate:

- (i) the number of persons who applied for firearm user licences annually since 2002;
- (ii) the number of firearm user licences issued annually, since 2002; and
- (iii) the number of persons who are not nationals of Trinidad and Tobago who were granted firearm user licences yearly, since 2002?

The following reply was circulated to Senators:

The Minister of National Security (Sen. The Hon. Martin. Joseph):

- (1) The number of persons who applied for firearm user licences annually from January 1, 2002 to September 15, 2009 is as follows:

Year	No. of Persons who applied for Firearm User Licences
2002	3,600
2003	3,955
2004	4,764
2005	5,110
2006	5,895
2007	6,258
2008	4,220
2009	7,957
Total	41,759

- (2) The number of firearm user licences issued annually, from January 1, 2002 to September 15, 2009 is as follows:

Year	No. of Firearm User Licences Issued
2002	390
2003	367
2004	514
2005	117
2006	162
2007	207
2008	226
2009	215
Total	2,198

- (3) The number of persons who are not nationals of Trinidad and Tobago who were granted firearm user licences yearly, from January 1, 2002 to September 15, 2009 is as follows:

Year	No. of Non-nationals granted Firearm User Licences
2002	Nil
2003	46
2004	31
2005	24
2006	41
2007	31
2008	43
2009	144
Total	360