

*Leave of Absence*

*Tuesday August 21, 2012*

**SENATE**

*Tuesday, August 21, 2012*

The Senate met at 1.30 p.m.

**PRAYERS**

[MR. PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

**Mr. President:** Hon. Senators, I have granted leave of absence to Senators Faris Al-Rawi, Shamfa Cudjoe and Helen Drayton who are all out of the country.

**SENATORS' APPOINTMENT**

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ George Maxwell Richards  
President

TO: MR. ALBERT WILLIAM BENEDICT SYDNEY

WHEREAS Senator Helen Drayton is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ALBERT WILLIAM BENEDICT SYDNEY, to be temporarily a member of the Senate, with effect from 21<sup>st</sup> August, 2012 and continuing during the absence from Trinidad and Tobago of the said Senator Helen Drayton.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 16<sup>th</sup> day of August, 2012.”

*Senators' Appointment*

*Tuesday August 21, 2012*

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ George Maxwell Richards  
President

TO: MRS. SHERRIE HAMIDAN LORNA ALI

WHEREAS Senator SHAMFA CUDJOE is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by sections 44(1)(a) and 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, SHERRIE HAMIDAN LORNA ALI, to be temporarily a member of the Senate, with effect from 21<sup>st</sup> August, 2012 and continuing during the period of absence from Trinidad and Tobago of the said Senator Shamfa Cudjoe.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 21<sup>st</sup> day of August, 2012.”

**Mr. President:** Senators, I am expecting additional correspondence from His Excellency, but in the meantime if Senators will stand there are Senators who are required to take the oath.

#### OATH OF ALLEGIANCE

*Senators Albert William Benedict Sydney and Sherrie Hamidan Lorne Ali took and subscribed the Oath of Allegiance as required by law.*

#### ANNOUNCEMENTS

**Mr. President:** Whilst we await further correspondence from His Excellency, I thought it might be a fit time to make a few announcements myself.

*Retirement (Brig. J. Sandy)*

*Tuesday August 21, 2012*

**BRIG. JOHN SANDY (RET.)**

**Mr. President:** I received a letter from Brig. General John Sandy, a former Senator of this Senate, who indicated to me that he would like to pass on to you, the esteemed Members of the Senate of the Republic of Trinidad and Tobago, his gratitude for being offered the noble opportunity of serving with you over the last two years. He has asked me to communicate those sentiments to the Members with whom he had the honour and privilege to serve during the past two years. He indicates that he will cherish the memories of his tenure in the Senate, and pray Almighty God will continue to shower his richest blessings upon you and our Parliament, as we continue to serve our beloved Republic of Trinidad and Tobago.

**SEN. BASHARAT ALI  
(RETIREMENT)**

**Mr. President:** I would also like to indicate that I have received correspondence from Sen. Basharat Ali. Sen. Basharat Ali has indicated to me that this may be the last occasion on which he will be sitting in this Senate, assuming the Leader of Government Business does not call us between now and the end of the month once more, and I thought perhaps it was an opportune moment.

Very often we wait till people leave us here before we pay tribute, and whilst Sen. Basharat Ali is out here today I thought it might be a moment when we might say to him, thanks very much for the service that he has granted to Trinidad and Tobago, and to this Senate in particular. We know certainly that Senators, including Sen. Basharat Ali, have to put a lot of time and work and research into their contributions that they submit here in the Senate, and I think it is fitting that we should thank Sen. Basharat Ali for that service over the period of time that he has served, beginning in June 2003 as a temporary Senator and thereafter as a substantive appointment in January 2004.

Sen. Ali has given us yeoman service here in the Senate and we wish to thank him for that opportunity, for the many contributions that he has made and for his diligence in looking at Bills. I think, perhaps, that has been the outstanding factor that I have seen over the last two years, that there is not much that is going to miss the eye of Sen. Ali in terms of how we formulate Bills. So, on your behalf and on behalf of myself, I would like to thank Sen. Ali for his yeoman service over the last many years. [*Desk thumping*]

**EID GREETINGS**

**Mr. President:** As I may not be with you at the end of these proceedings and we are still awaiting correspondence, I thought it might be a fit opportunity for me to issue warm Eid greetings to our Muslim community. I have no doubt that you will do the same at the end of these proceedings, but depending on how long Senators decide to talk I may not be here at the end of today's sitting. *[Laughter]* I think one of the very important, if you like, values that the Muslim community has brought to us is that sense of self-sacrifice, and to me that is the very antidote that we need here in Trinidad and Tobago if in fact we are to develop as a nation and as a community so that we may move from strength to strength. So we would certainly like to wish greetings on this important feast that has passed in the celebration to the Muslim community and, by extension, to Trinidad and Tobago as a whole.

**50<sup>TH</sup> ANNIVERSARY INDEPENDENCE GREETINGS**

**Mr. President:** Whilst I am on that tone and still awaiting correspondence, we did have greetings, of course, relating to Independence on the last day we were here. We did not know we would come back to sit and, of course, the independence celebrations are closer at hand and perhaps we should not let the opportunity pass without congratulating Trinidad and Tobago on its 50th anniversary, the golden anniversary of its independence.

As Senators would have recounted on that occasion when we last sat here, there were not many of us who were around at that time, but the truth is that it is unlikely that any other generation, beyond those who are here, will be able to say that they were here at the birthing of the nation. And that is a significant opportunity! Can you imagine American independence? There is nobody there who can say, "I was there when the independence celebration was first enacted" for them, and likewise for us. We were there—many of us—at the birth of the nation. I think that is an important event and, therefore, what we recount about those days is important as well.

For myself, I was a teenager at the time and, therefore, what was perhaps going through the nation was what as a rebellious teenager seeking his own independence, I was pursuing at the time and, of course, as a teenager, it was that sense of invincibility. So too, we as a nation were seeking our independence and striving to launch out and create our own destiny.

What I would like to suggest is that, as I did on the last occasion, this goes beyond celebrating the actual day of our 50th anniversary. In fact, it should be a whole year—it is a jubilee year, if you like. So that for the year following the actual celebrating

of that event, we should be celebrating this 50th anniversary. And there is no better way to do that than by in fact seeking to inculcate, as I mentioned in the case of the Muslim community, the values of self-sacrifice, values of family, values relating to honesty, values relating to community. And these are matters which, unless we ingrain them into our community, we are not going to move forward as a nation, and we hope that that [Desk thumping] will take root, as it were, from this independence.

#### INDEPENDENCE BALL

**Mr. President:** Lastly, I would like to thank the members of our staff at the Parliament. Those of you who were at our independence ball on Friday will know that we had a really wonderful event. [Desk thumping] It must have taken a lot of planning. It was an extraordinary moment. A number of people came to me to offer their congratulations on the moment. I think those of us who were unable to be there missed a great opportunity—[Interruption]

**Sen. Ramlogan SC:** Excellent!

**Mr. President:**—and, therefore, a lot of thanks go to our parliamentary staff who organized that event. [Desk thumping]

We have one other announcement to make which I will defer at this point and we will proceed with the regular agenda on the Order Paper and come back to that moment when the time arises.

**1.45 p.m.**

#### MISCELLANEOUS PROVISIONS (FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO AND ANTI-TERRORISM) BILL, 2012

Bill to amend the Financial Intelligence Unit of Trinidad and Tobago Act, 2009 and the Anti-Terrorism Act, Chap. 12:07, brought from the House of Representatives [*The Attorney General*]; read the first time.

*Motion made:* That the next stage be taken at a later stage in the proceedings. [*Hon. A. Ramlogan SC*]

*Question put and agreed to.*

#### PAPERS LAID

1. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Police Complaints Authority for the year ended September 30, 2005. [*The Minister of Finance and the Economy (Sen. The Hon. Larry Howai)*]

2. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Police Complaints Authority for the year ended September 30, 2006. [*Sen. The Hon. L. Howai*]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayor's Fund of the Chaguanas Borough Corporation for the year ended September 30, 2009. [*Sen. The Hon. L. Howai*]
4. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Airports Authority of Trinidad and Tobago for the year ended December 31, 1998. [*Sen. The Hon. L. Howai*]
5. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Airports Authority of Trinidad and Tobago for the year ended December 31, 1999. [*Sen. The Hon. L. Howai*]
6. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Environmental Management Authority—Environmental Trust Fund for the year ended September 30, 2009. [*Sen. The Hon. L. Howai*]
7. Annual Audited Financial Statements of Estate Management and Business Development Company Limited for the financial year ended September 30, 2010. [*Sen. The Hon. L. Howai*]
8. Annual Audited Financial Statements of Telecommunications Services of Trinidad and Tobago Limited for the year ended March 31, 2012. [*Sen. The Hon. L. Howai*]
9. Audited Financial Statements of the Water and Sewerage Authority for the financial year ended September 30, 2007. [*Sen. The Hon. L. Howai*]
10. Audited Financial Statements of the Water and Sewerage Authority for the financial year ended September 30, 2008. [*Sen. The Hon. L. Howai*]
11. Audited Financial Statements of Export-Import Bank of Trinidad and Tobago Limited for the financial year ended December 31, 2011. [*Sen. The Hon. L. Howai*]
12. Audited Financial Statements of the Deposit Insurance Corporation for the year ended September 30, 2011. [*Sen. The Hon. L. Howai*]
13. Annual Audited Financial Statements of Trinidad Nitrogen Company Limited for the financial year ended December 31, 2011. [*Sen. The Hon. L. Howai*]

14. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the College of Science, Technology and Applied Arts of Trinidad and Tobago for the year ended September 30, 2005. [*Sen. The Hon. L. Howai*]
15. Annual Administrative Report of the Evolving TecKnologies and Enterprise Development Company Limited (eTeck) for the fiscal year 2001. [*The Minister of Trade, Industry and Investment (Sen. The Hon. Vasant Bharath)*]
16. Ministerial Response to the recommendations contained within the Fourth Report of the Joint Select Committee of Parliament on Ministries, Statutory Authorities and State Enterprises (Group 2) on the Office of Disaster Preparedness and Management. [*The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh)*]
17. Annual Administrative Report of the Point Fortin Borough Corporation for the period October 01, 2003 to September 30, 2004. [*Sen. The Hon. G. Singh*]
18. Annual Administrative Report of the Point Fortin Borough Corporation for the period October 01, 2005 to September 30, 2006. [*Sen. The Hon. G. Singh*]
19. Annual Administrative Report of the Point Fortin Borough Corporation for the period October 01, 2009 to September 30, 2010. [*Sen. The Hon. G. Singh*]
20. Annual Administrative Report of the Arima Borough Corporation for the period October 01, 2009 to September 30, 2010. [*Sen. The Hon. G. Singh*]
21. Annual Report of the Registration, Recognition and Certification Board (RRCB) for the year 2009. [*Sen. The Hon. G. Singh*]
22. Annual Administrative Report of the Occupational Safety and Health Authority for the period October 2007 to September 2008. [*Sen. The Hon. G. Singh*]
23. Annual Administrative Report for the Occupational Safety and Health Authority for the period October 2008 to September 2009. [*Sen. The Hon. G. Singh*]
24. Annual Administrative Report for the Occupational Safety and Health Authority (OSHA) for the period October 2009 to September 2010. [*Sen. The Hon. G. Singh*]
25. Annual Administrative Report of the Tobago House of Assembly for the year 2010. [*Sen. The Hon. G. Singh*]

**SENATOR'S APPOINTMENT**

**Mr. President:** We will refer to that further item that we had. We had further correspondence from His Excellence the President, Prof. George Maxwell Richards, T.C., C.M.T.T., Ph.D.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ George Maxwell Richards  
President

TO: MR. MARIANO BROWNE

WHEREAS Senator Faris Al Rawi is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, MARIANO BROWNE, to be temporarily a member of the Senate, with effect FROM 21<sup>st</sup> August, 2012 and continuing during the period of absence from Trinidad and Tobago of the said Senator Faris Al Rawi.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 17<sup>th</sup> of August, 2012.”

**OATH OF ALLEGIANCE**

*Sen. Mariano Browne took and subscribed the Oath of Allegiance as required by law.*

**MISCELLANEOUS PROVISIONS (FINANCIAL INTELLIGENCE  
UNIT OF TRINIDAD AND TOBAGO AND ANTI-TERRORISM) BILL, 2012**

**The Attorney General (Sen. The Hon. Anand Ramlogan SC):** Mr. President, I beg to move:

That a Bill to amend the Financial Intelligence Unit of Trinidad and Tobago Act, 2009 and the Anti-Terrorism Act, Chap. 12:07, be now read a second time.



I rise before this honourable Senate to present the Miscellaneous Provisions (Financial Intelligence Unit of Trinidad and Tobago and Anti-Terrorism) Bill, 2012. This Bill, I am pleased to say, was unanimously passed in the other place and it is my hope that it will be passed in a similar fashion here.

The aim of this Bill is to further strengthen and enhance the Financial Intelligence Unit of Trinidad and Tobago and, of course, our anti-terrorism laws.

The Bill seeks to amend two pieces of legislation that emerge from a tripod of legislation that was passed before. I refer here to the Financial Intelligence Unit Act, the Anti-Terrorism Act and the Proceeds of Crime Act. Those three pieces of legislation formed an important tripod in the fight against crime that firmly and squarely located Trinidad and Tobago alongside the rest of the international community in terms of its fight against the financing of terrorism and measures to combat terrorism and, of course, money laundering.

Those three pieces of legislation, when one chronicles the development of the legislation, we would see that our Parliament and our country has approached the development of the law in this area in a piecemeal fashion, hence the reason we have these three pieces of inter-related laws.

The common and central theme, of course, through all of them, is that we are attempting to combat money laundering and to stamp out and eradicate the problems that come, since 9/11, with the financing of terrorism and terrorist-related activities.

This single miscellaneous provisions Bill attempts to weave into those two major pieces of legislation, the FIU of Trinidad and Tobago Act and the Anti-Terrorism Act, certain amendments which have been born out of our reviews and reports by the International Financial Action Task Force.

This, I must pause to say, is an ongoing exercise. The Financial Action Task Force, as I will show during my presentation, has been, since its inception, revising its recommendations and issuing new guidelines for member states to follow so that they can countermand those who seek to outmanoeuvre the recommendations of FATF in terms of financing terrorism and laundering money.

The relationship between these three pieces of legislation, at first blush, does not jump out at you; but the link between money laundering and the financing of terrorism has long been established internationally in that, if you wish to finance terrorism, you first must find a way to launder and wash the money and then pass it into the terrorist organizations.

*FIU and Anti-Terrorism Bill, 2012*  
[SEN. THE HON. A. RAMLOGAN SC]

*Tuesday August 21, 2012*

That is why, Mr. Speaker, if one looks at the chronological order that has come about since the Financial Action Task Force has begun its evaluation of member states, you will note that FATF was set up in 1989. Subsequent to its establishment, we found that there were recommendations issued in 1996. Thereafter, a second set of recommendations came in 2001 and two years later, again, in 2003, a fresh set of recommendations was published.

**2.00 p.m.**

In 2004, nine special recommendations were made, and this is what is commonly referred to as the 40+9 recommendations. Trinidad and Tobago, in its quest to find its rightful place alongside countries that have been FATF compliant, we joined the CFATF, which is the Caribbean Action Financial Task Force Organization in 1992. So it was in 1992 Trinidad and Tobago became part of the worldwide movement to deal with anti-money laundering and measures to combat the financing of terrorism.

Between the period 1995 to 2005, the CFATF Caribbean organization evaluated this country three times. The report showed that we were not compliant with 11 of the 16 core FATF recommendations, and that was during the period 1995 to 2005. We were thus flagged as being earmarked to be monitored by FATF and the CFATF organization and by what is known as the International Cooperation Review Group, and their monitoring process started as a result of that.

Since that time, Trinidad and Tobago has taken many measures and made many positive legislative strides to becoming compliant. This is the ebb and flow of the developmental process and cycle in terms of complying with these recommendations, and it is one that is an ongoing process. If we look at it in a vacuum, then we will do disservice to the continuum of relationship building that has been taking place with the international organization and the Government of Trinidad and Tobago, regardless of who is in power.

Throughout my presentation today, Mr. President, I am not going to go on the path of pointing fingers to say where the blame lies for this. The fact of the matter is, the State, the Republic of Trinidad and Tobago, has found itself in the peculiar position of having to comply with these recommendations, and to cure certain identified strategic deficiencies as identified by FATEF, and since 1995 onwards the country has been making slow but measured progress toward becoming fully compliant.

After the 9/11 attacks on the World Trade Centre in 2001, there was a sense of urgency about the need to link anti-money laundering laws and the measures taken to combat the financing of terrorism. It took Trinidad and Tobago four years to react to that phenomenon, and it was eight years after that we had the first piece of FIU legislation. We are not alone in that regard. It could have been done quicker, but we are not alone in that regard. The fact is we are happy that we eventually got it done.

Subsequent to that, there was a series of amendments to both the Anti-Terrorism Act, the Financial Intelligence Unit Act and also even under the Proceeds of Crime Act. We had Act No. 8 of 2011, the FIU (Amdt.) No. 2 Act of 2011, we had Act No. 16 of 2011, amendment to the Anti-Terrorism Act and we had of course, subsequent to that, Act No. 16 of 2011 and so forth. These series of amendments were all designed to try to appease and pacify the angst and the concern of the international body with respect to Trinidad and Tobago's commitment to fighting terrorism and eliminating money laundering.

The three strategic areas of deficiency that were identified are as follows:

- (1) the need to implement without delay adequate procedures to identify and freeze terrorist assets;
- (2) to implement adequate procedures for the confiscation of funds relating to money laundering; and
- (3) to establish a fully operational and functioning financial intelligence unit with supervisory powers.

Mr. President, I would not take us through the myriad of amendments that took place in both the Anti-Terrorism Act and the FIU Act, but suffice it to say that there are three sets of regulations which have since been made as well. We have the Financial Obligations Regulations, 2010; the Financial Obligations Financing of Terrorism Regulations, 2011 and the Financial Intelligence Unit of Trinidad and Tobago Regulations, 2011. They were passed during the course of this administration's tenure and I am pleased to say that we have, in fact, delivered on those regulations which are now part of the laws.

Moving on from that, the FIU Act was proclaimed initially on February 09, 2010 and the responsibilities of the FIU to combat money laundering through services offered by listed businesses and non-regulated financial institutions are contained in the Proceeds of Crime Act. So what you have is the Proceeds of Crime Act on the one hand and the Anti-Terrorism Act on the other; both of them refer to the Financial Intelligence Unit in terms of its functions and they confer certain statutory duties on that body.

The Anti-Terrorism Act, for example, points to critical functions and powers of the FIU. The regulations of 2011 provide mechanisms to ensure that the FIU fulfils its mandate and gives us legislative teeth to regulate listed business as identified in the Proceeds of Crime Act. So there is a distinct correlation between the FIU Act, the Anti-Terrorism Act and the Proceeds of Crime Act.

Mr. President, the amendment Act No. 8 of 2011, which is the FIU (Amdt.) Act, No. 2, sought to promote three important functions in the FIU:

- (1) the promotion and advancement of the operation of the FIU;
- (2) to impose administrative sanctions for non-compliance with statutory duties imposed by the FIU Act; and
- (3) to establish functions and powers of the FIU as a supervisory body.

This is meant to operate in tandem with the Anti-Terrorism Act which has as its core purpose and function the need to detect, prevent, prosecute, convict and punish terrorist activities and to seize and confiscate assets related thereto.

There are two United Nations Security Council Resolutions that have informed the development of the law in this area internationally, and they are resolution 1267 which was passed on October 15, 1999 and resolution 1373 which was passed on September 28, 2001. Mr. President, resolution 1267 of the United Nations Security Council sought to establish a regime to sanction individuals and entities associated with the Al-Qaeda movement, the Taliban movement and any other known terrorist organizations that pose a threat to world stability, security and order.

Resolution 1373 urged jurisdictions to prohibit nationals from financing terrorism or attempting to participate or support any terrorist acts. It was in an effort to comply with those National Security Council Resolutions that Act No. 16 of 2011 came, and that is the Anti-Terrorism (Amdt.) Act No. 16 of 2011. I mention this in terms of the chronological development of the history of the legislation simply to refer back to the fact that these resolutions were passed in 1999 and 2001. It was, in fact, in 2011 that we, as a Parliament, complied with those security resolutions.

Mr. President, enhancing the rating of Trinidad and Tobago with respect to these recommendations, these amendments contributed in no small measure to maintaining Trinidad and Tobago's stable rating with the international FATF organization and, of course, to taking a long step in the right direction toward ensuring that Trinidad and Tobago can in fact become fully compliant.

There are ongoing reviews from the international body to evaluate Trinidad and Tobago and other member states' compliance level. We hope that by virtue of these legislative interventions, and the operationalization of the FIU itself, that we will in fact be able to gain a positive rating in the near future.

Mr. President, the FIU itself has as its core functions the receipt of suspicious activities; the need to analyze such reports received and, of course, if necessary, in appropriate cases where the suspicions are justified or substantiated, to refer them to the appropriate and relevant law enforcement agency.

Additional functions include the dissemination of information collected to aid other agencies in fighting and combating money laundering and the financing of terrorism; to educate listed businesses and non-regulated financial businesses on anti-money laundering initiatives that they must take to counter financing of terrorism; and it also supervises and monitors those entities to ensure that they comply with the programmes, and to do this the FIU can conduct examination and, if necessary, they can impose administrative sanctions.

Mr. President, the ability to impose administrative sanctions is an innovation that will no doubt ensure that the FIU possesses the ability to crack the whip on those errant listed businesses as and other financial institutions that may not become fully compliant in the shortest possible space of time with the FIU.

I wish to pay tribute to the financial sector for its cooperation thus far and its sensitivity to this particular problem, because the financial sector has responded to the Financial Intelligence Unit quite well, and the level of cooperation that we have been getting from the financial sector in Trinidad and Tobago has been nothing short of phenomenal and commendable. [*Desk thumping*]

Mr. President, we have now as a matter of administrative convenience—you may recall there was no provision made for a register relating to listed business or a separate register for non-regulated financial institutions—where the FIU has since created two separate, independent registers to cater for both, and that will conduce a certain amount of administrative efficiency in implementing the laws of the FIU.

In the short space of time that the FIU has been up and running, I am pleased to report on the progress it has made thus far. The FIU now has its website up and running and the website contains substantial information about the activities of the FIU and its progress: suspicious transaction and suspicious activity reports, October 01, 2011 to March 31, 2012, you will see the details there.

*FIU and Anti-Terrorism Bill, 2012*  
[SEN. THE HON. A. RAMLOGAN SC]

*Tuesday August 21, 2012*

Of 126 suspicious transaction reports or suspicious activity reports, 65 are the subject of ongoing analysis; 54 were closed and seven were analyzed and those seven in respect of which the analysis was completed, 14 intelligence reports have been generated, and they have been passed on to the law enforcement agencies for investigation. What that shows is that the FIU is performing its function in a creditable manner, and given the short space of time that they have had to operationalize and come up to speed, I think we must give them our full support and commend the work of the FIU. [*Desk thumping*]

To put that in proper context, section 18(1) of the FIU mandated that the director should submit a report to the Minister of Finance within 60 days of the end of the financial year. The first report was due on November 30, 2010, but there was no appointed director when that report was due, but the second report became due on November 30, 2011, and I am pleased to say that both reports have since been submitted to the Minister of Finance. [*Desk thumping*]

I have examined those reports and the reports themselves speak well and augur well for the future of the FIU. It gives a breakdown in terms of the operations, the infrastructure, the initiatives and the programmes implemented and introduced by the FIU to ensure compliance and the education campaign that they have embarked on. They also list various entities that they have been cooperating with; both nationally as well as internationally, and specific mention is made of the Caribbean region in terms of those countries that we have been forging alliances and building a relationship with.

You know, Mr. President, Trinidad and Tobago continues to be a leader in the Caribbean, and with respect to financial intelligence, we are going to be no exception. We have been assisting a number of countries in the Caribbean, including Jamaica, the Bahamas and St. Kitts by sharing information and having a transfer of knowledge and expertise to ensure that they too can have their financial intelligence units up to the standard that Trinidad and Tobago's own is.

Strong bonds have also been formed with three major training partners, and those which have been our allies for a long time, and that would be the United States of America, Great Britain and Canada. We have received great assistance from those countries in terms of the sharing of information and the reciprocal obligations, and the exchange of information has been healthy, vibrant and conducive to the strengthening of our own local FIU.

I am pleased to see this level of detail in the FIU's annual report. Far too often Parliament receives annual reports, and when one looks at them, the reports are, perhaps, more notable given the lack of information it contains rather than the

information it contains. I am very pleased to see that the FIU has condescended to provide this level of detail to the population about its activities, having regard to the sensitivity of the functions that the FIU must perform.

This will no doubt alleviate the concerns and fears and the sensitivities of those who may find themselves subject to the jurisdiction of the FIU, because such transparency augurs well for the integrity and independence of the Financial Intelligence Unit. I think that in itself is demonstrated by the fact that the large majority of suspicious activity reports came from the banking sector.

Mr. President, 111 reports were received for the period February 09, 2010 to September 30, 2010, and out of that 111 reports, 58 came from the banking sector. The monetary value of those suspicious activities reports and those suspicious transaction reports is \$263 million.

So, I wish to commend the banking sector for providing that kind of sensitive information to the FIU and for reposing the kind of confidence that is required to make the FIU a viable entity in Trinidad and Tobago. I also want to commend the banking sector for actually putting in place in the banks the mechanisms and the safeguards that would enable them to detect and flag suspicious transactions that require reporting to the Financial Intelligence Unit of Trinidad and Tobago.

### **2.15 p.m.**

For the review period, Mr. President, 303 suspicious activity and suspicious transaction reports were filed with the Financial Intelligence Unit, and that is for 2011. That is 303, and that is as compared to 111 in 2010. So the figure has almost tripled in the space of one year from 111 to 303. Of that figure, the banking sector again remained the major contributor, almost over 50 per cent. What this shows is that the Financial Intelligence Unit is not just working, but working quite well, and that augurs well for positive compliance ratings with the Financial Action Task Force.

The Miscellaneous Provisions (Financial Intelligence Unit and Anti-Terrorism) Bill, 2012 requires a special majority, and I have no doubt that that will be attained given the fact this is an important measure that is required, not just for Trinidad and Tobago but as part of Trinidad and Tobago's international obligations to comply with the FATF recommendations.

In preparing this Miscellaneous Provisions Bill, regard was had to the contributions of the Members in this Senate as well as the other place, and we took into account concerns expressed. In a number of areas we have in fact

*FIU and Anti-Terrorism Bill, 2012*  
[SEN. THE HON. A. RAMLOGAN SC]

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included some of those suggestions. I am pleased to say that, particularly on the Independent Bench, many of the contributions made during the course of the last debate were noted, and you would see that we have included a number of measures to deal with those concerns. I recall, for example, Sen. Prescott and my good friend, Sen. Hinds, raising concern about the oath of office to be attached in the schedule. I think the concern was that it spoke to confidentiality as opposed to duty. It was felt that like the Integrity in Public Life Act and the public service oaths, the oath taken by the FIU officers should be amended to reflect and be consistent with those oaths. We have in fact done that.

Clause 4 deals with the necessary amendments to the Anti-Terrorism Act in tandem with the amending Act No. 16 of 2011. I take you now to section II, the definition section of the Bill.

“Financing of terrorism” is now defined. “Law enforcement authority” has been expanded and we have introduced the definition of “public authority”. I believe it was Sen. Corinne Baptiste-Mc Knight in the last debate who pointed out that there was no definition of the term “financing of terrorism” in the FIU Act. I took note of that, Senator. So what we have done is that section 2 of the FIU Act is amended to provide a new definition for the term “financing of terrorism”, Ma’am. That term will now specifically refer to the offence created under section 22(a)(1) of the Anti-Terrorism Act so as to provide the required clarity for the legislation.

A restructured and widened definition for the term “law enforcement authority” is also provided. You would see that during the course of the debate, Members of the Independent Bench had expressed the view that we could perhaps broaden “law enforcement authority”, and we have done so. You would see that we have included (a), where there is now (a) to (e). We have also now gone on to define “public authority”. We have borrowed from the definition in the Freedom of Information Act, where any public authority that is controlled, whether directly or indirectly or that is supported with state funds, we have now included that in the definition of a public authority.

These changes may appear to be quite simple at first blush to the uninitiated, but, in truth and in fact, the inclusion of these definitions, given the scope and ambit of them, is very expansive. What they demonstrate is the Government’s commitment to allowing the FIU to wield and exercise its jurisdiction in as full and complete as possible a manner. That is why, for example, we have adopted the definition in the Freedom of Information Act with respect to public authorities, because it is the widest possible definition known to our laws at the present time.



Mr. President, just by way of reference, companies incorporated under the laws of Trinidad and Tobago: a service commission, a body corporate or unincorporated entity, in relation to any function which it exercises on behalf of the State, whether it is by the President's prerogative—and this is the important one—which is supported directly or indirectly by government funds and over which the Government is in a position to exercise control. This has far-reaching implications, because hitherto, definitions of what constituted a public authority were restricted to public authorities that the Government owned or that the Government controlled outright.

It was only in the Freedom of Information Act that we introduced this concept of whether it is supported, not controlled, directly or indirectly by government funds and over which the Government is in a position to exercise control. So that the interlocking directorates that have mushroomed in the course of the last 10 to 15 years, we have taken care of that by getting to the root of the financing. Once it is supported by government funds and the State has control, then it will be subject to the jurisdiction of the FIU, so that it can have recourse to it.

In section 8(1) the language used was the “primary institution” which was responsible for the collection of financial intelligence and so on. I believe my learned friend, Independent Sen. Subhas Ramkhelawan, had queried during the course of his contribution that “primary institution” left room to say, “Well, look, there is some other institution.” What we have done now is to simply clarify it so that it will now be “the FIU shall be responsible”, as opposed to “the FIU shall be the primary institution responsible”. So it is now clear and beyond doubt that the FIU is the sole body responsible for collection of financial intelligence and information. *[Interruption]*

**Sen. Hinds:** You listened.

**Sen. The Hon. A. Ramlogan SC:** Yes, I do listen, Sir.

Mr. President, the language has been tidied up simply because of the amendments. Instead of referring to the Proceeds of Crime Act, 2000, the Proceeds of Crime Act (Amdt.) Bill, 2009, and then you have to list all of them, it was more tidy simply to confine it to the Proceeds of Crime Act and the Anti-Terrorism Act.

Section 8(3)(e) dealt with the exchange of financial intelligence with members of the Egmont Group. We have amended that to allow for the Government of the Republic of Trinidad and Tobago and the State—the FIU, to be able to cooperate and share information with foreign FIUs, whether the country is a member of the

Egmont Group or not. The reason for that obviously is because this is a global phenomenon and the fight against crime in terms of terrorism and anti-money laundering is one that has to be fought as a global, common problem and we did not think it wise to leave out those countries that were not members of Egmont having regard to the fact that some of them do business with Trinidad and Tobago and some of them actually have nationals and persons with families who live in Trinidad and Tobago.

Just by way of example, there are many countries that are not members of the Egmont Group, but among them would include Cuba with which Trinidad and Tobago has had a very good and rich relationship over the years, Pakistan, Bangladesh, Iran, Iraq, and there are many others just by way of illustration. Trinidad and Tobago will now be able to exchange and share information with those countries.

We have, in fact, to avoid any doubt, defined what constitutes a foreign financial intelligence unit. The definition is that it is a competent authority which in a country outside of Trinidad and Tobago exercises functions similar to the FIU under this Act. It is our hope that this expansive and broader approach to the sharing of information would lead to a greater exchange of ideas, training and sharing of expertise and improve the level of cooperation in the international fight against money laundering and anti-terrorism measures. It also allows us to enter into written agreements with those foreign FIUs.

Section 8(4) deals likewise with the reciprocity and the reciprocal arrangements for the sharing and exchange of financial information with Egmont Group and non-Egmont Group FIUs. These offences are known to cross boundaries, and we therefore felt that we should cooperate as far as possible with all.

Mr. President, in section 10 we have inserted the “Anti-Terrorism” so that we could correct an omission from the previous Act, so we will now be able to refer to both Acts that are correlative, which would be the Anti-Terrorism Act and, of course, the Proceeds of Crime Act where applicable.

In section 12(2) there are some minor changes to deal with language that we have done to ensure consistency. Consistency was lacking in terms of the use of the term “financial institutions” and “non-regulated financial institutions”. Minor amendments have been made in the language of that section to deal with that.

Section 13 has been repealed, and that is a major substantive change that is a direct result of FATF’s evaluation exercise. Section 13 dealt with the ability of the FIU to grant approval where a suspicious transaction had been flagged, to complete it. That obviously created problems, not just with the FIU, but also with the banking

sector. I am pleased to say that this repeal of section 13 is based on consultations which the Government had with the banking sector, and we have in fact arrived at a consensus position that that section will be repealed.

It was felt by the banking community that section could give rise to litigation against the banks and that banks themselves could be accused of tipping off clients, unknown to the banks, perhaps through persons within the community. It just made better sense to delete it altogether rather than run the risk of exposure to litigation, and of course remove any doubt that exists in the mind of the Financial Action Task Force that we are in fact committed to ensuring that suspicious activity reports are treated in a most serious manner, and that there would be no possibility of the FIU granting approval for the continuation of a transaction once flagged.

**2.30 p.m.**

Mr. President, I take you to section 14(1) where we have corrected an omission that existed previously, whereby, in section 14(1), the FIU could have instructed a financial institution or a listed business to suspend the processing of a suspicious transaction or a suspicious activity for a period not exceeding five days. It could have done so in the circumstances set out in regulations prescribed under section 27. The difficulty was, of course, that there were no such circumstances prescribed.

So what we have done now, we have in fact corrected that, so we have the prescription, and we have prescribed two circumstances when the FIU can suspend the processing of a suspicious transaction, and they are in the course of enquiring into a suspicious transaction or suspicious activity relating to the proceeds of suspected criminal conduct, a money laundering offence or the financing of terrorism, or two, where a request is made by any law enforcement agency or a foreign financial intelligence unit that may be conducting an investigation and enquiry.

I take you to section 16, Mr. President, which deals with the ability of the FIU to elicit the cooperation of many of the agencies in its enquires to conduct its business. What we have done is, we have given the ability to the FIU to request information from certain agencies, the Central Bank or any public authority which was expansively defined in the definition section, and we have said that that information should be provided within a reasonable time.

Now, in the other place, the question of reasonable time, considerable time was spent on it and, of course, one obvious criticism would be to say; why have a reasonable time and not put a fixed period of time? In our discussions with the financial community in Trinidad and Tobago, and having regard to the wide definition of what amounts to a public authority, it was felt that we have different

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entities located at different points in the spectrum of development and infrastructure, and it would be counterproductive if we were to put a fixed period of time, knowing full well that that in itself might be (a) impractical and unrealistic; (b) impossible in some cases altogether to comply with; and, (c) might actually act as a deterrent to the institution cooperating with you and giving you the information.

What putting a reasonable time does is it strikes a balance and allow the FIU to gauge the response—evaluate the response—of the institution that they request information from, and to see if it is genuinely trying to provide that information or if it is simply being evasive.

If the FIU comes to the conclusion that it is being evasive and that it is not in fact being genuine in its attempt to provide that information to the Financial Intelligence Unit, what we have done is provided a mechanism for the FIU to go to court and a judge, looking at the evidence, will then make an order to compel them to provide the information within a certain time. And, of course, all of that would take into account the factual matrix that governs the particular institution so that we do not pass legislation that is impracticable, unworkable and, indeed, counter productive.

I take you next to part 3(a) of the FIU with its supervisory powers. We have defined what a document is; we have tidied up the language to make it clear that we have sorted out non-regulated financial institutions and listed businesses; and what we have done is to solidify the model that we have adopted for Trinidad and Tobago which really is a hybrid model.

Mr. President, there are several models available throughout the world for FIUs. We have the law enforcement model, which is the pure law enforcement type model which concentrates and dedicates its focus on the enforcement aspect and function of the FIU; we have the administrative type model; we have the judicial or prosecutorial type which, of course, includes *quasi-judicial* functions that have been conferred on the FIU so that it can not only investigate but it has the power to be a competent court to actually prosecute those offences, and of course, we have the hybrid model which Trinidad and Tobago has gone for.

Mr. President, throughout the FIU the common theme is that we did not want the pendulum to be too far on the right or too far on the left, we have come down the middle. The Financial Intelligence Unit of Trinidad and Tobago takes into account our own socioeconomic, political and social realities on the ground, and that is why the FIU really is a go-between-the financial sector and the investigative and prosecutorial arm of the State.

By creating this middle intermediary as a buffer or a go-between, what we have done is remained alive to the sensitivities and sensibilities of the financial intelligence community which may not have been as eager or as enthusiastic, in terms of cooperating by supplying information directly to say, for example, the police, or supplying it directly to some state agency that is already entrenched in the landscape of our prosecutorial and enforcement regime.

What we have done is to provide the FIU in the middle to receive suspicious transaction reports, and the FIU will now have the required level of experts and expertise so that they could analyze those reports that have been received. When they analyze those reports—and the FIU with its expertise that the police service would not have, because there are financial analysts, they are compliance analysts and so on, but these are the persons who are specifically trained to analyze the information provided by the banks and so on—and when they analyze that information, it is only if they see justification or a concern that cannot be explained, then they would refer the matter, with a report from the FIU, to justify an investigation by the police service.

Now, that has worked well given our own socioeconomic realities in Trinidad and Tobago, and as evidenced by the fact that we have had a tripling of the number of suspicious activity reports that have been provided by the financial sector to the Financial Intelligence Unit.

I hasten to point out that this is not in any way non-compliant with the Financial Action Task Force. Indeed, recommendation 17(1) and 17(2) speak to the model. In 17(1), the recommendation speaks to countries ensuring that effective, proportionate and dissuasive criminal, civil, or administrative sanctions are available to deal with natural or legal persons covered by the FATF recommendations. 17(2) mandates that countries should designate an authority, supervisors or the FIU empowered to apply these sanctions. But it says further:

Different countries may have different authorities which may be responsible for applying sanctions depending on the nature of the requirement that was not complied with.

So that the recommendations of FATF left it open to countries to have not the FIU but a different authority to be able to deal with the enforcement aspect, and that is why Trinidad and Tobago opted for this hybrid model that allows the FIU to apply administrative sanctions only and to leave law enforcement to the relevant body. And it may not be just with the police, it could be a body with regulatory and coercive powers other than the police, for example, the Central Bank, the Trinidad and Tobago Securities and Exchange Commission, et cetera.

Now, in adopting this model and in retaining this model, Trinidad and Tobago finds itself in good company. It is a model that is utilized by many countries in the world including the United States, Canada, the Netherlands, and Australia and, of course, closer to home, Barbados, St. Kitts and the Bahamas.

Mr. President, I take you now to section 23(1) which was simply reworded for clarification purposes. I mean the legislative draftsman made some minor language changes throughout the course of the Bill to make it simpler, easier to understand and more reader and user friendly.

Section 25, we have expanded the immunity offered to officers of the FIU to cloak them with the necessary immunity from suit, so that they would perform their duties without fear or favour. It was felt that we should specifically cater for civil and criminal proceedings and we have introduced a subsection 25(2) to deal with that. So that now provides that no civil or criminal proceedings shall lie against a person who in good faith discloses financial intelligence or information under this Act, and that would apply to anyone.

The Schedule, as I indicated, with the oath of office and secrecy, we have inserted the words, “conscientiously and to the best of my ability discharge the duties of my office”, which brings it in line with what exists elsewhere, and deals with a concern raised by the Opposition and Independent Benches during the course of the debate. Having gone through those amendments made to the FIU Act, I would like to address those made to the Anti-Terrorism Act, and I will take you to clause 4.

Clause 4 admits to the possibility of maintaining the consolidated list and to have it circulated by electronic means. I believe during the course of the last debate Members on the Independence Bench made the point that we should take advantage of technology, and we should not simply have these things for transmission by the traditional means. So that we have now inserted “by other electronic means”.

Mr. President, these again seem to be—with the insertion of two words, we have created a small revolution in how the Government does business because even now we see every day that the public service continues to advertise in the newspapers, when in this country people seldom read the papers and look at the ads. When you advertise a job in the newspapers I do not know that it actually reaches the target audience in a more effective manner, as compared to if you advertise it, for example, on Facebook, if you advertise on the radio and the television, and, you know, it is time we change these things.

I am very pleased to say that we have included transmission by electronic means, and maybe this will be the first step in the right direction. Maybe the time has come for the public service and the Government to start advertising jobs on Facebook, or jobs should be advertised on radio and TV. There is no point in advertising a job that requires three and four O'levels in the newspapers when people might not even be able to read it. They might not even be buying the newspaper; they might find it when it is too late. Let us advertise it on radio and television so it can reach the target audience.

Let us simplify how we do business to take advantage of technology, and that is why we have inserted "by electronic transmission" so that the Government can keep abreast of technology and change radically how we do business with the population. [*Desk thumping*]

Mr. President, section 22(a)(b) has been created to ensure that there is some consistency in how the reporting is done. We have created prescribed forms, and we have deleted the possibility of obtaining prior approval of the FIU, again, to continue a transaction or a business relationship with an entity that has been flagged. This, of course, again, is a direct result of the criticism made by FATF, and permit me to quote from FATF's assessor report.

The FATF assessor had this to say about that particular provision, and they said it is of the view that this exception undermines the effectiveness of the designation and the exception should be removed from the Anti-Terrorism Act so that under no circumstances can a financial institution or listed business be able to complete a transaction or continue a business relationship with a designated entity. So FATF was unhappy about that possibility even being theoretically left in the law, and therefore we have deleted it before under the FIU Act, and we are deleting it now under the Anti-Terrorism Act,

I am pleased to say, Mr. President, that we have also created a prescribed form called the terrorist funds report, so that one of the problems that we have seen over the years is that when we create these agencies—if everyone sends in their information to the FIU in a format that is unique to their bank or their particular business, the FIU would then have difficulty to input it into their system. So what we have done is do a prescribed form, it is then easier to streamline and rationalize that information, put it on your database, and it allows for a more efficient and smooth operation.

**2.45 p.m.**

Mr. President, section 22(1)(b), 3(a) and 6; these are the sections that deal with the powers of the Attorney General to apply to a judge for an order in respect of an entity where the entity is a designated entity, and we have tidied up the language simply, and one change made is that in subclause (5), in 22B subclause (5) in the other place—although this was not an amendment that was before the House—an Opposition Member of Parliament made the point that subclause (5) reads:

“Where an Order is made”—that is an order made by the court—“the Attorney General may, within seven days after the date of the Order, cause to be published in the *Gazette* and in two daily newspapers of general circulation...

(a) a copy of the Order...” et cetera.

The point was made that the use of the word “may” gave a discretion to the Attorney General in terms of publishing that order and it was felt that although there may have been reasons when the FIU Bill was originally brought with that provision, although I do not know what the thinking was as to when the Bill was originally brought, they wanted to leave the Attorney General with a discretion and they put “may”.

One can surmise it could have been because one conceivably could have thought maybe national security considerations may arise in appropriate cases. But having regard to the fact that before you can declare it a listed business you would have to have an order made by the court, and having regard to the fact that the order when made on an ex parte application in the absence of the other side, that provision must be made for that order to be served on the affected person or business entity so that they would be aware of it, so that they themselves would not find themselves in the unenviable and embarrassing position of being in contempt of court because an order has been made against them but they are not aware of it, what we have done is to make two changes:

1. To make provision for the order to be served on the relevant body.

So 22B (4)(a) after the word “upon” we included the words “listed entity”, and that is an amendment that has been approved by the other place, so the Bill comes with that amendment included and, of course, I have conceded, if it is that the listed business will be served with the order, then no useful purpose can be achieved by the Attorney General retaining a measure of administrative discretion



in terms of the publication and gazetting of the order. So the Government has agreed to remove the word “may” and the discretion that was given in the original Bill as brought and we would now include the word “shall”, so it becomes mandatory and there shall be mandatory publication of all orders made affecting listed business.

**Mr. President:** Just letting you know, Attorney General, you have another minute.

**Sen. The Hon. A. Ramolgan SC:** Indeed, Mr. President, thank you very much. We have made a slight change to include individuals so that we can clarify—I believe the point was made during the course of the debate that listed businesses and listed business entities, for clarification sake we should have also included “individual” to cater for natural persons and we have in fact actually done that.

Section 22E(1), we have changed from “three” to “five” working days. That is a period that the FIU may instruct a financial institution to suspend processing, and that is consistent with what obtains elsewhere in the Act because it was pointed out during the course of the contribution of Sen. Baptiste-Mc Knight, I believe, that there was an inconsistency with having three days here but five days earlier on in the legislation. So we have now put it at five across the board.

Section 34(1), we have included property of an individual or entity who participates in the commission of a terrorist act so that that will widen the scope and widen the net in terms of where persons at the rank of sergeant or above have reason to believe that property may be in the possession of someone in respect of which they can apply to a judge for a restraint order.

Section 42—minor language changes to just simply clarify the meaning of the section; no change in substantive law, and, Mr. President, those are the main changes that have been made to this legislation.

I am pleased to say that in addition to the annual reports of the Financial Intelligence Unit that we have now had measured—slow but measured and demonstrable progress on the part of the Financial Intelligence Unit in terms of its establishment and functioning. The offices of director and deputy director have now been filled. We have had—the job description for six analyst positions have been developed and forwarded to the DPA and the Permanent Secretary in the Ministry of Finance and the Economy; seven for the compliance and outreach division; job description and classification questionnaire for senior state counsel; and we have had several meetings between the FIU, the director of human

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resource, the Deputy Permanent Secretary and the Permanent Secretary in the Ministry of Finance and the Economy and, of course, CPO and DPA, and they are trying to fast-track those positions being filled, but we are all aware that sometimes when you have to go through all of these processes it just takes some time given the bureaucracy that exists in the public service.

But happily, in the compliance and outreach division, five persons have been able to assume duties, the director in the analytical division and the senior legal officer. Shortlisting has been completed; interviews have been completed and they are about to make appointments, and we have the intelligence research specialist and four analyst positions, and these positions are being filled so that the FIU can fulfil its mandate.

The last plenary session for FATF was held in Rome in June 2012, and I am advised that the feedback from the Financial Action Task Force based on this progress was very encouraging and very, very positive and I am certain that Trinidad and Tobago, with this kind of progress, will be able to gain a positive recommendation and rating from FATF.

Mr. President, before we get all alarmed and bring down the hail storm of doom and gloom, I wanted to pause to point out that Trinidad and Tobago, through it remains on the grey list, we must obviously be thankful that we are not on the blacklist, but there are many, many countries on the grey list. Trinidad and Tobago is a small country and, as I pointed out, it took us almost 10 years after we gained CFATF membership to even bring the Financial Intelligence Unit Bill, it took us four to five years after 9/11 to bring an Anti-Terrorism Bill, and sometimes we are too slow in reacting to these international trends perhaps, but it is not that Trinidad and Tobago can act with haste. Sometimes it is better so that we can learn from the mistakes of the others, and I think the amendments that have been made to these pieces of legislation, the Proceeds of Crime Act, the Anti-Terrorism Act and the Financial Intelligence Unit Act, we have benefited tremendously from the experiences of the countries that have gone by.

To give us some measure of comfort whilst we strive towards and emerging out of the grey list, there are over 40 countries on that grey list, countries much larger in size, much better resourced than Trinidad and Tobago, and I say that only to highlight the fact that, look, we are not alone and as we try there is room for hope, quiet and cautious optimism but at the same time we must not beat up on ourselves. We must not beat our chest, but we must not beat up upon ourselves either.

Mr. President, neighbouring Antigua, Venezuela, Argentina, Philippines; a number of countries are in that grey list section and we are all trying to comply with the FATF recommendations whilst we also try to cope with the growing aggressive challenges and demands of having a legislative agenda that is extremely packed and keeps the Parliament very busy.

So, Mr. President, with those words, I say that it is my hope that having regard to the fact this matter was passed unanimously in the other place, in light of the fact that we have sought to incorporate a number of concerns that were raised and suggestions made during the course of the last debate, it is my fervent hope that this miscellaneous Bill will be passed with the full support of this honourable Senate in the public interest so that Trinidad and Tobago can continue its journey towards a positive rating from the Financial Action Task Force and we can take our rightful place amongst other countries in the international community as we seek to demonstrate our commitment to the fight against the financing of terrorism and money laundering.

I thank you and I beg to move. [*Desk thumping*]

*Question proposed.*

**Sen. Fitzgerald Hinds:** Thank you very much, Mr. President. We are here today on August 21, 2012 on or about the same time last year when this failed Government instituted shockingly a failed state of emergency. Their former union friends are today mourning—

**Mr. President:** Senator, I did read the question. You do not seem to have any relationship to that. [*Desk thumping*]

**Sen. F. Hinds:** Thank you very much. This has to do with crime, Mr. President, and the purport of the implementation of that failed state of emergency was to deal with crime, and the guns that are available in the hands of criminals which is why the Government claimed one of the reasons they instituted the state of emergency. So while they may not have seen it, that was what was operating in my mind, Mr. President, but I shall press on.

Mr. President, I heard the Attorney General—and by the way I am tempted to compliment him; very, very tempted—

**Hon. Senator:** Not there yet.

**Sen. F. Hinds:** I thought your presentation today was more like an Attorney General's presentation in this honourable Senate. I am tempted to compliment him, but to countervail that, Mr. President, you would notice that he did a very, very

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good job at trying to disguise the very hideous and ugly scars of failure of his Government in respect of the measures before the Senate today. [*Interruption*] Oh yes, oh yes. [*Desk thumping*]

Mr. President, he boasted only yesterday that having implemented the failed state of emergency—from which I am moving—not one red cent has been paid to all those thousands of people who were arrested and kept without bail, and wrongly. But I want to let him know there are matters in the court and in due time red cents would be paid. [*Interruption*] Today, we are dealing with the FIU, money laundering, anti-terrorism; those things lead to murders. Today we have more murders, and interestingly enough today's newspaper reports tell us seven murders over the weekend on this August 21, 2012; so reminiscent of the last year, but let us press on, Mr. President. [*Interruption*]

But the biggest crime of all is this Government. [*Desk thumping*] That is not only my view. Michael Harris wrote poignantly about it a few days ago, a matter to which I should return. I want this Senate to know that as we deal with monitoring financial transactions, we have a Public Accounts (Enterprises) Committee set up by this Parliament for that purpose. We had another meeting scheduled this morning and the members of the Government with one exception did not appear. So while we are attempting to assist international partners in managing the flow of moneys, to avoid money laundering and financing terrorism, members of the Government in this Senate today, again, for a second time did not show up at a Public Accounts (Enterprises) Committee meeting to monitor our own internal arrangements when there are so many issues of corruption and possibly money laundering as a consequence of that facing us in Trinidad and Tobago.

You, Mr. President, read for us and I cannot avoid it, you brought it to me, a very, what I consider to be, cryptic message from the Minister of National Security—failed himself as he then was, John Sandy, a noble man, but he sent us a message on today's date, August 21, wishing us well as we continue here without him. He was one of the casualties of that failed emergency—continues to be.

Mr. President, non-compliance with the FATF recommendations is a very serious matter indeed. Countries can be blacklisted. You heard the Attorney General say that we are approaching blacklist, we are in the grey list. As a conscious black man I am not too keen on that word, I think it is politically insensitive and incorrect, but—

**Hon. Senator:** “Ooooh, Lord, father.”

**Sen. Ramlogan SC:** “PNM see race in everything boy, oh God!”

**Sen. F. Hinds:** It has nothing to do with race. It has nothing to do with race! But, Mr. President, paragraph 70 of this sixth follow-up report of May 2012 from the Secretariat of the CFATF organization demonstrates how serious the question of being blacklisted is.

**3.00 p.m.**

It demonstrates how serious non-compliance can be. Let me read paragraph 70. It says:

“With regard to implementation, at present the authorities advise that financial institutions have indicated that transactions from countries which are non-compliant, or do not sufficiently comply with FATF standards are carefully scrutinized and in some instances stopped. Additionally, enhanced due diligence is also applied when dealing with transactions involving severe risk countries.”

Transactions can be stopped and there is more than usual diligence in dealing with these transactions.

Mr. President, so it is indeed a very serious thing, and I heard Minister George telling us today as you spoke, how much they enjoyed the Parliament ball, and unfortunately I could not be there. I regret it to some extent, but I must admit I was in no mood for dancing. This Government has not put me in any mood for dancing. I want to tell Sen. George, going forward, that while the Titanic was on its way down, men were dancing and singing, you know. So you continue dancing.

**Sen. George:** I have been doing it all my life.

**Sen. F. Hinds:** Mr. President, in February 2010, Trinidad and Tobago made a high-level political commitment to work with the FATF and CFATF to address its strategic anti-money laundering and the financing of terrorism deficiencies—the standards, AML/CFT. Since that time Trinidad and Tobago has demonstrated some progress in improving its AML/CFT regime. However, FATF has determined that certain strategic deficiencies remain.

Trinidad and Tobago should continue on its path of implementation. [*Cellphone rings*] It has to implement adequate procedures to identify and freeze terrorist assets without delay, and that is a special recommendation, implementing

adequate procedures for the confiscation of funds relating to money laundering in Recommendation 3 and ensuring fully operational and effectively functioning FIU, including supervisory powers, according to Recommendation 26.

Due to Trinidad and Tobago's deficiencies outlined above, a team of experts from FATF are coming to Trinidad to evaluate the progress made by Trinidad and Tobago to comply with the 40 recommendations. They have, as the Attorney General pointed out, from time to time made new recommendations, special recommendations, but now it is down to 40 recommendations.

The FATF recommendations set out essential measures that countries should have in place: to identify risks, pursue money laundering, among other things of course, apply preventative measures for financial sector and other designated sectors, establish powers and responsibilities for the competent authorities, investigative law enforcement and supervisory authorities, enhance transparency and availability of beneficial ownership, information of legal persons and arrange and facilitate international cooperation.

So, Mr. President, those are the essential measures that countries are expected—another one—in terms of dealing with the proliferation of weapons of mass destruction was also one of the recommendations, but that has not yet fully developed and therefore we cannot be held accountable for not so doing.

Clause 3 of the legislation, as the Attorney General pointed out, seeks to conform with Recommendation 5, dealing with terrorist financing offences. And while the issue of dealing with the proliferation of weapons of mass destruction has not yet been properly developed, I would have thought that we would have seen some element in that clause 3 as well, but it is not there and we leave that for the time being. As the Attorney General pointed out, this is a work in progress and hopefully we will get there.

However, the Attorney General did not tell us that there appears to be a serious conflict in the definition of “non-regulated financial institutions” and “financial institutions”. Problems arise because, in the Proceeds of Crime Act, in section 55 it speaks only to financial institutions and listed businesses. This means that non-regulated financial institutions who should also obey and comply with the duty to report and pay attention to suspicious transactions are not therein mentioned. It also means that we will need to amend the Financial Obligations Regulations 2010, in order to include in the definition of “non-regulated financial institutions”, otherwise that whole sector would be left out from the purview of this legislation, and it is something the Attorney General must look at.

In addition to that, it is now clear to us all, after all these years of administering this legislation, that money laundering—for a proper prosecution and conviction for money laundering, it must be—well it is a predicate offence. It must be based on some criminal offence like fraud or some other offence, and out of which you have money laundering.

So, Mr. President, to put it differently, in a case—if the police, for example, raids a man’s house and find \$10 million in cash, the police can seize the money, but they cannot charge the person for money laundering, because there would be no evidence to prove some other substantial criminal offence. It is a predicate offence—the money laundering.

In the case of *R v Montilla* 2006 reported in the West Indian Law Reports, the State or the Crown had to prove that property that was seized was in fact money from the proceeds of a crime. When the United Kingdom was confronted with that, they then amended their Proceeds of Crime Act in Part 7 in order to deal with that. The UK is now in a position to prove a money laundering offence by:

- “(a) ...showing that it derives from conduct of a specific kind or kinds and that kind of conduct is unlawful, or
- (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime.”

And therefore we need to look at that, because without establishing a substantive offence you will never be able to prove that the money seized was related to money laundering.

**Sen. Ramlogan SC:** What year was the UK amendment?

**Sen. F. Hinds:** The UK amendment, Mr. Attorney General, 2002.

**Sen. Ramlogan SC:** I wonder why “all yuh” did not do that when you—

**Sen. F. Hinds:** Well forget that. You are in Government now. There are a lot of things that we were not doing that you all are doing now. I do not want to be distracted and tell you about them, so take it easy. I do not want the President to say that we are not dealing with the Bill. But there are a lot of things that you all are doing that we did not do.

Mr. President, might I continue unperturbed? The Government must as well consider seriously the implementation—Mr. Attorney General, I want you to hear this, this is serious—the implementation of what is known as the civil asset forfeiture.

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Where a person in authority has reasonable cause to believe that a person has committed a money laundering offence they can seize or restrain the property before the person is charged.

You see, as it stands now, when they are investigating money laundering they are unable to seize property or seize money until the person is charged. In the UK, and not only in the UK, in Antigua, in St. Vincent, in The Bahamas, in Canada, in the US, they have provisions that permit them to seize the property and seize the money before the person is charged.

Let us take a local example. If it turns out—I am not saying that it is—if it turns out that there is some money laundering involved in the issues with Clico, this major thing, nothing stops those who have money there from moving it away while the investigation ensues. So this is a sensible provision that I would want the Attorney General, if he has the political will—because I am not so sure whether this Government really wants to deal with white-collar crime in this country. I am not so sure. All the actions of this Government so far suggest to me that this Government is not seriously committed to dealing with crime. I will demonstrate why I say so in a short while.

Mr. President, so therefore, I want the Attorney General to pay attention to that, because we cannot—so section 18 perhaps of the Proceeds of Crime Act need to be looked at in order to allow for that kind of action and to pre-empt the movement of money before the investigation is even completed.

The Government finds itself scrambling to meet FATF deadlines. As early as June 20, 2010, one month after they came into government, the FATF community had been signalling to the Government that things needed to be done. As I said, earlier in February 2010 this Government gave high-level political commitments to address these deficiencies. In June 2010 the FATF conducted, in fact, called on Trinidad and encouraged it to address these deficiencies.

In February 2011, Trinidad and Tobago moved from a country that was making some progress to a country or jurisdiction that was not making sufficient progress in terms of implementing these measures. The Attorney General quite improperly and incorrectly told us in his presentation that Trinidad and Tobago, we are leaders in this business of FATF and implementing the standards. Well I want to tell the Attorney General because, Mr. President, he told us that there are about 40 countries on this so-called grey list, and he told us countries are more developed than we are and better resourced. But he was only able to tell—you see, Trinidad and Tobago is in the Caribbean region, and we are part of the



Caribbean Financial Action Task Force. Trinidad and Tobago is supposed to be the leader in terms of development, the leader in terms of resources, but it is only Trinidad and Tobago, and Antigua and Barbuda who are in the Caribbean on that grey list, only the two of us.

**Hon. Senator:** So what?

**Sen. F. Hinds:** Minister, you do not have a clue. You are asking so what? Go and deal with the “so what” in St. James. You go and deal with that.

**Sen. Ramlogan SC:** Go and tell Marlene that. Do not talk to me about that.

**Sen. F. Hinds:** She is not the Minister. She is representing her constituents. I will not be distracted by you, you know. You are a hurricane in waiting.

Mr. President, the only two countries in the region that are on that list are Trinidad and Tobago and Antigua and Barbuda. That is a fact. On June 24 Trinidad and Tobago again made high-level commitment to address these deficiencies. On October 28, 2011, Trinidad and Tobago was again identified by FATF as a country that has strategic deficiencies, threatening to put us on the blacklist. In February 2012, Trinidad and Tobago failed to implement specific aspects of the action plan that we had outlined.

Mr. President, as early, if you like, May 2012 the sixth follow-up report indicated all of the deficiencies, all of the concerns of the CFATF which we were supposed to have addressed. We had May, June, July—three months—we are now in the month of August in the middle of vacation. The Government comes to the other place, passes this Bill down there, adjourns the Parliament there to a date to be fixed and now here in the Senate again in the middle of what is supposed to be vacation, to the embarrassment of you, Mr. President—because you reminded us on the top of this Session that we had when we left here on the last occasion, wished ourselves and the nation a happy Independence—and we are here today again unexpectedly. It just tells you that this Government’s train is running aground.

The report, as I told you, the sixth follow-up report in May, and what have they done since? We are now in the Parliament dealing with this as though it were an emergency. But just like August 21 last year, there was really no emergency, you just created a problem. No real emergency; this ought to have been dealt with a long time ago, including and especially since May.

**3.15 p.m.**

So, Mr. President, I accuse this Government of recklessness, I accuse this Government of failure, I accuse this Government of slackness, and all of their sweet words, as far as I am concerned, count for precious little. The citizens of this country know that quite well, and I have in passing a very small example of that. The people in the western peninsula, Diego Martin and the region, are suffering for the last few weeks as a result of serious rainfall and flooding. There is a centre in Diego Martin Central where there are about 35 people who are housed.

**Mr. President:** Senator, the question for debate is somewhat different.

**Sen. F. Hinds:** Yes, indeed.

**Mr. President:** You will get another opportunity.

**Sen. F. Hinds:** I am getting there. Thank you, Mr. President. I was just going to say that in those circumstances all this Government made available to that centre since this disaster started was seven cases of water and five boxes of bread, nothing else, and then want to tell us how well they are serving. This Government's word—that is the point I am making—counts for nothing.

The FIU, Mr. President, is curiously silent on many matters in this country, especially since the failed state of emergency, very silent! We have had reports of drugs in containers in Point Lisas and not a word from the FIU in Trinidad, not a single prosecution by the FIU. The Attorney General read statistics today telling us about how many investigations. The point I am making, with very low-hanging fruit in Trinidad and Tobago, corruption left, right and centre, not a single word from the FIU, not a single prosecution, not a single seizure of assets to date in Trinidad and Tobago. These are facts.

Which serious anti-money laundering investigation is going on now in this country? I want the Attorney General or the Minister to tell me which one. I want him to tell me who is being seriously investigated in a land where everybody knows “drugs running”. There has never been a shortage of cocaine on the streets in this country, especially since the last state of emergency. Not one! The pipers and they are still having a happy time. Which serious investigation is taking place now? Which?

**Sen. Ramlogan SC:** I will tell you. You want me to tell you?

**Sen. F. Hinds:** You will get your turn. You tell us! And as I said low-hanging fruit, there are people—and I hear them talking about “Mr. Big”. Let me put this carefully. There are probably people in the governance structure of Trinidad and Tobago, today, whose activities and whose conduct cannot stand proper scrutiny of the FIU—[*Interruption*]

**Hon. Senator:** PNM.

**Sen. F. Hinds:**—and talking about suspicious transactions and the investigations.  
[*Interruption*]

**Sen. Ramlogan SC:** Make a contribution to the Bill.

**Sen. F. Hinds:** Mr. President, in these circumstances, it is a very damning report of the CFATF against the Government, especially against the background of a failed state of emergency and one in which we lost a Minister of National Security, lost a commissioner and a deputy to date, and the Government is still struggling—seven murders over the weekend and telling us about crime. This Government is not committed to do anything.

Mr. President, I want to be careful. Just to mention, I saw that the Privy Council dealt with a case recently, dealing with the liability of an insurance company in respect of someone who was authorized to drive a vehicle but was not covered by the policy, and the Privy Council held in that case that the insurance company is not liable in those circumstances. But the interesting point I want to make is that the Privy Council has reported and I am quoting from the newspaper which reported it, and this would be the *Newsday*, Saturday, August 18, 2012 at page 7. Hear what the Privy Council said for your interest:

“Having forced to refer to the Hansard of the debate on the amendment in Parliament, the Law Lords said they encountered considerable difficulty in extracting any clear message from it as to the aim, or scope of what was intended...by the amendment.”

So I have to be very careful about what I say here, since it is recorded in *Hansard*.  
[*Crosstalk*]

**Sen. Ramlogan SC:** “You falling into that trap right now.”

**Sen. F. Hinds:** I have to be very careful. [*Crosstalk*] That is why I paused and was very careful to say that there are probably persons in the governance structure of this country and Government whose business cannot stand the scrutiny of the FIU.

Mr. President, we are now really trying to satisfy the recommendations and the standards set by the FATF. Although the Financial Intelligence Unit was established since 2009, although as the Attorney General pointed out there have been some amendments, although we have been giving commitments to FATF, and we are finding as we go forward, we still have not yet met the standards expected by FATF in respect of our Financial Intelligence Unit, and that is why we are here today.

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We will have to come back because I have already pointed out at least three amendments that will be necessary in satisfaction of recommendations of the FATF. So we will have to come back. We could not have dealt with these now because this was not an expected comeback. This Government was sleeping, dancing, playing, eating, drinking, having a wonderful time for the last three months—in fact, for the last two years—in a stupor apparently, in a daze, glasses in hand chipping, handing out glasses—[*Interruption*]

**Sen. George:** You will make the *Express* tomorrow.

**Sen. F. Hinds:**—teacups with faces on it—[*Interruption*]

**Sen. George:** That is what you are asking for.

**Sen. F. Hinds:**—and as we celebrate Independence, putting the face of the Prime Minister on the banners across the country as though it is about her. This is why some citizens are describing that kind of conduct as being shameless. I do not know who the journalist was referring to, but he spoke of the high priestess of shamelessness and the prince of perfidy.

**Sen. George:** “Yeh man, you try.”

**Sen. F. Hinds:** So, Mr. President, this Government is sleeping, happy-go-lucky, having a ball while citizens are suffering on the western peninsula and otherwise. Crime is raging and all they are doing is spending money, giving out money, having a ball. The nation is tired of it and tired of you. I am tired of it and tired of you, [*Senator hits his chest*] and I was in no mood for dancing last week—notwithstanding.

Mr. President, I heard some of the debate in the other place and it appeared as though there was some misconception that all Financial Intelligence Units belong to the Egmont. I would say “Egg-mont” in typical “Trini” style, but I am told by those who are more skilled in linguistics than I am that it is to be pronounced “Ear-mont”. I understand that there is mistaken impression that once you are a Financial Intelligence Unit—no, that is not the case. Not all Financial Intelligence Units belong to the Egmont Group and Trinidad and Tobago does not, because it does not satisfy the higher standards of the Egmont Group within the international community, and that is why partly we are here today hoping to reach those standards.

Clause 3 is amended as the Attorney General pointed out, where it amends section 2 and broadens the concept of law enforcement authority to include the comptroller of customs, the Chief Immigration Officer, the Board of Inland Revenue and any other agencies with coercive powers. This is important in dealing with money laundering, especially the comptroller of customs.

You will remember, Mr. President, that sometime in the not too distant past, a film was recorded in a building two minutes' walk away from here in the Hyatt, and a certain Member of Parliament and Minister of Government was featured in the film. It is now beyond question that he was engaged in handing out moneys at the Hyatt. The reports are that it consisted of envelopes with US \$40,000 at a time, handed out to 25 CFU delegates—US \$1 million. I have not heard a word from the Financial Intelligence Unit on that to this day. Not a word! I want to know if they are investigating this matter.

We want to know how that US \$1 million came into Trinidad and Tobago. I am talking about the expansion of the definition to the comptroller of customs, because when the report by the Police Service Commission on the then Commissioner Dwayne Gibbs as to whether he was investigating this matter came up, the Police Service Commission called him in and asked him, at the prompting of the Leader of the Opposition, whether he was properly investigating this matter.

A report came out in the newspaper and the very Minister, their colleague in Government, the Minister of National Security, jumped out and said he was vindicated, and the Director of Public Prosecutions had to make an unusual intervention and tell him, his Government and the country, that there was no such vindication. In fact, the Director of Public Prosecutions directed the police to go to the comptroller of customs and look at the Customs Act [*Desk thumping*] to see how the money came in here and where it came from, but not a word from the Government, not a word, not from Minister George, not from the Attorney General—none!—and none from the FIU.

So we want to know whether this is one of the matters that is being investigated. Very important, and I am happy—and that can be recorded as a suspicious transaction. Yes! Right! Another report from an arbitration body in sport reported that the said Minister received US \$250,000 from a certain source—

**Mr. President:** Senator—

**Sen. F. Hinds:** Yes.

**Mr. President:**—I understand the first point. You are now going beyond the pale of the question.

**Sen. F. Hinds:** I am obliged. I was just about to show you within the pale the importance of the other point if would you permit me, Mr. President.

It may very well be a suspicious transaction. That is the job of the FIU, to investigate suspicious activities and suspicious transactions, and until and unless they can demonstrate to the citizens of this country that they are dealing with

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those matters—Mr. President, I had reason last week to write a letter to the Commissioner of Police in Trinidad and Tobago, asking him whether he continues an investigation into those suspicious transactions.

**3.30 p.m.**

I do not know if he will report it to the FIU. I hope he does, but, silence from the Prime Minister. As a matter of fact, the Minister is rewarded with Acting Prime Minister whenever she departs and I understand it is causing consternation by some decent members of the Cabinet—split in the Cabinet. It is causing trouble.

I will tell you one thing—I hear Minister George talking about split in the PNM—such a Minister would never have been appointed to a PNM Cabinet. I could put my neck on a block for that. [*Desk thumping*] I know, as a PNM candidate in many elections, if I, Mr. President—and this is a serious point for you, Mr. President, who sit in chairmanship in this Senate—were accused of stealing this cheap pen and it came to the attention of a PNM screening committee, I would never be a PNM candidate. But that Government seems to attract people who—

**Sen. George:** Go ahead, man! “Doh” hold back!

**Sen. F. Hinds:** I have to be careful what I say in *Hansard*; but like flies to jam, that Government attracts persons who cannot pass the simple ballpoint pen test. [*Interruption*]

You can say what you wish, you know. This is a serious situation. Trinidad and Tobago, at year 50, is in trouble. We are in trouble and you are the biggest source of our trouble and I will never rest until we see the back of you. You are destroying the institutions. You have no regard for morality. You have no regard for principle.

**Sen. George:** Calder Hart.

**Sen. F. Hinds:** And I did not say so.

Mr. President, the Minister is taunting me. He thinks that that is my opinion. Mr. President, let me read for you.

**Mr. President:** Senator, it really has nothing to do with the debate. I have allowed you a certain amount of latitude, but the debate before us—I should read the question again. [*Laughter*] It is an Act to amend the Financial Intelligence Act of Trinidad and Tobago and the Anti-Terrorism Act that is being read a second time. That is the question before us.

**Sen. F. Hinds:** I am obliged, Mr. President. I was only speaking to the consciences of intelligent people about financial matters in Trinidad and Tobago.

From the existing 2009 legislation, the Government is now deleting clause 8(4) and they are replacing it with a provision that lends itself to reciprocity with the Egmont and other FIUs.

**Hon. Senator:** The new paradigm.

**Sen. F. Hinds:** “Yeah”. Mr. President.

**Sen. George:** “Ketch yourself! Ketch yourself!”

**Sen. F. Hinds:** You “doh” worry. You “doh” worry. In fairness to Trinidad and Tobago, not to the Government, the report to which I made reference a while ago highlighted that we had made some progress—and I did indicate that, although we had dropped off again at the hands of this Government. At page 4 of the report to which I referred, under the rubric “Summary of progress made by Trinidad and Tobago”, it said—just let me take two elements of it:

“10.Shortly after the mutual evaluation visit to Trinidad and Tobago in June 2005, the Anti-Terrorism Act, 2005...was passed... In an effort to address some of the major recommended actions made by the examiners, the authorities in Trinidad and Tobago enacted on October...2009 the Proceeds of Crime...Act...and the Financial Obligations...”

So we had been doing reasonably well. We were making some progress until, of course, as I said—that was 2005—the trouble. I saw the Attorney General try to be balanced and he did not go on the blame game thing, so I do not want to do myself.

However, let me look at two provisions in this Bill. First of all, I know there were some amendments in the other place, but in the Explanatory Note to the provisions that are before us today, I see, at clause 3(b), in the last line, it should be “Proceeds” of Crime Act and it says “Proceed” of Crime Act.

When I saw that, one might be inclined to say that is a simple typographical error, but with this Government it may not be so. I want the citizens of this country and the Minister of Planning and Sustainable Development in particular to remember that between 1995 and 2001, when we had the airport scandal at the hands of your UNC Government, there was an allegation—and it was established in the courts around the world; some people went to jail for it—that there was bid-rigging in respect of the airport contracts; two contracts, package one and package two.

When it was alleged by the Opposition in Trinidad and Tobago that the law, NIPDEC tender rules, required more than one bid and it should be bids, and they only had one bid and therefore it was demonstrated logically that they were in breach of the law and that the contract was illegal—one of the reasons why it was illegal—they had NIPDEC amend their own tender rules to make what was plural into what was singular. They did that after the allegation in order to satisfy the law and leave the bid-rigged contract in place. That Government did that.

So when I saw “proceed” of crime rather than “proceeds” of crime, I remembered that and I only wanted to remind. It may be a typographical error, but with your history I have to watch harder because you all are well known for your financial—*[Interruption]* No, boy, I cannot say that. You all are well known for your SARs.

Mr. President, I want to draw the Attorney General’s attention to an amendment to section 16. They are repealing section 16 of the existing Act and replacing it with a new provision. Hear what the new provision says:

“The FIU may, in the performance of its functions, co-operate and liaise with any person who,”—underline those words—“in the opinion of the Director is able to assist in the provision of information relevant to an analysis of a suspicious transaction or suspicious activity.”

Subclause (2) says:

“Notwithstanding subsection (1), the FIU may, in the performance of its functions, request information from—

- (a) the Central Bank;
- (b) a public authority...
- (c) an authority specified...under a treaty for co-operation...”

Subclause (3) says:

“Any information requested under subsection (2) shall be provided within a reasonable time.”

And the Attorney General explained that.

But subclause (4) goes on to say, Mr. President, take careful note:

“Where a person fails to provide the requested information or fails to provide it in a reasonable time, under subsection (2) or (3), the Director may apply to a Judge for an order to direct that person to comply with the request made under subsection (2).”



Now, my reading of this—and I may be wrong—tells me that they are able to go, the Director of the FIU, to court for an order to prise out of the Central Bank or a public authority, or an authority specified by or under a treaty for cooperation on any matter provided for in this Act to which Trinidad and Tobago is a party—but, based on the wording of this, they will not be able to go to court to get an order against a natural person.

That is my concern. The way it is worded here seems to exclude the power of the FIU Director to go to court for an order against a natural person as opposed to the Central Bank or a public authority. I would like an address on that. If that is not correct and my interpretation is wrong, I would stand corrected, but short of that—

The Attorney General told us about interlocking directorships and that the amendment before us today was designed in part to deal with interlocking directorships. We have a problem. That Attorney General cancelled a contract for 40 million that was being awarded by NP last year or 2010. When was the NP contract scandal? Two thousand and ten? Early o'clock in this Government's life.

The Attorney General entered the arena; cancelled the contract because he told us in Trinidad and Tobago that something was improper and wrong about it. He never told us what was improper, who conducted the impropriety, who was to benefit from it; nothing else, and the matter just dropped out of the sky.

We had known that the contract was to be awarded to some Gopaul group. We had also known, and it was admitted to a question I filed—

**Mr. President:** Senator, I do not see the relevance to the Bill before us.

**Sen. F. Hinds:** I was just demonstrating.

**Mr. President:** If we could proceed to demonstrating it—You seem to be expounding along different lines.

**Sen. F. Hinds:** I was just giving the factual matrix. I had to do that as a backdrop. I told you I am concerned about what is recorded in *Hansard*. This Government likes to take me to the Privileges Committee, so I have to be careful. So I was making the factual backdrop clear to you, Mr. President, and I was saying that we also knew that the Gopaul contractor was a friend of the Prime Minister and in whose house she stayed.

**Mr. President:** I will not allow you to introduce that line. Will you have a seat? You have given us sufficient to the factual matrix that we can draw any connection between the present Bill and what you had to say. I would not allow you to go there.

**Sen. F. Hinds:** I thank you. I was just making the point as I go forward that the Attorney General—

**Mr. President:** Senator, we are finished with that. Make your point in relation to the Bill.

**Sen. F. Hinds:** I am finished with it. I am finished.

**Mr. President:** Thank you.

**Sen. F. Hinds:** I was making the point, Mr. President, that the Attorney General told us that this Bill was designed to deal with interlocking directorships and I hope in so doing the FIU would pay attention to those directors of that company for the contract he had to stop and other companies that are now operating and doing business with the same Government. That is what I was saying.

The Attorney General is who told us about interlocking directorships. They even have interlocking telephones. “One Minister have three. The Prime Minister paying for all.”

**Mr. President:** Hon. Senators, the speaking time of Sen. Hinds has expired.

*Motion made:* That the hon. Senator’s speaking time be extended by 15 minutes. [Sen. P. Beckles]

*Question put and agreed to.*

**Sen. F. Hinds:** Mr. President, I want to thank my colleagues on this side. I heard the Government groaning “No”, but thanks to my colleagues on this side I still have a few more moments on my legs. I thank you, Mr. President, as well.

I want to say, in Trinidad and Tobago’s honour, that the only recommendation for which we have been deemed by FATF to be largely compliant, LC as they call it, is the recommendation as it deals with international cooperation and mutual assistance dealing with extradition and that was achieved under the last Government. That is not a boast, it is just a fact. [*Desk thumping*] It was done under the stewardship of a fellow who, for them, is now persona non grata, called Mr. David West, who I said in this Parliament is a distinguished son of the soil who served us well in that capacity. [*Desk thumping*]

Mr. President, FATF has expressed a number of serious concerns insofar as the Securities Bill is concerned that has not yet come to the Senate; the credit unions Bill. These are institutions that are also expected, based on FATF recommendations, to be a part of the whole compliance mechanism and to provide supervision for compliance under the AML/CFT.

Implementation—as I said earlier, issues around the confiscation and forfeiture regime. The outstanding requirement is the exclusion of the one-off transactions from the suspicious transactions reporting requirement. I am not sure whether the Attorney General told us or has done anything in these measures to deal with this concern by FATF, which has to do with one-off transactions. You see the one-off transactions could be serious. That could be, as I told you earlier, the \$250,000 that came from Qatar for someone in Trinidad and Tobago. It could be the million dollars of which we spoke earlier, which was handed out in \$40,000 parcels to CFU delegates next door.

FATF is recommending that we pay attention, in the regime, to the one-off transactions as well and we have heard nothing about that in these amendments and, therefore, I know we have to come back because those were one-off transactions.

FATF is also concerned that there were only eight on-site examinations of listed businesses registered. We all, as lawyers—companies—had to register with the FIU last year or year before. We all had to file registration and up to that time there were 1,465 registrations—you will be familiar, Mr. President—and so far the FIU has only conducted eight on-site examinations of those listed businesses registered. FATF expressed the concern that that was very unwholesome and ineffective. They expect to see more.

Another concern is that there is no legislation to prevent criminals and their associates from gaining control or significant ownership of financial institutions in the securities sector and the credit unions. FATF has expressed clearly that we need to see some provisions in order to avoid persons who are engaged in unsavory pursuits from gaining control in those sectors. It now exists in respect of insurance companies, but not in respect of the securities sector and the credit union movement. They also recommend that the AML/CFT standards apply to these two institutions.

**3.45 p.m.**

Mr. President, FATF has expressed a number of other concerns. Let me quote paragraph 87 of the report that I had been reading. It says:

“The main recommended actions under this Recommendation”—that is recommendation 30—“address deficiencies in resources and training in the FIU, the Director of Public Prosecutions...the Magistracy, Customs Division, the Police, the Strategic Services Agency”—and the Securities and Exchange Commission—“The authorities advised in a previous follow-up report that the

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DPP was contemplating establishing a specialist Proceeds of Crime/Money Laundering Unit”—within the office of the DPP. “A plan had been submitted to the Attorney General and was receiving favourable consideration. No additional information on this measure has been submitted for the last two follow-up reports or for the present report.”

So the bottom line is that the DPP’s office is terribly understaffed, terribly under-resourced and has to have an additional unit to deal with implementing these things. A report was sent, no doubt, by the DPP to the Attorney General—that is to say the Government—and so far nothing has been done. The DPP’s office is still understaffed and still under-resourced and, therefore, cannot perform the functions that it is expected.

So, again, when we come here and we make vague platitudes and boast about how we are passing legislation, if we do not take action to finance and implement it, it comes to naught, and this is the point I am making. This Government just cannot be trusted. It makes lofty promises. [*Desk thumping*] It says all kinds of things and the bottom line is rotten to the core. That is the bottom line. So, Mr. President, I can only call on the Government to pay attention to that and try to meet the standards expected in spirit and, if possible, in truth. That is all I am saying.

And, yet, while we would not staff the DPP’s office who recommended that they go and look in the Customs and Excise Act and investigate the matters that I referred to earlier, this Government, according to the Attorney General’s Department, over the last two years—\$200 million to investigate corruption; money laundering and all manners of things and so far, based on the reports from the Government, all the Attorney General has been able to accomplish with the TT \$200 million was to issue two pre-action protocol letters to a professor at the university over some “pan” and someone to the man in Miami. [*Desk thumping*] Two! So, in effect, if I may extrapolate, it is \$100 million per pre-action protocol to date—\$100 million!

So, Mr. President, this Government remains an embarrassment to the people of Trinidad and Tobago. Time is running on me. There is so much—as a matter of fact, I think it is proper to say, and I would like to record in *Hansard*, it is my opinion that this whole Government is a suspicious transaction—this whole Government. [*Desk thumping*] I would like to record that in *Hansard*. They are not serious about dealing with crime, drugs and money laundering. They are not serious at all.

If the Attorney General—I admired this presentation today, you know. It is the second time he started to sound like an Attorney General, and I wish him well. He is now Senior Counsel. He put his hand in the cookie jar, and he took it, [*Desk thumping*] but it is all right. I hope that he would continue in that way. Today your presentation was a bit of a credit to the Parliament and the people of Trinidad and Tobago. I have to say that.

**Sen. Ramlogan SC:** Yours is not!

**Sen. F. Hinds:** I have to say that.

**Sen. Ramlogan SC:** Yours is not! [*Crosstalk*]

**Sen. F. Hinds:** Mr. President, if he wants to satisfy my standard—not FATF, they have failed—as an attorney-at-law, his brother in the law and a fellow Senator in this Senate, I would like to see him pursue these matters: the Hyatt matters, the bribery matters and others with the same vigour and verve that he goes after the Leader of the Opposition and other people. There is no word from the Attorney General; no fighting spirit when it comes to issues about their Government. A container found with marijuana, police investigating chairman of the board—nothing; not a word from the Attorney General. I told you what he did with the NP contract—not a word.

**Sen. George:** Mr. President, Standing Order 35(1). [*Crosstalk*]

**Mr. President:** Senator—

**Sen. F. Hinds:** Sir.

**Mr. President:**—I am hoping you would not stray into those areas which were outside of the remit of this particular question for debate.

**Sen. F. Hinds:** I never will, Mr. President. You know I am not like that. I confine myself to the matters before us. We are dealing with money laundering, we are dealing with crime. I told you earlier that there is a deficiency in the legislation where to prove money laundering you have to demonstrate a substantive offence known to the criminal law of Trinidad and Tobago. Money laundering is a predicate offence and, therefore, it behoves me to speak about crime, and, by extension, this Government and, therefore, everything that the Government is supposed to have done to protect this country from crime and criminals is very germane to a debate on money laundering; very, very, germane.

**Sen. Ramlogan SC:** That is not true.

**Sen. F. Hinds:** Yes, yes. [*Crosstalk*] Stretch it? I want, now that the Attorney General is back—you were absent when I asked—

**Sen. Ramlogan SC:** No, no, I was right here behind—

**Sen. F. Hinds:** You were right there listening. You see, he was right there behind. His Minister of National Security admitted to the country that he was a stalker. He spent a whole night watching the Leader of the Opposition office. [*Desk thumping*] A criminal offence! I want the Attorney General to investigate that.

So, Mr. President, as I wind to a conclusion, I want to conclude by saying— [*Crosstalk*—you can say what you wish, I do not wish to be disturbed—altogether the Government of Trinidad and Tobago met the entire regime of the FIU and its functions on the up, that is to say, we may have taken nine years as he put it as a nation. We passed DNA legislation, we had to come to amend it. In fact, they repealed the entire Act and replaced it with a new one. That was correct. So we are doing things but, it is a fact, hon. AG, that the reports coming out of FATF showed that Trinidad and Tobago has slowed in its implementation processes.

We are not doing as well as we could, and I think it is because of a lack of commitment on the part of your Government, and I am now questioning the basis for that lack of commitment; whether it is that you are overburdened; whether you all have become tired; whether the pressures of office are getting to you or whether it is a deliberate attempt to look the other way while those who you have in your bosoms gain your protection, but those are questions for you to answer.

Mr. President, with those few words I, like Michael Harris, draw my line in the sand. I would like if the noble citizens of Trinidad and Tobago would be on my side of the line.

**Sen. George:** They would not be. That is a dangerous side to be on.

**Sen. F. Hinds:** But it is quite clear from Michael Harris' article, in which he used concepts of shamelessness and perfidy, that this Government is on the other side of the line, hopelessly so, and it will continue to drift and drift and earn the angst and anger of the people of Trinidad and Tobago who were promised far more much to our chagrin and disappointment.

It is sad that while we had to come today on August 21 to deal with a so-called emergency created by the Government to satisfy the examiners of FATF who are expected to be here at month's end—so they took themselves out of vacation to come here to advance measures in satisfaction of those standards—we will have to come back, and we will take it from there. Mr. President, with those few words, I wish to thank you.

**Sen. Subhas Ramkhelawan:** Mr. President, I am pleased to be given the opportunity to make a contribution on this, an Act to amend the Financial Intelligence Unit of Trinidad and Tobago Act, 2009 and the Anti-Terrorism Act, Chap. 12:07.

Let me say at the outset that any time I am called to serve and to do my duty, vacation or not, I am pleased to do so in the interest of this our beloved country of Trinidad and Tobago. [*Desk thumping*] There can be no vacation that is so important or more important than necessary amendments that must be made on a timely basis to address the burning issues of this our country. [*Desk thumping*]

**Sen. Hinds:** That is why we are all here.

**Sen. S. Ramkhelawan:** So, Mr. President, I believe during the time that I have been honoured to serve in this Senate, that the Financial Intelligence Unit is probably the most amended of all the Bills that have come to this Senate, maybe four times, maybe three times but many, many, times. Really, it is a testimony to the fact that each administration would have had to chase to become adherent to or compliant with the requirements of FATF and CFATF which is the supplementary arm of FATF.

It is to the credit of both these administrations, the PNM and the PP Government, that they have moved as swiftly as they can to meet the requirements of this particular institution, because it is very important that these requirements be met. Why is it very important? Because non-adherence could effectively shut down the financial system in Trinidad and Tobago. It can shut down the financial system because counterparty institutions, financial institutions, all across the world may be compelled not to do business with institutions in Trinidad and Tobago and, therefore, vacation or not, we need to come out to ensure that that never happens in this country. [*Desk thumping*]

By extension, if our financial system is shut down, it is the lifeblood of activity in this country, business activity, and if that is shut down, businessmen cannot operate; goods cannot be bought or even sold to the external community and, therefore, it is very important and I stress that importance. But the tripod which the Attorney General alluded to of three pieces of sometimes incoherent legislation that we are working towards today to make coherent has come about since the year 2005—the Anti-Terrorism legislation; the Proceeds of Crime Act—POCA as it is known—and then the implementation arm, if you will, for money laundering and counter-financing terrorism, they rest in the implementation arm of the Financial Intelligence Unit.

It is true that this Financial Intelligence Unit, at the rate of swiftness of both administrations has been slow in coming, and has been in slow in getting to a level of action and activity to properly secure the nation from anti-money laundering or even, probably lesser so in our own situation, counter-financing terrorism. It is here with us today, and, after the various amendments that have been made, I think we are at a place, from what I am hearing from the Attorney General, that action is now being taken. The wheels are starting to grind, not to a halt, but to some movement. I think it is commendable that we are now in a position where, hopefully, actions against money laundering and actions against counter-financing terrorism can commence.

**4.00 p.m.**

I say commence because the hon. Attorney General spoke to some 300-plus suspicious activity reports that were reported by, in the main, the banking sector and regulated financial institutions; but beyond that action, or should I say reports, from the FIU, according to the hon. Attorney General, number 14, which have gone to the law enforcement agencies. Beyond that, I am not aware of any conviction to date arising from money laundering or counter-financing terrorism, and I stand to be corrected by the Attorney General if that is so.

What does that mean for us? It means either that we are such a squeaky clean nation that no money laundering activities have or are taking place in this country, or that we are so weak in enforcement that we are unable to find, apprehend and convict money launderers. I would like to believe the former, but I am sure that I would be disabused and learn to accept that it is the latter. Therefore the key to what we are doing in terms of legislation, to unlocking the legislation if you will, is to ensure enforcement.

I want, with your permission, Mr. President, to speak to that matter, because it is not a digression. If we do not put in place the infrastructure to address this burning matter of white-collar crime, we are going to find ourselves in a greater and greater and more difficult situation.

The hon. Attorney General alluded to this in his presentation. His allusion—I did not say “illusion”—has been premised on a point of view that the evaluation of white-collar crime, in this case money laundering and financing counterterrorism, must be based in an institution or should be based in an institution outside of the police service. I do not concur with his view. I believe that we have to strengthen the police service and put in place within that institution the capability to understand and dissect white-collar crime if we are to make a dent in this area of money laundering and counter financing terrorism.



There is no substitute, because as the Attorney General rightly said the Financial Intelligence Unit is a hybrid. It can apply certain administrative sanctions and penalties and it has been a limited scope for investigation, but the question of law enforcement still remains primarily outside of the remit of the Financial Intelligence Unit. I do not mean that as a complaint; I mean that as a reminder to the hon. Attorney General and to the Government at large that much work needs to be done with regard to this area of white-collar crime. There is no capacity that I know of within the police service. There is absolutely no capacity to deal with this complex series of transactions.

In other cases you see a man grab somebody else's purse and run with it. The police are well geared to deal with that. There are some of them who are quite fit, and some who are not, to chase that man down the road. But white-collar crime, what is that? It will fall below the radar screen and never hit the light of day within the current context of our police service.

I make no apologies for saying that. I call upon the Government to ensure that mechanisms are put in place, whether it be in the form of training to identify suspicious white-collar transactions, whether it is necessary, because you are going to have to translate the reports that come from the FIU, and there must be that understanding. So I make that call, I make that appeal to the Government with regard to this matter of white-collar crime. The fact is that nobody has been apprehended, or should I say no one has been convicted, of any crime under these pieces of legislation, some of which have been in place since 2005.

I want to address several points raised by Sen. Hinds, whose contribution I thought was very fruitful today, as indeed they are on many other days, but it was very focused today, more so than they are on other days. [*Laughter*] He made the point that, indeed, with regard to the Securities Bill, the one that is pending and the one that is right now, that there are not—if I understand the hon. Senator correctly—sufficient provisions to deal with criminals or such persons who can take over certain institutions, particularly regulated institutions, and I believe he spoke to securities companies as well as credit unions.

But let me hasten to add that there are what you call fit and proper rules in the Financial Institutions Act, embedded in the Securities Bill, which will ensure that persons who are not fit and proper cannot take control of these institutions. So if it is a concern by the FATF or otherwise, I want us to be very clear that that matter is being in the legislation or is to be dealt with by the upcoming legislation which is the Securities Bill. So I want him to have no fear, as far as that is concerned, with regard to the fit and proper rules to which he alluded in the coming insurance legislation. It is also there in the securities legislation that is coming.

I want to turn to the question that individuals and persons who do business with financial institutions often raise. Why do we have to fill out so many more forms than we have ever had to fill out before? It annoys citizens that there is so much paper that needs to be completed in order to open an account either with a bank or with a securities firm. The legislation that we are debating today amply recognizes or supports why there is so much need for paper.

When you go into an institution as a customer, Mr. President, you have to complete a form from these institutions that are abiding by the law. That is what you call a know-your-client form. It asks you everything about your financial situation, where you got the cash from, what is your source of income, what is your source of funds and where the money is being transferred from, and it is necessary. I say to our citizens, if you want to be a part of the process of addressing money laundering, it is a necessary evil that you will have to go through, by filling out even more and more and more forms.

But citizens should know that there are other aspects related to money laundering and countering and financing terrorism, and that is, when you do fill out these forms, most institutions that are abiding by the law need then to go to a suspicious transaction website to see whether your name is on that site. I know many people have found themselves embarrassed, because if your name is a common name, you might see about 10 such names on the listing, and then you have to go and check other things, like birth certificates, passport numbers and direct forms of identifications.

So when citizens ask, "Why do I have to give two and three forms of identification" before you open an account, that is a financial institution opening an account, it is because of this; because you want to be safeguarded as a citizen that if your name is a very common name and easily replicated on any such international report, that you can be differentiated as the person who does not fall or ought not to fall on that list. Your name is the same, your birthdate might be different, your passport number might be different, the name of your wife might be different or the name of your child might be different. All these things are distinguishing features and therefore I think it is important to convey this to our citizenry to ensure that they understand the need to deal with money laundering.

There is no doubt in my mind that there is an extensive amount of money laundering that is taking place in this country; there is absolutely no doubt in my mind. When you see an economy going down and property prices staying up, it is an indicator. When you see the extent of cash in the financial system, when you see certain things, when activity is falling away but wealth is growing, there is no

doubt in my mind that there is such, and there is no doubt in my mind that we still do not have the mechanisms of enforcement to catch such criminals. That is why I have made the appeal to the hon. Attorney General.

Even beyond that, the report that we have had from the Financial Intelligence Unit—I want to commend the unit for the extensive work it has done in preparing a very comprehensive report. I want to commend the unit and the Minister responsible for ensuring that the training component is taking place within the unit, not only to participants but to the public as a whole. I know that that accolade would not necessarily go to the current sitting Minister of Finance, but rather to the former Minister of Finance who was sitting in the—shall I say hot seat—at the time this report was prepared.

Permit me to digress a bit, Mr. President, to congratulate now the new sitting Minister of Finance. We have not had the opportunity to so do, because this is only the second sitting that we have had since the Minister of Finance has taken up that position. But even more so, I want to congratulate the outgoing Minister of Finance for the work he would have done, by his own testimony, in stabilizing the economy. [*Desk thumping*] I say “by his own testimony” so that I do not cast any judgment on his stabilization plan. [*Desk thumping*] Let me say that that Minister of Finance has served us well and served us honourably with integrity for an extended period of time. I congratulate him on his work and I wish him well in his new Ministry. [*Desk thumping*]

**4.15 p.m.**

**Sen. Hinds:** “Yeah man, tell me let me take he job.”

**Sen. S. Ramkhelawan:** It would be remiss of me if I did not take also a moment or two to reflect on the contribution of my colleague and friend Sen. Basharat Ali.

He has served in this Senate with distinction ever since 2003. He has remained calm in coordinating a group of Senators who, shall I say, are disparate most times in their outlook because each is an independent entity on his or her own, unlike the Opposition Benches and unlike the Government Benches which have caucuses and whips. As a coordinator, I suspect that his job is at least four or five times more difficult than any of the other Benches.

So, to my friend as he goes into what I would call voluntary retirement, I wish him good health and I wish him a wonderful and happy retirement. [*Desk thumping*] If I may, on behalf of the Independent Benches, we would hope that

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you would allow us to gain from your wise counsel and to tap into your wise counsel as required with time, and I know that we will have to tap into that wise counsel that is Sen. Basharat Ali. [*Desk thumping*]

Let me close by saying I see nothing in the amendments that gives me any great cause for concern. [*Desk thumping*] I see in the amended Bill some deep insight and foresight which has come from the advice received from the Independent Benches as well as the Opposition Benches, and I think that what we have in the amendments is certainly an improvement of what we have had in the previous Bills that have been enacted. So I do not have a difficulty, Mr. President, in supporting the amendments that come with this particular Bill. I thank you.

#### PROCEDURAL MOTION

**Mr. President:** Before calling on the next speaker, I wish to indicate to the Senate that my proposal is that we will sit until 5.00 p.m., when we will take the tea break, rather than 4.30 p.m.

#### MISCELLANEOUS PROVISIONS (FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO AND ANTI-TERRORISM) BILL, 2012

**The Minister of Finance and the Economy (Sen. The Hon. Larry Howai):** Thank you—[*Interruption*]

**Hon. Senator:** Now we are going to have a good contribution, a real good contribution.

**Sen. The Hon. L. Howai:** Mr. President, I rise to make my first contribution before this honourable Senate on the Miscellaneous Provisions (Financial Intelligence Unit of Trinidad and Tobago and the Anti-Terrorism) Bill, 2012.

I must say that I am indeed honoured to be part of this honourable Senate, and certainly to partake in the very serious work and the very important work of this Senate in the legislative agenda that it has undertaken and would continue to undertake on behalf of Trinidad and Tobago.

We are aware of the importance of these Bills, so I do not need to go further into that. As the Attorney General pointed out, this Bill seeks to amend two pieces of legislation which are critical to our anti-money laundering and counter-financing of terrorism efforts. But is it more than this as Sen. Ramkhelawan pointed out, to the extent that these matters are not efficiently and effectively addressed, the operations of our financial system, and indeed of the entire economy, could be compromised.

Mr. President, the FIU Act was enacted on October 09, 2009, the offence of financing of terrorism was created by the amendment to the Anti-Terrorism Act, 2010 which was assented to on January 21, 2010. Therefore, when FIU Act became law there was no offence of financing of terrorism. The FIU Act which established the FIU, empowered the FIU to exercise its functions over money laundering, not the financing of terrorism. So this Bill which is before this honourable Senate seeks to ensure that the FIU can exercise similar powers in relation to the offence of financing of terrorism.

Mr. President, this Bill which is before this honourable Senate addresses concerns expressed by Members of the Independent and Opposition Benches during the debates on the Financial Intelligence Unit of Trinidad and Tobago, and I want to acknowledge the support which Members of the opposite side in the other place gave to this Bill, and certainly the support which Sen. Ramkhelawan has given to this particular Bill at this time.

As the hon. Senate has pointed out, becoming a member of the Egmont Group, which the passage of this legislation will facilitate, will certainly benefit Trinidad and Tobago. We have reached the seventh stage of an eight-stage membership process. The Egmont Group has informed us that they are not satisfied that provisions are in place for fully empowering the FIU to exercise appropriate FIU functions in the area of terrorist financing, and, having this Bill in place would rectify this particular matter.

Mr. President, there has been a number of areas which the FATF has recognized as part of the weaknesses and deficiencies which remained outstanding, and you are fully aware, and this honourable Senate is fully aware, that steps have been taken to address these matters in this Bill.

What I would like to do, Mr. President, is address the issue which Sen. Ramkhelawan has identified, in fact, that there have not really been any convictions arising out of the legislation to date, and that is a serious source of concern for him as well as, I am sure, for all the Members of this honourable Senate.

The Financial Intelligence Unit has started to put in place measures which we are hopeful, and which we expect over time, would address this deficiency, would strengthen its capabilities and its powers, and will ensure that this deficiency is rectified going forward.

The FIU has already developed a standard operating procedure with the central authority unit of the Minister of Attorney General. The standard operating

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procedure details each party's responsibility, in a step by step process, which would immediately and without delay freeze terrorist funds.

The FIU has since taken steps to publish a guidance note detailing the procedures for reporting terrorist funds to assist reporting entities in understanding their obligations to report immediately and without delay to the FIU, when it knows or has reasonable grounds to believe that it has funds which belong to a terrorist individual or entity. The FIU has published and circulated, via the FIU website, the UN sanction list, and fourthly, business and financial institutions have been made aware of all these initiatives.

Furthermore, in addressing the weaknesses implicit in Sen. Ramkhelawan's comment, the FIU has put certain operational effectiveness programmes in place to address certain critical areas. Firstly, to strengthen its core functions in identifying, collecting and acting upon suspicious transactions reports, and secondly, in providing assistance and advice to financial institutions and listed businesses.

The FIU has initiated several measures along these lines to ensure that businesses and the professionals it supervises understand the mandatory nature of their obligations. The FIU has conducted several awareness and training programmes and has sought to educate businesses on their AML/CFT legal obligations.

The FIU has hosted and participated in 21 training and outreach workshops and seminars during this year. This includes also a two-day workshop for businesses in Tobago which will become an annual event.

Mr. President, in its role to educate and inform the businesses and financial institutions of the mandatory nature of their AML/CFT responsibilities, the FIU has also published several guidelines, advisories and notices in the daily newspapers, in the *Gazette*, through electronic means and by publication on its website.

Publications include guidelines to motor vehicle dealers, guidelines to private members' clubs, guidelines to real estate agents, guidelines on structuring an AML/CFT compliance programme, customer due diligence guide, and suspicious transaction reporting guidelines. All of these have been circulated with a view to ensuring that we have a very, very robust system for identifying, detecting and acting upon suspicious transactions.

The FIU has also issued two advisories on scams, advance fee fraud, and email hijacking. Notices of FATF's high-risk and non-cooperative jurisdictions—jurisdictions which the FATF has identified as posing substantial money laundering and terrorist financing risks—have been published both in the daily newspapers and on the FIU's website.

A third area of operational effectiveness that the FIU has put in place relates to its supervisory powers. The FIU has been performing supervisory functions as evidenced by the fact that it is examining compliance programmes and conducting on-site inspections to ensure that the sectors it supervises complies with all regulations.

As the Attorney General has pointed out, but again it bears repeating, so far 11 on-site examinations of businesses in various sectors have been conducted. These are attorneys (3), real estate agents (1), motor vehicles (3), private members' clubs (2), jewellers (1), and cooperative societies (1). This particular range of investigations and supervisory activities will be continued to be ramped up in the coming months. It is to be noted that the FIU is ahead of its regional counterparts in supervising the designated non-financial businesses and professionals which are called listed businesses under our laws.

There is a fourth area, Mr. President, an operational area which the FIU has strengthened over the past few months, and this relates to enforcement. We know, as Sen. Ramkhelawan pointed out, that many of these laws are enacted but at times not observed. Businesses which have complied with their AML/CFT obligations naturally want to know what is being done about those businesses which do not implement their own obligations.

The FIU outreach programme was aggressively driven from February 2011. Since it has been operating for over a year to ensure that listed businesses are fully aware of their legal obligations, the FIU is now turning its attention to the case of those businesses that fall below the level of compliance in reporting. The FIU has created an enforcement manual to promote consistent and effective application of the AML/CFT laws in the area of enforcement and imposition of administrative sanctions.

#### **4.30 p.m.**

A tiered approach is now adopted to enforcement. Delinquent entities are first given written warnings. If these measures are not successful, the process will be escalated into directives or application to the court if necessary. The FIU has taken enforcement action against a number of individuals and entities for not registering with the FIU and for not submitting compliance programmes.

Enforcement at the first level was taken by issuing warning letters to 210 individuals and businesses. This resulted in a positive response from 131 of these individuals and entities to fulfilling their legal obligations and the submission of compliance programmes to the FIU. The FIU continues to follow with the remaining outstanding individuals and businesses to ensure compliance.

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Finally, Mr. President, the additional area that needs to be focused on by the FIU, and which the Attorney General has taken much pains to address, is the area of recruitment. Without the right staffing within the unit, it will not be able to carry out its duties. A number of initiatives have been taken, staff have been brought on board as the Attorney General had indicated, and we know that the FIU is at a level where it will be able to certainly carry out its duties and responsibilities in a more effective manner.

The scope of laundered criminal proceeds is estimated in billions of dollars worldwide. If you look at our FIU's annual reports for the years 2010 and 2011, you will see that the total amount of money suspected to be involved in money laundering for both years combined is over TT \$700 million. As long as money laundering and the financing of terrorism are feasible to criminals, they will continue to play a significant role in perpetuating crimes. It is for this reason that we seek the cooperation of the Independent and the Opposition Senators in amending these Acts of Parliament.

Mr. President, we look forward to the support of both the Opposition and the Independent Benches in this matter, and I thank you for the opportunity to make this contribution to this honourable Senate. [*Desk thumping*]

**Sen. Terrence Deyalsingh:** Thank you, Mr. President, for allowing me the opportunity to speak, and I think the Muslim community would grant me the privilege to say Assalaamu Alaikum, as we have just come out of the— [*Interruption*—and also to wish the Muslim community Eid Mubarak, especially Sen. The Hon. Fazal Karim; my brother, Sen. Jamal Mohammed; Sen. Basharat Ali; and my brother in absentia, Sen. Faris Al-Rawi, and the flower in the bunch Sen. Sherrie Ali. [*Interruption*]

Mr. President, please also allow me to extend my congratulations to our entire olympic team that did us so proud in the recently concluded olympics. [*Desk thumping*] I think never before has so small a country reached so many finals. Our medal count might have been four, but the number of finals that we reached was truly mind-boggling, and also to wish the country a happy 50th Independence.

Mr. President, we are here today to pass some amendments to the Financial Intelligence Unit Act, and I want to start off by just speaking directly to a comment that the—and first of all, congratulations to Sen. The Hon. Larry Howai on his maiden speech. [*Desk thumping*] In his maiden speech, he spoke to the fact that our membership in the Egmont Group is currently at stage seven. I would like to quote from the *Hansard* of Sen. The Hon. Anand Ramlogan of April [*sic*] 08, 2011. A full 16 months ago, and I quote from page 13:



“Membership is an eight-stage process. We are at stage seven, so that we have the finish line in sight and we are running towards it...”

Sixteen months ago we were at stage seven. [*Desk thumping*] I do not hold this Minister of Finance responsible; he is new to the position, but somebody at the Ministry of Finance and at the directorship of the FIU has dropped the ball [*Desk thumping*] on our membership to the Egmont Group, because we are now at the same stage that the hon. Minister has alluded to that we were in April of 2011. [*Desk thumping*] Somebody has dropped the ball [*Interruption*] or dropped the baton as I am being reminded.

Mr. President, I want to refer briefly to the contribution by Sen. Subhas Ramkhelawan, and it is indeed an honour to come to this Parliament whenever we need to do so. However, coming to the Parliament on August 21 in a period when Parliament does not normally sit to pass a piece of legislation to comply with a requirement because we are being visited on August 26 and August 27 again speaks to dropping of the ball, because if the FIU and the Ministry of Finance were on the ball, these amendments could have been debated months ago. [*Desk thumping*] If these amendments are so minor as made out to be, why call us out now? We have no problem with coming out.

The hon. Minister of Finance, one of his first utterances was “a pleasure to speak on the legislative agenda”. If there was a legislative agenda, we would not be here now, [*Desk thumping*] and we have been calling for a legislative agenda since May 2010, and we have not seen a legislative agenda. [*Interruption*] And yes, if PNM never had one they promised to do better, Sen. Ali. If PNM never had one, they promised to do better! But in August when we moved to adjourn the sitting of the honourable Senate, the worldwide practice in the Commonwealth countries is that August is a sacrosanct month where not only parliamentarians go off on vacations, spend some time with their relatives, but also the employees of the Parliament; the Hansard reporters, the Clerks of the House. [*Desk thumping*]

If the FIU and Ministry of Finance did not drop the ball on these amendments, they would not have inconvenienced and call out the Parliament staff, [*Desk thumping*] and especially in the context of a Bill which requires a three-fifths majority. This is a serious piece of legislation that cannot be brought here by “voops, vaps and vaille que vaille” again. If you have no consideration for parliamentarians, at least consider the parliamentary staff who have planned to take their families on vacation. This could have been done in June and May.

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[SEN. DEYALSINGH]

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I ask you, Mr. President, how many sittings did we miss or forego because of celebrations in Centre Pointe Mall or wherever? We missed about four sittings of this Senate due to celebrations.

**Sen. Hinds:** Oh yes, oh yes. [*Desk thumping*]

**Sen. T. Deyalsingh:** These amendments, if the FIU and the Ministry of Finance did not drop the ball, could have been done months ago. [*Interruption*]

Mr. President, these amendments have to deal with the FIU Act, 2009 and there are seven amendments, and the Anti-Terrorism Act, Chap. 12:07, nine amendments; so that we could fulfil our obligations to FATF as they visit us on August 26 and 27. I am sure that the Government knew of these dates long ago. FATF would not drop an inspection of you like how they dropped a public holiday with less than 12 hours' notice.

**Sen. Hinds:** "Oooh!" [*Desk thumping*]

**Sen. T. Deyalsingh:** Serious people do not operate like that. They just do not drop these things. They would have known. If they knew, why did they not bring it earlier? So that a Bill requiring a three-fifths majority, where we offend sections 4 and 5 of the Constitution, where we can seize people's property could get the type of mature, reflective deliberations that it deserves. [*Desk thumping*] This is not an ordinary, simple majority Bill—three-fifths majority—but, because we have a deadline, it speaks to the inability and the inability to manage their own affairs and the absence of a legislative agenda.

Mr. President, our duty to FATF and CFATF is to have this framework to deal with money laundering, white-collar crime and terrorist financing, and a lot will be said about white-collar crime. FATF was formed in 1989, and your first mandate, Mr. President—if you allow me to just read briefly—is to set standards for promoting effective implementation of legal, regulatory and operational measures to combat money laundering, terrorist financing, and I will come to that later, and financing and proliferation of other related threats to the integrity of the international financial system, and locally our two agencies charged with this responsibility would be the FIU and the Ministry of Finance.

So what is white-collar crime, Mr. President? It is a term, I think, first coined in 1939, and it refers to any sort of non-violent crime perpetrated by people in society, businessmen, who walk around with the air of societal acceptance, and worldwide there has always been a difficulty in prosecuting white-collar crime, especially when those crimes concern complex cases of fraud, which is what this

Bill speaks to. And the citizenry in all countries are always weary about the alacrity with which blue-collar criminals are held and imprisoned and the slothful response to white-collar crimes where white-collar criminals escape unscathed.

Many lawyers build their practices on getting off white-collar criminals. There is an American attorney, his name is Barry Pollack, and he was a very special attorney, in that, he was able to successfully get out one of only two people in that Enron scandal. Everybody else was jailed, but that particular white-collar crime, this lawyer was able to get him out.

Mr. President, I am just laying a framework to illustrate how difficult it is to prosecute white-collar crime, and how we are going to face the same difficulties—FIU or not, FATF or not. There was a case in Queensland, Australia, where a case was aborted after 20 months when it became clear to the judge that the jury just did not get it. The jury just did not understand the complexity of the fraud in front of them.

In England, the Guinness trials and the Blue Arrow trials are now legendary in the annals of UK jurisprudence as to how difficult it is, after spending millions of pounds, and years and days, and hundreds of days of sittings, where decisions are overturned because the jury, it was found, just did not understand what was going on.

There is a very funny case in Victoria, Australia, a case, *R v Wilson & Grimwade*, where the verdict was actually overruled, overturned, and you know why? Because it came out that one or two jurors, during the trial, actually stuffed cotton wool in their ears because they just did not understand nor did they wish to understand the complexity of a fraud trial. [*Interruption*]

That, Mr. President, is what has brought me to my next point which Sen. Hinds has anticipated. If we are going to try complex fraud cases in Trinidad and Tobago under FATF, under CFATF, do we need to amend our Jury Act? And I pose this question based on what I have said before. Are our local courts geared towards bringing a case of a suspicious transaction identified by the FIU to prosecution? It is a difficult question and many jurisdictions are grappling with the issue and even suggesting jury without trial.

**Sen. Ramlogan SC:** Trial without jury.

**4.45 p.m.**

**Sen. T. Deyalsingh:** I mean trial without jury. Some jurisdictions are saying, okay, trial without jury, what about a trial with a judge and two expert persons to guide him? What about a trial with a judge and special jurors learned in the way of financial transactions? I bring up this issue, Mr. President, simply to illustrate that trial by jury—the old saying, “twelve good men and true”—is something that we may

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have to face, and I bring it up in the context of a recent statement by the hon. Minister of Justice, Member for St. Joseph, Herbert Volney, who threw out an idea that it may be time to get rid of juries.

Now, is that official Government policy? Because we had to issue a statement on this side, via our PRO, that we did not agree in principle, and that that statement by the hon. Minister of Justice was premature, not well thought out, and if you want to suggest trial without jury, what are the parameters? What is the policy? Where is the policy to deal with this? So while I proffer no opinion, I have given both sides of the coin. There are reasons for and against trial without jury in complex fraud cases, but I do take umbrage to the way this Government throws out policy without engaging the public with the parameters of the discussion for trial without jury—“voops, vaps and vaille que vaille.”

Mr. President, it brings me to another point. How safe is this FIU legislation? The safety of this FIU legislation is going to be called into question on several grounds. I know it is the habit of us to quote in the Senate *Pepper v Hart*, but I want to draw the population to a recent local case, and I refer to *Presidential Insurance Limited v Resha St. Hill*. It is a local case, but the Privy Council was forced to make a ruling on section 4.7 of our Motor Vehicles Insurance Act (Third Party Risks) Act. What the Privy Council did was refer to *Hansard*.

When we last debated this FIU Bill in April of 2011, we were asked by the Attorney General on April 08, 2011 to forego the committee stage. There were serious problems admitted by the Government that that piece of legislation was flawed in several areas inclusive of clause 7—the savings clause—which was meant to give some legitimacy to any decision taken by the improperly appointed Director, Susan Francois. We were given the undertaking by the Attorney General that he would return to this honourable Senate within one month, [*Desk thumping*] from April 2011, to bring the Bill back with substantive amendments and go through the committee stage.

Mr. President, to bolster my point I refer to the *Hansard* of that same date:

“**Sen. Baptiste-Mc Knight:** Anyhow, can you just answer my question? Are no amendments going to be accepted tonight?”

Sen. Panday who was sitting where Sen. Ganga Singh is now—

“**Sen. Panday:** No”

So he is saying no, no amendments.

**“Sen. Baptiste-Mc Knight:** Right. So why waste our time?

**Sen. Panday:** Well, whatever concerns are raised we will look at them and review them.”

Later—we are now 16 months later [*Desk thumping*] and the original piece of legislation has not gone through committee stage of this Senate. I refer to section 51 of the Standing Orders of the Senate, Committal of a Bill, and from section 51 onwards talks about the procedure to be followed in committee stage or a select committee. This piece of FIU legislation has not gone through a full clause by clause examination in committee. It has not. [*Desk thumping*]

We raised the point, Sen. Baptiste-Mc Knight raised the point. We were told by the Attorney General: “Please grant us this piece of legislation because the then Minister of National Security had to go to Honduras in two weeks’ time because a deadline was approaching, we were going to be grey listed and please, please, please, I will come back in a month.”

**Sen. Hinds:** You cannot trust them. [*Desk thumping*]

**Sen. T. Deyalsingh:** That was the solemn undertaking, 16 months ago, and that is how it went.

I go on—Sen. Panday in that same *Hansard* record of—

“The Government meets FATF as the Attorney General indicated sometime in June. That is June 2011. When we meet them in June, all these issues will be brought to their attention and whatever recommendations come out of it, we shall return to Parliament.”

We have returned to Parliament, yes, but 14 months later. The FIU and the Ministry of Finance have dropped the ball on this FIU issue, and dropped it badly—sorry, the baton—and dropped it badly, and I bring up this because when a case comes before the courts they are going to refer to *Hansard*. We have the local precedent now, our *Presidential Insurance v Resha St. Hill*, we have *Pepper v Hart* and when they read *Hansard* and they look at the Standing Orders of the Senate, they will see that the legality of this FIU legislation can be questioned. The appropriateness, the way it was passed or not passed, can be called into question. And my question to the hon. Attorney General when he wraps up, is this a chance he is willing to take? Will we then get like Australia and get like England, unsafe convictions which would be overturned and overruled? [*Desk thumping*]

**Sen. Hinds:** Who was the Leader of Government Business at the time?

**Sen. T. Deyalsingh:** Sen. Subhas Panday.

Mr. President, the original FATF 40 Universal Recommendations were drawn up in 1990, revised in 1996 and the mandate expanded in 2001, mainly as a result of 9/11, and again revised in 2003. Under the 40 operational and law enforcement measures, there is Recommendation 39 which deals with extradition, and coming out of 9/11 you also had UN resolution 1373 to deal with Al-Qaeda and terrorism and so on.

We have been successful in extraditing three people—I think one Guyanese, two Trinidadians—to the US, who were held in connection with the attempt to bomb JFK Airport. We did that largely as a result of UN resolution 1373, as I have just said, which deals with terrorism. I admired how our legal system and any role that the hon. Attorney General would have played, I admire the vim, verve and the vigour he would have brought to extraditing those three people. I also admired the vim, verve and the vigour the Attorney General is using to find Calder Hart and bring him back here. Let us bring him back. We on this side have no problem with that. But I want the Attorney General to use the same vim, verve and vigour to deal with the airport duo and extradite them. [*Desk thumping*]

**Mr. President:** That is a matter before the court. You would not be allowed to introduce it.

**Sen. T. Deyalsingh:** Thank you, Mr. President. It is a matter before the courts and I think—I would just say that the slothful response to that—[*Interruption*]

**Mr. President:** I would not allow you to say that either. You will have to take your seat if you intend to pursue that line. Those remarks are not acceptable.

**Sen. T. Deyalsingh:** Slow response then, the slow response, the less than response with no degree of alacrity, because this speaks to the public confidence as I spoke about in bringing white-collar criminals to justice. [*Desk thumping*] There seems to be one rule for certain perpetrators of white-collar crime and another rule for others. We demand that the rules be applied across the board, whether it is blue-collar, white-collar, cream-collar, use that same vim, verve and vigour, please.

Mr. President, as I said before, the hon. Minister of Finance and the Economy said that we are in stage seven of our membership with the Egmont group, and I have pointed out, by reference to *Hansard*, that we have been at stage seven for the past 14 months. So I am hoping that the Attorney General in his wrap-up will tell us, when are we going to cross the finish line that he promised us on April 08, 2011, because again it speaks to a certain degree of incompetence on the part of the FIU.

The hon. Attorney General, in piloting this Bill, spoke about the amendment to section 16(3) that deals with reasonable time, and some time no pun intended, was spent in the Lower House dealing with this concept of what is reasonable time. It speaks about the FIU requesting information from certain bodies, example, the Central Bank, and a public authority.

Now, the question of reasonableness of time in legislation is always one that gives rise to some concern. Some legislators, depending on whether they are in Government or Opposition would require a statutory time, three days, five days—it sounds nice, but this issue of reasonable time is a very subjective standard to be judged by what are the circumstances, facts, complexity of the case and so on. I am here in sync with the Attorney General and I support him in having this issue of reasonable time in the legislation, because there is no way the FIU could know what time frame the Central Bank will require until they get a particular request, as I said, based on the complexity, the volume of information and whether the information is available.

The hon. Attorney General did speak to the fact that if the Central Bank or any other authority is taking an inordinately long period of time, they can go to a High Court judge, Judge in Chambers, get an order. I want to hear from the hon. Attorney General the reverse. If it is the Central Bank or the public authority is not so incline, to go along with a decision of the FIU, could the Central Bank seek judicial review on an issue like this? Because if you have the FIU going to a judge in chambers to get an order to compel compliance, the Central Bank wants to hold back, or whatever, and they are not in agreement with the decision of the FIU and they go for judicial review, what type of stalemate are we going to get? It is an issue which I would like the hon. Attorney General to clarify. Because, in principle, the issue of reasonableness of time, and pun intended, may be reasonable for this piece of legislation.

### **5.00 p.m.**

Mr. President, as I come to a rapid close, because I see that you have given us a time of 5.00 p.m. at which to close off, I will just close by posing a series of questions which I am hoping the hon. Attorney General can address in his wrap-up.

First, as I said, what does he feel about the recent Privy Council ruling? Would this Bill stand scrutiny given that we did not go through a committee stage in keeping with our own Standing Orders? [*Desk thumping*]

Two: how are these cases to be tried? Is the Government serious about white-collar crime? I adhere to your ruling. I would not mention that case, but the duplicity in treating with white-collar crime needs to be addressed.

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Three: what is the Government's position on trial with or without jury? I have given the pros and cons of both, but the Minister of Justice has made a statement. Is that statement Government policy or not? What is our status of membership with the Egmont Group?

Last but not least, Mr. President, if you allow me one minute, the hon. Attorney General, in his closing—and I will close now—said:

“It is not time to beat upon ourselves or beat upon this Bill.”

I would like to refer briefly, and this is my last contribution, to the *Hansard* of a Member of the then Government in debating this Bill, to show the type of debate that went on, and I will read briefly. This is on the Anti-Terrorism Bill, *Hansard*, February 18, 2005:

“Mr. Deputy Speaker, I submit that the Government,”—meaning the PNM Government—“in providing financial assistance through the Community-based Environmental Protection and Enhancement Programme (CEPEP) to criminal elements within the CEPEP and the Unemployment Relief Programme (URP) to buy guns to terrorize the citizenry, the Government”—meaning the PNM—“is guilty of an offence under clause 4. Give them 20 years for that.”

That was the contribution of the Member for Siparia, the hon. Kamla Persad-Bissessar.

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

**Mr. President:** Hon. Senators, it is now 5.01 p.m. I propose to take the tea break at this time. This Senate will be suspended until 5.30, when we will return.

**5.01 p.m.:** *Sitting suspended.*

**5.30 p.m.:** *Sitting resumed.*

**Mr. President:** Before we go to the next speaker, I would like to take this opportunity to congratulate the Minister of Finance and the Economy on his maiden contribution. [*Desk thumping*]

**Sen. Dr. Rolph Balgobin:** Thank you, Mr. President, and welcome to new Senators, in particular many familiar faces and quite a number of friends among them. I wish also to join you, Mr. President, in congratulating Sen. The Hon. Larry Howai on his maiden contribution.

I rise in support of the Bill that has come before us, so I just have a couple of areas of concern which I would like to draw to the attention of the Government as we take this forward.



The first has to do with something that the Attorney General mentioned, which really spoke to capacity, the capacity of the FIU to do its job and to carry out its functions. It occurs to me, Mr. President, that this is something that bears noting and, more than that, warrants serious consideration.

I say that because, in conducting a quick review of most of the agencies in this country that are charged with investigative powers, one will find a significant rollover, year-on-year, of issues to be investigated. That is true for the Trinidad and Tobago Police Service. It is true for the Integrity Commission which speaks about, in its 2011 report, the success of a public education programme, but when you look at the number of investigations that they have had, they have had 42 completed for the whole of 2011. The majority of those was completed within one to 90 days, so presumably those were fairly straightforward; but the number of investigations rolled over was 31. Almost as many investigations are being rolled over as are being completed and this same problem manifests itself in many of the other agencies that we have charged with—the Integrity Commission, the Equal Opportunity Commission. Even in the report of the Ombudsman you tend to find this rollover. So I would be very concerned, Mr. President, about our capacity to assess, to investigate and capacity affects us in silent but often profound ways.

When, for example, we birthed the Telecommunications Authority of Trinidad and Tobago (TATT), one of the things that went tremendously wrong with the TATT—and this had nothing to do with politics; it was not a political problem or anything else like that. One of the many things, I think, that went wrong with TATT was that there was really a dearth of technical competence. The people did not understand what they were meant to be regulating and that has imposed a significant telecommunications cost on the public. The public is not aware.

You have instance upon instance upon instance where we see that we do not always have the technical capability; the capacity to do what we say we want to do via legislation and so we fix things with legislation. We come here and we pass laws; we amend the laws that we pass and we still cannot enforce anything. Why? Because we do not have the right people. [*Cellphone rings in Public Gallery*] [*Laughter*] We can forgive that. Such an interruption can be readily countenanced. It is not a problem.

I applaud what is being done. I think every effort should be made to fashion these existing pieces of legislation in a way that makes them workable, but I am very concerned about capacity, so I was heartened to hear the Attorney General's comments with regard to hiring; but I have seen only too often where the regulatory and investigative agencies that we put forward in Trinidad and Tobago lack the technical competence to deal with the challenges that they face.

Another great example of that, I suppose, would be the EMA. I can go on calling example after example after example, but the EMA runs right up against people who would like to develop infrastructure or lands or whatever to do projects which, presumably, have an economic advantage. They bring some sort of benefit. They employ people. So, it is not a question of getting regulators to say yes, you know, it is a question of getting them efficient and effective so that they do their job with as little interruption to business as possible.

This takes me to my second and penultimate point, happily, and that is that white-collar crime in this country is a massive problem. It is a significant and unexplored phenomenon. Government after Government has been changed in Trinidad and Tobago for the last 30 years or more on the basis of corruption and our record for finding and prosecuting corruption is awful. And so we go through, in environments like these, in legitimate or informal channels, the process of calling each other thieves.

**Sen. George:** Successful prosecution.

**Sen. Dr. R. Balgobin:** Successful prosecution. Okay, fine, but we call each other thieves all the time and so the media and the society have now picked up on this and it has become some sort of element that you peanut butter whoever is in government with.

**Sen. George:** And nobody wins.

**Sen. Dr. R. Balgobin:** So everybody is a thief and when everybody is a thief, how do you fix the mindset of a society so that it respects the efforts of things like the FIU? A man filling out a form for the FIU will say, “Oh my God, I have to do all of this to buy a motor car and look dat fella passing dere; he is a big tief. I know he is a big tief, but you want me to fill out all these forms and give you three years of my financial statements and tell you where I get de money from and look dah man buy dah building dey and I know he is a tief”; or he is selling drugs or whatever it is we do.

I think that we must, as a society, pay close attention to the issue of white-collar crime. Even now, as a political football, when we talk about crime statistics, we talk about murder rates—how many people have been killed. The media, of course, has improved its analytical capability so they tell you how many people were killed up to this point last year. Although, when someone is killed, you rob the society of a person who can be productive for a lifetime and add economic, and, through that, social value, if you have no capacity to police and to prosecute people who are guilty of white-collar crime, then you are, in fact, allowing the problem to be exacerbated, to be accentuated; it grows legs as the Americans say.

**5.40 p.m.**

As someone involved in business, I can tell you it is quite interesting to see how many businesses accept that people who come to work for you will rob you, will steal from you. It is an accepted logic in the business community in this country, and someone should ask the business community about that. Why is that? Why are fraud and theft—why are these things so significant; such significant features in our society? Do you know what happens when you find someone stealing or guilty of some of these things? Unless you have a clear-cut case that is given the force of law as you have here, all you do is fire the person, so they go and become somebody else's problem. That is what you do. You terminate them and they go and become somebody else's problem.

I had an interesting case that I was involved in just a few weeks ago where one of the businesses I know about caught some people stealing and terminated them. They probably went to the Ministry of Labour and Small and Micro Enterprise Development, and the Ministry of Labour and Small and Micro Enterprise Development calls the company and says, "You know, you terminated them, for what?" And you say, "Well, for stealing." And they say, "Oh, I see that there. Well, you know, you still have to pay them for notice." You have to pay them in lieu of notice. So, you are caught stealing, but we have to give you notice of impending termination.

Obviously, they did not go to eminent Senior Counsel, Elton Prescott, [*Laughter*] but what you should know is, this is the Ministry of Labour and Small and Micro Enterprise Development saying that. So, somewhere in this game, I think that we need to take into consideration the strangulation that happens to business through things like white-collar crime. They are massive issues. I say that, just to come back to the point that while my colleague, Sen. Ramkhelawan, is absolutely correct in saying that if we want an economy and a society free of money laundering, we have to put up with some increased amount of paper work.

We have to be careful as well, Madam Vice-President as well as Mr. President, because they are both there, that we do not allow our legislative compliance with global standards to overshadow the importance of establishing streamlined processes or systems to make it as easy as possible for business to do its work, because the impact on business can be nightmarish, and as we prepare for independence, as we look at many of these things, Trinidad and Tobago, in many respects, can be seen to have come a very long way.

But one of the unanswered questions for me really has to do with the Government's position—by Government I do not mean this Government, I mean in general—on the role of business in the economy. Because if you are insensitive to that role,

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then you could put on as many fetters as you wish. You could put on as many forms to fill—as many things as you could put on—to strangle, which may have the effect of strangling business, and it would not bother you if, in your view, the Government has to continue to be the prime mover in the economy, the patriarch—“Doh worry boy, we will take care of you.” If that is the economy and the society that we are seeking to perpetuate, well then, that is fine, but if it is not that, then I would be greatly encouraged if somewhere in our approach an emphasis on simplicity and streamlining can be found.

It starts here now, because obviously we are trying to be compliant with something else, but whoever is coming up with these lists that we are either grey on or brown on or black on or white on, are not concerned with our internal efficiencies. We have to be concerned with that. So as much as I am happy to support this fully and encourage everybody else too, I would say in our roll-out and in our implementation, this is not just about educating the society.

I see the FIU has done some educational work and so on, but this is not just about that. To my mind, that is really not so important, you know. What is important is that we have this Act in force and we have not prosecuted a single person. So, they tell me the reason for it might be embedded somewhere inside of here. I do not think so. So I would like to see maybe a little less education and a little more enforcement, and let us make that as simple as it can be.

Let us streamline systems; let us make it easy for business to do its work so that we can employ people, because what you will find is, when there are very complex systems to navigate for business, how does a small business start up and grow if the overhead, the administrative overhead, becomes too high? When it becomes too high, if we discourage people from business, the Government then has to step in and continue to run these massive social programmes which we are doing now. I wait with bated breath to hear the Minister of Finance and the Economy’s contribution for the national budget and to see whether that level of social spending will continue to grow, well on its way to perpetuation. Of course, I would object to some of that, I am sure, but it is a Government, you have to do what you have to do.

But you strangle business, Government then has to step in, and you have more and more social programmes to pick up the slack, but business is now strangled, it is not growing; it is not maturing. So what happens then? The State then looks around—the Government looks around and says, “Well business is not investing. Business is not employing people.” I heard former Sen. Mary King say that. I am always aghast when I sit here and hear people say business does not want to invest. Who does not want to make more money?

There are many businesses in Trinidad and Tobago that are investing outside, but you try as a business in Trinidad and Tobago, especially if you are not a very big one that can reach the political domain, it is a whole raft of things that you have to do, and then you will put up a fence somewhere and then suddenly somebody comes around and says, “Well, I am from the city engineer’s office, I have to give you permission too”; and then somebody else comes and says, “Well, I am from public health, I have to give you permission too.” And, of course, somehow or the other, a lot of them, the handshake looks like this and not like that. [*Shows movement with hand*]

Of course, it has become sophisticated, you know. The Integrity Commission cannot pick that up. It is not an open hand. They bring an invoice and say, “Well, this is my private company, and you are now required to do this study, the results of which I will then approve.” That is what is happening. So you strangle business, the State then picks up the slack, looks at business and says, “You do not want to invest anymore”, business then says, “Well, it is difficult for me to”, and what we do is we then let business off the hook, because we never compel them to take their rightful place and play the role that they are supposed to play in this economy and in this society. We let them off the hook by allowing them to be traders, buyers and sellers of things. That is what we do. Every time a businessman drops dead, another one just pops up and takes his place to buy and sell things too—very straightforward.

As we are approaching age 50, we should ask ourselves, how many of our businesses really we could look at and say, this is a 50-year-old business; this is a business that I could say has gone through 50 years of development and of maturation? I am not talking about businesses that exist for 50 years. I am talking about businesses that have grown and develop and have become sophisticated, because that would tell us that the Government somewhere understands what the role of business in an economy is or should be.

So, I am very hopeful. I know that the Minister of Planning and Sustainable Development in his work is addressing some of those things, and now we have a Minister of Finance and the Economy who understands this. So I would be interested to know, as we go forward, what is the role of business in the society. I would like to see if it is what I think it is or should be—that is it has a signal role to play, not just as an employer, but as a generator of wealth—then, as we consider pieces of legislation like this, we should also consider the overhead it requires to comply. With those few short words, Madam Vice-President, I thank you. [*Desk thumping*]

**Sen. Dr. Lester Henry:** Thank you Madam Vice-President, as I rise to give a brief contribution on this Bill. I expected a Government speaker, but nevertheless—so, given the sterling contributions of my two colleagues before me, Sen. Hinds and Sen. Deyalsingh, they were quite excellent, comprehensive and articulate in raising most of the relevant concerns in and around this Bill, so there is not much more I could add, and I do not wish to take away from the valuable points that they made.

Now, the Bill was also passed with the support of our side in the Lower House so, therefore, that also plays a significant role in my brief contribution. Now, as noted, the Bill seeks to get us further in line with the international requirements to be part of the Egmont Group and so on, and it appears to be a serious attempt to deal with matters relating to money laundering and countering the financing of terrorism, something that I have been paying some attention to for a good while, a long time, even before coming into this Senate.

However, I get the feeling that this is more smokescreens and, basically, last-minute vaille-que-vaille rush to supply some piece of legislation that will just get us over that hump with no real intent behind it of dealing with the issue seriously. So, in the end, I think this Bill will come to nothing, because of the lack of willingness to go after the perpetrators of serious crimes, as the Senator who spoke before me was emphasizing, but I have a couple of points I would like to make, just two of them.

One is, I would like to get some clarification in terms of how a transaction is actually stopped. That is part of the job of the FIU, and it is not clear to me what is the mechanism as to how a transaction is actually stopped, and at what point. You know, we see it in the legislation that says, well, okay, a transaction could be stopped for as much as five days, but what actually happens on the ground when the FIU people are supposed to make a decision? I mean, somebody going to carry out an illegal transaction is not going to pick up the phone and call and say, “Hey guys, I am going to do something illegal here. You know, you have five days to stop me.” What is actually going to happen?

Now, we know that the banking sector has to play a role in this, because the money will be deposited or taken out from the banks but, to me, there is something kind of missing in terms of the clarification as to how that process is actually supposed to work. I would like to know if anyone could enlighten me as to have we ever had an instance where a transaction was actually stopped in this country, either on the day or the day after or whatever? Because, I mean, we live in a world of electronic transactions. These things happen instantaneously. So what do we mean by stopping a transaction? So, clarification on that would be useful, because, do we have the level of sophistication? Or maybe that is what we should be aiming for.

I will give a concrete example, which I know of from back in the US. A friend of mine from Peru had—someone called him and offered him a good deal on some coffee beans back home, and he transferred some money to go ahead and cash in on this deal. They told him he could get it cheaper and he could make some money off the deal. That was on Thursday, and he wired the money to his people in Peru, and Friday he went to use his bank card in the same bank in Massachusetts and it would not function. He could not get any money out with his bank card. So after trying and saying, “Well wait, I have money in this bank. How can I not get access to my own money?” He went in, the manager called him in and spoke, he said, “Well no, that transaction you did yesterday was flagged and your account was frozen”, in one day.

**5.55 p.m.**

I am almost certain we do not have that level of sophistication now, but these are the kinds of things we should be aiming at. That example is what I want to bring across; the main point being that to get to that level is a long way off for us. *[Interruption]* Maybe it is not as far, because I am not privy to national security details, maybe we might be closer than I think, but that is the kind of thing that we should be aiming for, and it shows us how far behind we might be.

That was a technical point. The other more political point that I want to make is that in the appointment of the FIU director, which the hon. Leader of the Opposition made a big deal about last year, and many people did not quite understand why he was making such a big deal about it, people thought that somehow he was nitpicking or being somewhat frivolous by harping on the issue of the suitability of the particular individual for the position. Here we are today with the same Government telling us how important the FIU is in terms of fighting all these crimes, and yet at the time when the Leader of the Opposition was raising the issue, they were trying to pretend that somehow he was not raising a serious point, and the public must understand. Who is going to initiate the investigation? When the suspicious transaction report, the STR, goes to the FIU, who is going to say, “Look, this name here, take it forward to investigation?” Suppose the names are members of the Government or maybe people associated with the Government? You never know who it could be.

**Sen. George:** “Include de Opposition too.”

**Sen. Dr. L. Henry:** It could be, yes, but which ones would be flagged? That is the problem. So when you have a political appointee or the partner of the Prime Minister—you know, that is one of the things that is becoming clear with this PP

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Government, “dey taking dis partnership ting too seriously. Dey really mean when they say People’s Partnership that you hire your partner for the wuk.”  
[*Laughter*] [*Crosstalk*]

**Sen. George:** “Leave dat for Hinds. You above dat.”

**Sen. Dr. L. Henry:** I said I was making a political point. “Doh worry; yeah, I could make a political point.”

It is a serious point, because in my work in financial services which I do quite a bit of, I am aware that in most jurisdictions the head of the FIU generally is someone who could command a kind of respect, like a Chief Justice, a former Chief Justice, a distinguished private attorney of some longstanding merit, and so on. It is a serious position. It is not something you could play games with, if you are serious about fighting crime as they say, white-collar crime in particular. I am saying that you could bring the best legislation, you can have all these expansive powers of the FIU, which this Bills seeks to provide, and we could comply with the FATF and so on, but if you have at the head of the institution somebody who is clearly politically appointed, then it defeats the whole purpose of all of this.  
[*Interruption*]

**Sen. George:** The person is a very, very upstanding citizen.

**Sen. Dr. L. Henry:** To me this is like building a maximum security prison and handing over the key to the inmates.

**Sen. Deyalsingh:** She ranked second.

**Sen. Dr. Tewarie:** Would the hon. Member give way? I just wanted to ask you a question. Why would you claim that the appointee as Director is a political appointee? Is she not a professional person in her own right, and has served in the place? She is a public officer and has served as Acting Director.

**Sen. Dr. L. Henry:** Okay; well the Prime Minister vetoed the person who was picked through the legitimate process to get her in.

**Sen. Dr. Tewarie:** Would you mind giving way again?

**Sen. Dr. L. Henry:** No, no, no; I am good. You will have your chance. I am about to finish. [*Interruption*] And the same questions were raised, “so doh drink yuh porridge too hot.”

**Hon. Senator:** Does the Prime Minister not have the right used by other Prime Ministers? [*Crosstalk*]



**Sen. Dr. L. Henry:** I have the same question to raise. [*Crosstalk*]

**Sen. Ramlogan SC:** “I went to court and win those matters.”

**Sen. George:** I could stand up for her.

**Sen. Dr. Lester Henry:** So what we have is, yes, a politically appointed person at the helm of the institution, who was not even on the list of interviewees at the first round, and then also vetoed the legitimate choice of the Public Service Commission. That is what we are dealing with.

As I said, there were two key points I wanted to make, and with these few words I thank you, Madam Vice-President.

**The Minister of Planning (Sen. The Hon. Dr. Bhoendradatt Tewarie):** Madam Vice-President, hon. Senators, I will make a few points in this contribution. I think that the debate so far has been very pointed in terms of people taking the opportunity to make their points. There has been some politics, but that has been, by and large, minimal. I think generally the position is that this Senate on all sides will support these amendments.

The Financial Intelligence Unit of Trinidad and Tobago Act, FIU, was passed in October 2009. Since then it has been amended on two occasions, both times in February and May 2011. The Anti-Terrorism Act was passed in 2005. Since then it has been amended on two occasions, in 2010 and 2011. The amendments that we are debating today were passed in the House of Representatives with some further amendments on August 17, 2012, and that is what we are discussing today.

There have been charges that the legislation is just a smokescreen, that it is “*vaille-que-vaille*”, that is to say the amendments, and that it is merely meant to cover ourselves for the August visit.

**Sen. Hinds:** We could not put it better. [*Desk thumping*]

**Sen. The Hon. Dr. B. Tewarie:** That has been the suggestion. There is no question that there is a deadline to be met, and that is a reality. But the truth is that this legislation which I suspect, given its international connectivity, of this legislation to other jurisdictions and to all of the institutions mentioned, will continue to have to be updated over the period of time as we continue and as the financial system becomes more and more sophisticated and demands more and more responses.

One of the striking things in this particular debate, and it came up on several occasions, is that, for instance in the contribution of Sen. Ramkhelawan, he said that there was extensive money laundering in the society. He said that we could see

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this if we just use two pieces of evidence that is available in the public domain: first of all, the continuing high price of real estate and then he said that the system, so to speak, is flush with cash. He said that this suggests a society in a situation in which the economy is not really buoyant, to the extent that we knew in the pre-2008 period, this suggests that there is extensive money laundering in the society.

When Sen. Rolph Balgobin spoke, he spoke of what he called an unexplored phenomena which had to do with the fact that there is knowledge in the society, pervasively, of widespread corruption in the society at all levels, and that this is just taken as part of how the society behaves, how the society operates, how the society functions, and from the business point of view it is taken simply as an additional cost in business.

All of us sitting here, and I suspect the public looking at the television and taking in what people are saying, I wonder if there is not something in the society that has created the conditions in the country in which we could talk about the society like this; that there is widespread corruption and there is glaring evidence of it; that there is money laundering in the society and there is evidence of it, and that we know what is happening to society and we simply make the necessary adjustments to accommodate the realities of money laundering and corruption, simply as part of the process of continuing the charade that is the society. We continue to do this, and we listen to this, we understand it, we pay attention to it and we are just numb to the challenge of doing anything about it.

When the other point is made that the issue has been one, not of legislation, the issue has been one, not of having the knowledge, but the issue has been one of enforcement and intervention, then you have to ask yourself what is the connection between, let us say, a money laundering elite, pervasively connected and interconnected in the society at all levels, a corrupt system that is manifest at every point and is identifiable at points of contact, and then at the same time you do not have the will or the capacity to intervene in the system to stop the rut in the society.

I do not know how one could be comfortable with that, as an enlightened citizen in the 21st century, and I feel that whatever political points might be made against the Government of Trinidad and Tobago today, of which I am a proud member I want to say, [*Desk thumping*] can you not at least acknowledge that the Government of Trinidad and Tobago today, the current Government, is seeking to do something that could make a difference here in Trinidad and Tobago?

**Sen. Hinds:** No!

**Sen. The Hon. Dr. B. Tewarie:** I want to say something, and I speak directly now through you, Madam Vice-President, to Sen. Hinds. One of the things he said, for instance, was that the Government was not committed to white-collar crime—

**Sen. Deyalsingh:** Deal with Ish and Steve!

**Sen. The Hon. Dr. B. Tewarie:**—and that the Government was not committed to dealing with crime at all. I want to say this. It is clear from the position articulated by Sen. Ramkhelawan, by the position articulated by Sen. Rolph Balgobin, that these people, these hon. Senators here in this Senate are reflecting the thoughts in parts of the population which go something like this, that you cannot really make any change or any shift in this society unless the people who are covered by the prevailing system are interfered with and touched through the legal system in this country.

**Sen. Deyalsingh:** That is Ish and Steve!

That you cannot really make any change or any shift in this society, unless the people who are covered by the prevailing system are interfered with and touched through the legal system in this country.

**Sen. Deyalsingh:** Like Ish and Steve.

**Sen. The Hon. Dr. B. Tewarie:** And—*[Interruption]*

**Sen. Deyalsingh:** Deal with that.

**6.10 p.m.**

**Sen. The Hon. Dr. B. Tewarie:**—and, as far as I am aware, that is something that is *[Crosstalk]* in the court, but I proceed to act with those who have been able to—*[Crosstalk]* or refer to things that relate to those who have either been able to operate below the law or above the law or on the side of the law, and I think this legislation and the institutional capacity that is required to give effect to it is really about trying to do something here, because there is a crying need, in the population to see someone who is culpable—*[Interruption]*

**Sen. Deyalsingh:** Ish and Steve.

**Sen. The Hon. Dr. B. Tewarie:**—but seemingly above the law—*[Interruption]*

**Sen. Deyalsingh:** Ish and Steve.

**Sen. The Hon. Dr. B. Tewarie:**—and big in the society in terms of structure and position—[*Interruption*]

**Sen. Deyalsingh:** Ish and Steve.

**Sen. The Hon. Dr. B. Tewarie:**—come to the courts of law—[*Interruption*]

**Madam Vice President:** Hon. Senator. Sen. Deyalsingh, I would appreciate if you will not raise your voice, at least to the level to disturb the debate, and allow Minister Tewarie to continue.

**Sen. Deyalsingh:** I apologize.

**Sen. The Hon. Dr. B. Tewarie:** Madam Vice-President, thank you very much. The whole intention behind those interventions is to distract me from my track and not to focus on the issue that I am focusing on here, which is that the country is crying out for justice to be done at the highest level, so that the rest of the society can get some sense of security that justice will, in fact, finally be done in Trinidad and Tobago. This part of the legislative requirements to make that possible, you know, because one of the things—if I could quote from a great poet T.S. Eliot, he said:

“Humankind cannot bear very much reality”

Sometimes the reality in Trinidad and Tobago is a little too much to bear, and the reality of this country needs to come to a head. People talk here about drawing the line but we also have to also begin to think about how to draw the line between what makes for a decent society and what makes for the perpetual tolerance of corruption in the society as part of the norm, [*Desk thumping*] and this is something that we have to come to terms with.

Why is this Bill important? Why is the FIU important? Why are the structures important? Why is the adjustment to the legislation important? A major component of these amendments in 2012 is to foster greater cooperation between the FIU of Trinidad and Tobago and similar agencies abroad. This is specified in section 8(iii) paragraph (e), which, when amended, reads as follows and it is included in here that it will:

“engage in the exchange of financial intelligence and information with members of the Egmont Group or with Foreign Financial Intelligence Units;”

The second one is the transnational nature of terrorism and money laundering has made it necessary for countries to protect themselves individually and collectively against persons or entities engaged in such activities. Thirdly, the 2012 amendments seek to make it more difficult for organized crime syndicates to do business in Trinidad and Tobago or use this country in any way for their illicit activities.

So, the statements in the Parliament today actually say that there are illicit activities going on now undetected. The question is, how do you detect them, and what is the capacity? The hon. Sen. Dr. Lester Henry said, how do you stop these things?

Well, the banks have become pretty sophisticated because if I travel somewhere and I do not alert my bank before that I am travelling, if I make a transaction, within minutes I get a telephone call on my cellphone asking me if I am in such and such a city and making such and such a transaction. So, the banks have become very sophisticated in matters like this, and with today's technology, opportunity and access, it is possible to manage and monitor those things.

So, what we need to do is to put the legislation to make it possible. The technology is already available, and if it is not available here it can be made available. But the point is to have that capacity to first of all deal with what is happening at home in your local institutions, but also to be able to have an institution which can connect with institutions abroad, if you need to, and create the conditions of a network for transmission of information.

Now, there was one important point here and I hope the hon. Attorney General will take note for the future, and the point was made that some of the financial institutions are not covered by this legislation, that there are institutions in the can that are not covered, and I feel that that is something that needs to be taken into account. The FIU should be in a position to intervene in a transaction in any financial institution operating in Trinidad and Tobago or else you will create a loophole for money laundering in Trinidad and Tobago. I believe that that is something that should be covered over time in the legislation in this country.

Perhaps there are other things to take into account. Perhaps there are other issues to consider, perhaps there are other pieces of legislation which need to be addressed but that is an issue that has to be addressed in Trinidad and Tobago because if you leave any sector of the financial institutions outside the pale of jurisdictional authority, you are going to create an immediate opportunity for transactions to take place that could not take place perhaps in the other banks. And there are ways of doing that in societies. It has happened before.

I will not go on very much more, Madam Vice-President. I wanted to make these few points and I wanted to close by saying something which I think is very important and I, through you, Madam Vice-President, share it with my colleagues in the Opposition, and it is this. You know, the party of which you are a part was in Government for a long time in this country, 43 years I think out of 55, at

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various points in time, continuously for 30 years, and then intermittently thereafter. And the country is now 50 years old—celebrating its 50<sup>th</sup> anniversary—and you made a significant contribution to that, and of course, it would not have been a perfect governance, you would have made the mistakes along the way, and the politics of the system allowed for changes that were required.

But having had that history and having had that opportunity to serve over such a long period, and to contribute to the development of the country, it is not in the interest of the country, in the interest of the Opposition or in the interest of the culture of the society to always smear and brand the Government as if it were not entitled to govern in the country. It is a horrible thing to do. [*Desk thumping*] [*Crosstalk*] This is something that you have been doing for a long time and consistently—[*Interruption*]

**Sen. Hinds:** That is the kind of statement that Google would have made.

**Sen. The Hon. Dr. B. Tewarie:** No. This is something that you have been doing for a long time and consistently, [*Crosstalk*] and now that you sense the mood of the place, you know, there is an element of desperation in it, but I do want to say that it is not in the country's best interest, and moreover, I want to say it is not even in the Opposition's interest.

**Sen. George:** Of course it is.

**Sen. The Hon. Dr. B. Tewarie:** Because the—[*Interruption*]

**Sen. George:** It makes no sense.

**Sen. The Hon. Dr. B. Tewarie:**—Government of Trinidad and Tobago is meant to play its role as Government— hon. Sen. Balgobin mentioned the point of the role of business. I want to address that in the minute—but he made the point about what the Government is supposed to do and the Government is meant to govern. We bring the legislation, this is one aspect of it. [*Crosstalk*]

#### PROCEDURAL MOTION

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Madam Vice-President, in accordance with Standing Order 9 subsection (8), I beg to move that this Senate continue to sit until the completion of the debate beforehand.

*Question put and agreed to.*

**MISCELLANEOUS PROVISIONS (FINANCIAL INTELLIGENCE UNIT OF TRINIDAD  
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**Sen. The Hon. Dr. B. Tewarie:** And the Opposition's role, of course, is to criticize constructively, to make its political points, et cetera, but they are also part of the governance system, they are part of the Government, they are part of the parliamentary system, you know, and the Government functions on the basis of this. That is why we come here, we bring legislation, you have amendments, you sit in committee, you make changes et cetera, that is part of the process. [*Crosstalk*] No, there is no committee here but that is how we function. That is how we operate.

The idea of trying to condemn, brand, and basically to stain—this is what I am concerned about—the Government and to stain the process of governance is not in our best interest. This year of all years, I think, we need to take note of that as we into the next 50.

The role of business, and I will close on this, the important point that was made about the role of business is important, and I do believe that perhaps that has not been clear in the country in many instances. We have a State that is quite large, and quite involved in the society on many fronts, and this is something that has evolved over time. We have had a situation in which we have had a lot of ideological lack of clarity in the country.

So you never know what is the role that the State will play in business, and what the role that the private sector will be allowed to play, and you are never quite clear about much space the private sector will be given to operate, and as a result of that lack of clarity you have had a situation in which the State has really expanded beyond its capacity to sustain itself. This is an issue that we have got to address head-on, but the question is whenever you address big issues in Trinidad and Tobago—[*Interruption*]

**Sen. Hinds:** How does that link to the Bill?

**Sen. The Hon. Dr. B. Tewarie:** —can you get—because it is about FIU and it was raised by the hon. Senator.

Whenever you get to those big issues, the issue is whether you are going to get a sensible response on the basis of national considerations or whether you are going to get a political response that is geared to cause you to fail or to lose. That was the tone of at least one of the contributions here this evening, and I want to say that the future of this country depends quite significantly on the capacity of—[*Interruption*]

**Sen. Hinds:** Madam Vice-President, I wish to take a point of order. I want to raise Standing Orders 35(1), (2), (3), (4), (5), and (6). The Senator is wholly irrelevant. Focus on the debate.

**Madam Vice-President:** Well, 35(1), (2), (3), (4), (5), and (6) definitely do not deal with relevance, it is 35(1) and I think, Senator, you may continue please. [*Desk thumping*]

**Sen. The Hon. Dr. B. Tewarie:** Madam Vice-President, I simply want to say that the issue of the role of business was raised in the debate by Sen. Rolph Balgobin. All I want to say is that the future of the country depends on an expanded role of business, an expanded capacity in innovation by those who may not now be in business, in addition to whatever happens in the existing businesses themselves. And for that to happen I think that we have got to have a serious decision-making process focused— [*Interruption*]

**Sen. Deyalsingh:** On the FIU.

**Sen. The Hon. Dr. B. Tewarie:**—in an uncombative way on the decisions that need to be made to allow the space that will make that possible, and to give the State its role in an expanded economy that is driven by the private sector.

**6.25 p.m.**

Madam Vice-President, I have responded to that issue because it was important in the business of how the FIU intervenes in a legitimate business and in corrupt transactions and, therefore, it was made within the case of how you create the conditions for legitimate business to operate. It is in that context that I raised these issues and I close my contribution.

Thank you very much. [*Desk thumping*]

**Sen. Prof. Harold Ramkissoon:** Thank you, Madam Vice-President, thank you fellow Senators, for giving me this opportunity to make a contribution on this Bill, The Miscellaneous Provisions (Financial Intelligence Unit of Trinidad and Tobago and Anti-Terrorism) Bill, 2012.

Let me start off by saying that the genesis of this Bill has its origin in two things: the ongoing battle with the drug cartels, the drug trade, and, also, the terrorist attack of 9/11 in the USA. The objective of this Bill is quite clear to me that you want to take profit out of crime. It is seen as an alternative or another approach towards solving the drug problem in the world today.

Money laundering is today a major problem of international dimensions. Let me quote from the ABC news of August 15, 2012. That is just about a week ago, and I quote:



“It’s a huge payout, the largest ever to a U.S. financial regulator. One of Britain’s largest banks has agreed to pay \$340 million to New York State. Standard Chartered will settle allegations that it broke U.S. money laundering laws, hiding illegal transactions with Iran.”

Madam Vice-President, the hon. Minister of Finance, who himself is a banker or was a banker, I am sure would agree with me that banks are supposed to be part of the solution not part of the problem.

Let me quote again, and again this is last week, August 13, and this time from the *Singapore Times*:

“Asia steps up fight against money laundering”

Madam Vice-President, money laundering and terrorism financing are major problems that we face today. They not only threaten our financial institutions, but they also threaten the very sovereignty of some of the countries of the world today—examples: Guatemala, Honduras and Mexico. Let us not be too naive that we here in Trinidad and Tobago, that our sovereignty is secure. We do have a major problem. We are losing control of our country. Fear stalks the land. We do not feel safe in our homes; we do not feel safe on our streets; we can be attacked at the night-time, under the cover of darkness; we can be attacked in the daytime. We are not safe also in our business places and on the streets.

We worry about the elderly; we worry about our children; we witness, sometimes, the youths, the young ones, and elderly brutally murdered. We are becoming more and more insensitive. We no longer complain of the daily, sometimes brutal, murders which continue unabated. And as we march towards our 50th Independence anniversary we must worry, and while we worry, some of us worry about whom to honour and not honour; we must spare some time to give sober thought to regaining control of our country. And I thank you for this slight digression.

Madam Vice-President, the shrinking of today’s world in space and time into a global village facilitated by modern technology makes or permits money launderers and criminals in general to communicate instantly. Transactions can now be communicated across timelines at the press of a button.

Consequently, money laundering is today a major global problem. You heard the hon. Minister of Finance and the Economy say that the value of money laundering in Trinidad and Tobago is about \$700 million. Globally, according to the IMF, it varies between 2 per cent and 5 per cent of the world’s GDP; between \$590 million and \$1.5 trillion. It is big business, but it is a global problem and global problems call for global strategies.

It was with this in mind, Madam Vice-President, that in 1989 the Financial Action Task Force, hereafter referred to as FATF, was established by the G7 countries. And precisely what is this organization? We have heard it mentioned several times in the debate here. Precisely what is this organization? Well it is an inter-governmental body, to start with. It comprises 34 countries, two international bodies and a number of regional bodies—example: the Caribbean arm, the Caribbean FATF. It is a policy-making body. It makes policy with respect to money laundering and counterterrorism financing.

Madam Vice-President, in 1990—and somebody mentioned this statistic—it issued 40 recommendations in 1990 and eight more after the 9/11 terrorist attack. Member countries are committed to implement these recommendations, the 48 recommendations. Let me emphasize that at this point in time Trinidad and Tobago, although not being a member, is not considered to be a high-risk country. Trinidad and Tobago, however, is a member of the Caribbean regional body. One of the recommendations of this body—FATF—is that a country that wants to become a member has to establish a Financial Intelligence Unit. That is one of the requisites.

Madam Vice-President, we established our Financial Intelligence Unit, the FIU, in 2009. One year later, it took us approximately one year to appoint a director, and this was due to what I call the politicization of the process. And we have been trying to deal with compliance issues ever since for the last two years. *[Interruption]*

This body puts out reports, country reports three times a year: February, June and October. Since February 2010 they have identified strategic deficiencies in Trinidad and Tobago, and this has appeared since in every report. They will shortly, as we know, be undertaking an onsite visit to see if these deficiencies are addressed in Trinidad and Tobago. What are the particular deficiencies; the important deficiencies and the strategic deficiencies? There are two as I see them:

1. To implement adequate procedures to identify and freeze terrorist assets without delay;
2. To have an FIU unit up and running fully and efficiently. *[Interruption]*

Failure, Madam Vice-President, to do this—and you heard about the implications for us. I would not say it would shut down our country, as one of our goodly Senators has said, but it would certainly have implications for the financial sector. It will, for example, make foreign investments more difficult to come by. I think as a country and as a people we must act in a more timely manner. We have

been trying to get these deficiencies right for the last two years, and that is more than adequate time to get this job done. Now at the eleventh hour we are here debating this Bill and it is not the first time that we find ourselves in this situation where we are trying to avoid embarrassment to the country.

When we act in this manner, we are creating the impression that we are not very serious about money laundering and anti-terrorism. When you couple that on to the fact that our perception, corruption perception, in terms of the index has gone from 31 in 2001—we were number 31 in 2001—to 73 in 2010, downward movement, drastic downward movement, and currently we are 91 out of 183 in 2011, when you couple that onto how we are treating money laundering you get the image of a picture which is not a healthy image. *[Interruption]*

Madam Vice-President, I want to just spend a few minutes on the Egmont Group. We have heard mention of this group. Now, if you have a number of Financial Intelligence Units, common sense demands that you try to bring together these units to exchange notes and see how they can help each other. It was with this in mind, in 1995, at an informal gathering of some FIU groups, a decision was taken to establish formally the Egmont Group, and it has gotten its name because the meeting, that particular meeting, took place at the Egmont Arenberg Palace in Brussels, and hence the name the Egmont Group.

The major objective of this group is to foster international cooperation. There are major benefits in being a member of this group. It is a large group. It now numbers, I think, over 100, and there are benefits, and some of the benefits include access to training and resources available to its members. But, more importantly, they can share critical information leading to the detection of drug traffickers and terrorists. It is therefore important for us to become a member of that group as quickly as possible.

Our application for membership into this group was held back pending clarification on certain issues which were to be submitted before, I think, January 2012. This apparently has not been done, and I am somewhat heartened by the Minister of Finance and the Economy who said that with the passage of this Bill it will expedite our membership into the Egmont Group.

Madam Vice-President, there is one query I have with respect to the Bill, and I want to go to the Bill now. Section 16, and I start with 16(4):

“Where a person fails to provide the requested information or fails to provide it in a reasonable time, under subsection (2) or (3), the Director may apply to a judge for an order to direct that person to comply with the request made under subsection (2).” And I now go to subsection (2):

“Notwithstanding subsection (1), the FIU may, in the performance of its functions, request information from—

- (a) the Central Bank;”
- (b) a public authority;—and the one that I am interested in—“or
- (c) an authority specified by or under a treaty for co-operation on any matter provided for in this Act and to which Trinidad and Tobago is a party.”

This, Madam Vice-President, would suggest that the Trinidad and Tobago court can impose a directive on a foreign authority as specified in subsection (2), and that raises a question as to whether a Trinidad and Tobago court has such an authority. Clarification is required here. And that is my only query or comment on this Bill.

**6.40 p.m.**

I want, however, to move on to another aspect, another issue, regulating money laundering and terrorist financing. There is a myriad of pieces of legislation relating to money laundering and terrorist financing. I think there are over 29 pieces of legislation, starting with the Central Bank Act No. 23 in 1964 through the Electronic Transfer of Funds Crime Act, 2000 and to the Interception of Communications Bill, 2010. There are 29 pieces of legislation. All these pieces of legislation may give rise to a lack of coherence and an ad hoc approach to the enforcement of laws. That is my worry. Madam Vice-President, this is one of the challenges I think facing the regulating of the money laundering and finance terrorism group—the multiplicity of regulations.

The other challenge is making FIU a truly independent body free from political interference. Once the Prime Minister has the veto power in selecting a director, that body is no longer a truly independent body. [*Desk thumping*] A different mechanism or procedure is required here.

The third challenge is scrutiny and evaluation of FIU. I also took a look at the 2011 report, I think a number of people did, and I must say, Madam Vice-President, I was impressed with what I saw. I note, like some of the others who went to the report, that the number of suspicious reports increased from 103 in 2010—that is when they came into existence from 103 to 303 in 2011, giving a total of 414 reports of which 322 are still on going and 16 have been passed on to law enforcement agencies.

We note, there have been 11 cash seizures, the largest being \$300,000, but as someone said before, there has been no seizure of property or assets.

With respect to international cooperation, there has been some international cooperation which is a good sign. There were 36 incoming request for information from some other countries, from other FIUs, while there were only five outgoing inquires or requests. This tells us something. Thirty-six incoming requests mean that a lot of people are interested in some activities here in the country—questionable activities. To me they say that the FIU is up and running, that is the conclusion we can come to, notwithstanding the fact that there is a lot of work to be done.

One suspects that there is a lot of money laundering activity in the country. It is very difficult, Madam Vice-President, you cannot do analyses, because you simply do not have hard facts and you are not going to get hard facts given the secrecy of the operations. But one can suspect that there is a lot of money laundering activity in the country for two reasons because of our geographical position between Colombia and Venezuela in the south and the US in the north.

Madam Vice-President, interesting, this morning in one of the newspapers there was a bit of news there headed:

“Cunupia man snatched by Spanish-speaking abductors

A 38-year-old Cunupia man was kidnapped a short distance from his home by five Spanish-speaking men shortly before midday...”

Almost in the middle of the day, Madam Vice-President. So again, because of our geographical position, one would suspect that there is going to be a lot of money laundering. We know that a lot of drugs come from the south; we know a lot of arms come from the south and one would suspect there is a lot of activity. The other reason why I think that we have a lot of money laundering is because—and we are unable to do much—up to this point in time we have limited resources for law enforcement agencies.

Madam Vice-President, I want to make two recommendations. First recommendation again is the regular evaluation of FIU. The second recommendation is that if FIU is to function efficiently, you need to ensure that resources are made available to it and that it has a strong IT infrastructure, firstly. Secondly, it can access what I call state-of-the-art technology to do its work—you need sophisticated equipment and technology—and thirdly, that it needs to build capacity.

Madam Vice-President, in conclusion, let me state that corruption continues to be one of the major problems we face in our country today. It has been a problem for decades, going way back in the 50s. It is destroying the very fabric of our society.

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Money laundering is intimately linked with corruption; hence, this Bill has the potential to assist us in our battle against corruption, but it can only achieve this potential and the general objective if it can be effectively implemented. Unfortunately, implementation, for one reason or the other, is our Achilles heel.

Thank you very much, Madam Vice-President. [*Desk thumping*]

**Madam Vice-President:** Before I ask the next speaker, I would like to recognize, for many of you who may not have known, that Sen. Harold Ramkissoon was re-elected to serve on the governing board of the International Science Technology and Innovation Centre of UNESCO for South-South Cooperation and I wanted to congratulate him. [*Desk thumping*]

**Sen. Mariano Browne:** Thank you very much, Madam Vice-President. I rise to add my few words, and it will be brief, to this Bill: the Miscellaneous Provisions (Financial Intelligence Unit of Trinidad and Tobago and Anti-Terrorism) Bill, 2012. I noted in the course of the presentation by the Attorney General that there are a couple of phrases that he used. First of all, one that there was slow and measured progress which I was happy to hear, inasmuch as on the last occasion there was an argument in this Senate when I attended, as a temporary Senator as well, about who did not do what, and I was happy to hear that this presentation had less to do about who had not done what before but what was taking place to move forward.

In addition to which, he also talked about becoming fully compliant in the shortest possible time, which is also important especially given the report, which was issued in May 2012 by the CFATF, the Sixth Follow-Up Report, which outlined a number of areas for improvement. In addition to which, he also used the term “crack the whip” in terms of what was required to get things moving forward. I think therein, if you want, a certain trigger went off because I would like to point out, if only for the record, that some of our institutions in the implementation of their compliance routines, perhaps have gone more than a little awry. Insurance companies for example, would qualify.

We have to remember at the end of the day that the provisions of these Bills are in fact really to restrict the movement of cash and to identify the movement of cash. So that you would expect that most of the due diligence routines which would have been established by our financial services firms would concentrate on that. Instead, what you have is some non sequiturs. For example, if my colleague were to receive a renewal notice, say for his car insurance from a well-respected—in fact, this is more than one firm—more than likely if he went there

to pay his renewal notice they may refuse to accept his premium, if only because he has not walked with two pieces of identification or, alternatively, a utility bill which demonstrates he is who he is and that he lives at his place of address. Notwithstanding the fact that you may have sent your renewal notice to the same address for the last 12 years and he is not coming with cash but he is coming with his credit card or his cheque.

It is in those circumstances—the point being made by Sen. Balgobin when he talks about—that the regulations and the way we take on board regulations need to be interpreted in a certain holistic sense, in a sense that it is not going to do an injustice to our business and to the business of the country as we move forward. If that example were not ludicrous, let me give you another one. By the way, that is not ludicrous. That is an actual occurrence that is taking place as we speak in many insurance companies as you go to renew your premiums—for house insurance, for motor vehicle insurance, for all other sorts of stuff, nothing to do with the underwriting risk, nothing to do, if you want, with compliance routines. They are actually, in some instances, refusing to accept your payment of your premium even if you are not paying with cash. It is as silly as that.

In another instance, I spoke over the weekend to an attorney who had his indemnity insurance being renewed, who faced the same difficulty as he went to the firm, but eventually he was able to prevail upon them to accept his payment in cheque, but has made up his mind, of course, that he would look for another service provider elsewhere, certainly, one that remembers him after his 25 years of business.

So those are certain things that we need to remember when we are talking about compliance routines and in a sense that compliance does not go, mad. as increasingly we become more and more networked in the international circle, because this is part of our international obligations as a member of the world community. In an attempt to stop what we would consider to be international crime, be it terrorism, be it anti-money laundering, be it from the proceeds of crime, these are part of the requirements which are being placed upon us as we become more integrated in part of the world community, as they are being placed on many other countries. So, that is something that we need to keep in mind.

In that regard I need to return to the comments which were made by Sen. Dr. Balgobin, that when we are taking on compliance routines that we need to take them on with a concept, with a certain level of intelligence in terms of how are they going to help us in a sense become a cleaner society, in a sense become a stronger society, in a sense a society that is able not merely to live up to its

international reputation, but also as a society that is in businesses that wants to go forward and wants to increase the level of economic activity and, in so doing, raise the standard of living for all of our people, for all of our society. So by definition we do not simply want to pass the law just simply to comply, we want to do more than that.

In fact, if we ever really want to become a centre of business that the world will come to, the standards of excellence have to be larger than just simply compliance. We have to move forward to the cutting edge in a way perhaps that we have never done before, if only by way of speaking about it but we now actually have to live the talk. So that, being compliant is not sufficient. Being compliant in a way that helps our business to move forward is something that we need to take on board, and to do so is not just simply a question of putting enough manpower behind, but putting some intelligence behind it.

I listened to Dr. Tewarie as he clearly was groping towards a methodology whereby governance and government is not merely to be vilified and in that regard I would ask him to remind some of his colleagues that it is a two-way street. And if it is a conversation, clearly it is something that requires engagement on both sides of the fence. It certainly is not one-way. So that the very thing of which he complains may, in fact, be a reflection of that which other people may have been subjected to at another point in time. [*Desk thumping*]

**Sen. Deyalsingh:** Wade Mark. [*Laughter*]

**6.55 p.m.**

I simply say that for what you call it, to move forward and, in that regard, the point with regard to implementation is the most important part. It is one of the themes that is consistent throughout the body of the Sixth Follow-Up Report. It is not about what we have done and whether we have satisfied the law and what regulations we have passed. Clearly there are many that we have not; clearly there are areas in which, for example, other pieces of governing law need to be rectified. They point to the Securities Act; they point to the Central Bank Act; they point to the Insurance Act; they point to the Credit Union Act.

We can keep going on like that and, in that regard, our legislative agenda is being set for us. It is not something we have determined that this is what we want to do because these are the things that we need to do to improve Trinidad and Tobago, in a sense, because we are not complying with somebody else's regulations and that is not what we need to do. We need to do something completely different.



It does say about implementation—and I am reminded of a conversation with a diplomat in 1988, I think, who asked me a very similar question long before I had any ideas of being in Parliament or being here. He asked me this fundamental question; it was very simple: “Why do you pass laws in Trinidad and Tobago?” To which I replied obviously: “Because they are required.” He said: “Well then, why pass laws if you do not plan to implement them?” He was speaking in the context of the Anti-Litter Bill, meaning that we had the law; it was on the books, but we had done nothing with it. We really have not implemented it. We have not really enforced it.

If you think about it, the Senator who spoke immediately before me, Sen. Prof. Ramkissoon, I think he was making that point; that we have 29 pieces of legislation—I have not verified his count, but I presume him to be right for the time being—that there are 29 pieces of legislation more or less along the same theme. Is it not going to lead to a certain inconsistency in terms of what we are doing and can we administer all 29 pieces of legislation using the same bodies?

That is something to which we really need to pay attention. In instances where we do not need it and it carries us away from that which we wish to achieve, perhaps we need to spend a little—less might sometimes be more in terms of what we want to do and where we want to go.

Included in this report, there are some important management statistics which jump out at me in the sense that if you had to run an organization. This body—and I do not know how many people they have employed, and I am happy to hear from the Minister of Finance and the Economy the number of activities which have been done by way of compliance, by way of improvement, by way of training either in the organization or outside the organization with other collateral entities. [*Crosstalk*]

So that is important, but it also brought home to me, if you look at the statistics, that there are approximately 1,600 companies that fall within the definition of firms which are to be supervised. In which case, if you are talking about suspicious activity reports coming from 1,600 firms, you are talking about a considerable number of reports, and if we are going about it in the way we do normally in the public service, by way of files, by way of keeping manual track of information, then we are in real trouble because we are not going to achieve anything in that way.

Back to Dr. Tewarie., Dr. Tewarie talked about the capacity of certain financial services firms to be able to track certain, if you want, risk measures. By definition, what we are talking about in terms of money laundering, what we are talking about in terms of all the activities which are inside here is developing risk profiles

which have a scientific basis in terms of what you would regulate and how closely you would look after them, because you could not possibly look after each one of those 1,600 firms. You could not possibly, over a period of five years, visit all. You could not have the staff. It would be impossible to.

If you look at the span of reports that has been identified, both at the level of the FIU's website as well as in this overview report, they are coming from about five different types of firms. Of course, the banks and the financial services companies are the ones that are reporting most and probably are likely to be the cleanest; but, by the same token, guess what? You are likely to spend most of your time there because that is where the majority of the transactions are. The banking community, in particular, represents roughly about 50 per cent of your GDP in terms of deposits, so you would expect something to take place there.

And we have only done what? Three hundred and three million dollars is what we did last year in terms of reports. If I were to go on the basis of the numbers which were presented by Prof. Ramkissoon and say that money laundering would approximate anywhere between 2 per cent and 5 per cent, well we have only covered 10 per cent of that which is possible, and we are just warming up. Whilst we are warming up, all the underlying institutions, to cover themselves, are putting in some of the most ludicrous compliance routines that you could have possible, so that we really need to apply some science and some sense to how we are doing this.

In addition to the issue, and I think my colleague, Dr. Lester Henry, was trying to make the point that included in this report was the requirement for a certain arm's length for the fact that we wanted to have a certain, if you want, credibility in the institution; that the institution which must liaise with various international bodies must, by definition, stand the test of credibility and in so doing—Prof. Ramkissoon makes the point that it needs to have a certain arm's length basis in terms of how we appoint the people to run this institution because, by definition, you are going to be dealing with sensitive institutions. If you are going to be dealing with intelligence institutions, we really want to give the information to somebody who we can trust, not somebody who is going to pass it on somewhere else.

In their report on page 8, paragraph 24, just to say what, perhaps, Sen. Dr. Lester Henry may not have put in so elegant terms, I will simply quote the words from the report:

“Concern about the autonomy of the FIU was indicated in the previous follow-up report with regard to employment of staff since final approval appears to rest with the Permanent Secretary of the Ministry of Finance. The FIU Act was amended in May 2011 to clarify that certain appointments has to be by the Public Service Commission and other by the Permanent Secretary in consultation with the Director, FIU. The authorities have advised that from the budget year 2011 to 2012 the FIU’s budget will be reported as a separate item in the Ministry of Finance’s budget. Disbursement of funds is at the discretion of the FIU and suggests an acceptable level of financial autonomy.”

What they are saying in real terms is, “We want to know that they are separate and apart and stand by themselves and we could trust them.” That is what they want to know and we need to interpret this also in the context, and I perhaps may be becoming a little political here; we need to say it in the context of an international body which says that certain members of our Government, certain Ministers in key positions, may be less than economical with their truth. [*Desk thumping*]

It is in those circumstances, when we are being evaluated by international agencies, those are the things that they take into context; it is not simply what the structures are but, alternatively, what takes place in the wider world. If an international court questions the veracity of statements and evidence made before it by a third party who is a member of your Government at a senior level then, by definition, they will ask certain questions of our institutions. That is what perhaps is replicated here. [*Desk thumping*]

I say that with no disrespect to the persons concerned but it is an ethical consideration; the very type of ethical consideration that was raised by Dr. Tewarie. I do no more than just simply repeat what he has said, if only to point him perhaps in a more specific direction.

On another matter, which is perhaps included in the conclusion of this report, it has to do with the institutions that are covered and perhaps one of the key important points moving forward in our legislative agenda. It has to do with those institutions which deal primarily in cash and for which there is really no governing legislation. I quote, in paragraph 123, on page 26, the second sentence moving on:

“While these measures have been put in place”—and this is to speak of all the measures that have been put in place under the FIU—“some of them are problematic, such as the supervisory function of the FIU which from the start

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is ineffective given present resources and the number of listed businesses. It is also noted that there is no initiative with regard to measures for ensuring that criminal elements are not involved in the ownership or management of private members clubs which conduct casino operations. Additionally, measures regarding the employment of staff at the FIU raise concern about the autonomy of the FIU and its effective operation.”

That is in fact raising some of the other issues that I raised. It also brings clarity to the point which was made by Dr. Ramkhelawan, in answer to a comment made by my colleague that the fit and proper persons clause in the Financial Services Act does, in fact, act as a cover-all clause which protects our financial institutions and also gives our regulator sufficient power to ensure that no third parties get involved in the management of those services firms.

So that when we speak of the implementation of the FIU and in terms of what we are talking about, we have to talk not merely in terms of the number of measures that are included but also the precision, the clarity of thought and the intelligence that supports the implementation of the Bill and all of its proposed administrative measures in such a way that the business of its country grows.

One of the unfortunate issues that we are treating with in the financial services arena, as in fact in many other areas of businesses, is the growth of compliance routines which now account, in many instances, for something like 10 to 15 per cent of your overhead costs. It is more expensive in financial services firms than it is elsewhere, but it is growing, and the number of institutions that we have which are increasingly attempting to be third-party arbiters, if it is not the Telecommunications Authority of Trinidad and Tobago; if it is not the EMA; if it is not what else; we have many others that fall into that particular category as well.

Sen. The Hon. Dr. Tewarie was raising the question of the role of the State; all of which are key questions that we have to ask ourselves as we move forward, understand that the State has certain responsibilities, there are things that it must do. Some of them we understand intuitively; some of them we do not as yet or we are not sufficiently clear; and some of them we are just toeing the line, tipping forward, when really we need to consider what will give us a bang for our buck and what will move Trinidad and Tobago forward and how do we implement it in an intelligent fashion that redounds to the credit of everyone in Trinidad and Tobago.

With these few words, I would like to thank you, Madam Vice-President. [*Desk thumping*]

**The Attorney General (Sen. The Hon. Anand Ramlogan SC):** Thank you very much, Madam Vice-President. This has been a very interesting and illuminating experience to listen to the learned contributions that have fallen from the lips of my friends from the Independent and Opposition Benches in this honourable Senate on this important Bill.

I particularly enjoyed listening to Sen. Prof. Ramkissoon's erudite contribution, which really characterized the professorship that he holds. [*Desk thumping*] I also wish to congratulate you on behalf of the Government of the Republic of Trinidad and Tobago on your appointment to the UNESCO Committee. You have served this country well, Sir, and you are now serving at an international level and I am sure you will do our country proud. [*Desk thumping*]

Madam Vice-President, I was particularly heartened by the fact that although there were a number of contributions, the common thread that ran throughout the contribution is that most persons understood the necessity for this legislation and also expressed their support for it.

We all share a common desire to see that the Financial Intelligence Unit becomes operational and works effectively and efficiently. We in Trinidad and Tobago are all aware that when it comes to the issue of financial crime, financial fraud, that Trinidad and Tobago, like so many other countries in the Commonwealth, are now coming up to speed and it is by no means that Trinidad and Tobago is unique in this regard. There are many, many other countries in the world where—Ponzi schemes and white-collar crime—they are still trying to grapple with these issues.

As you know, Madam Vice-President, this Government has taken the bold initiative and step of launching a commission of enquiry into the two major financial fiascos, that would be the collapse and failure of the Hindu Credit Union and that of Clico and the CL Financial Group. That matter is ongoing, but I mention that only to highlight the commitment of this Government to investigating white-collar crime and to getting at the bottom of the issues that led to the grievous injustice that so many suffered in our country.

Permit me to correct something for the record on *Hansard*. I am sure it will not reach the newspapers having regard to the time, but my learned friend, Sen. Hinds, did make optimum use of the fact that he was speaking during prime time when the media was here to boldly declare that the office of the Attorney General had spent some "\$200 million" to issue two pre-action letters. Permit me to set the record straight, Madam Vice-President.

**7.10 p.m.**

There are no pre-action letters in the matters to which my learned friend referred, at this present point in time. The matter to which he referred involving Prof. Copeland is well advanced in the court. A claim was, in fact, filed and that matter is now at case management stage in the court. So the pre-action stage was long complied with. The issue in that case that arises for judicial consideration, Senator, is the ownership or the rights to the PHI Pan and of course anything to do with sale of the G-pan, and it is the State's contention that those intellectual property rights belong to the State and people of this country and not Prof. Copeland.

The second case, just to let you know, is the case filed against the former board of e TecK led by Prof. Julien, and that case has also reached way past pre-action stage. In fact, you ought to have known this, because it was reported in the newspapers only two weeks ago that the State won its first initial round, where the High Court rejected a bid by the former board to raise a limitation point issue, and that matter is now on a procedural appeal before the Court of Appeal long, long, way past pre-action stage.

We also have, of course, a claim against former executive chairman, Mr. Calder Hart, whom you proudly and conspicuously omitted to mention in the litany of cases that we spent that money for to investigate in dealing with white-collar corruption and crime. But you may recall the name Calder Hart associated with a former administration, Sir, and I want to reassure you that Calder Hart has not only entered a appearance in the court, but that Calder Hart and the claim are very much advanced.

I want to reassure you as well that that money to which you referred, it is not just those matters. We also have the World GTL claim arising out of Petrotrin and the scandal that that led to, and that matter is also coming up before the courts, and I can go on, but suffice it to say, the Government has demonstrated its commitment to investigating all of the corruption that took place, and we are committed to continue to investigate where there is sufficient evidence and justification to investigating corruption and any instance of white-collar fraud and crime.

It cannot be right for the Senator to come here and mislead the Parliament and the population to say that \$100 million per pre-action letter—two pre-action letters issued—when the whole country is already aware of the advanced state of the litigation against all of these persons and those matters are before the court and sub judice, so I will say nothing further, except to correct my learned friend on yet another occasion.  
[Desk thumping]

Madam Vice-President, the other issue I wanted to deal with had to do with a quote from the recent Privy Council judgment in the Presidential Insurance matter, and that quote has been repeated and echoed by Sen. Deyalsingh from Sen. Hinds. I will read the quote from the actual judgment of the Privy Council, and what they say in paragraph 24 is:

“It is therefore permissible as a first step to look at *Hansard* to try to identify the mischief at which the amendment of s.4(7) was aimed and its objective setting.

The Board has considerable difficulty in extracting any clear message from these passages as to the aim or scope of what was intended to be achieved by the amendment to s.4(7) of the pre-1996 Act.”

What they were dealing with is a subsection within an Act of Parliament, and what the Judicial Committee of the Privy Council said is that having looked at the *Hansard*, as frequently happens, there was no clear indication of what was the intention and purpose for that particular subsection in the law.

Be that as it may, what is of interest that the Board did however note—and this is a very important matter in terms of the judgment itself, because it has to do with insurance companies being able to avoid liability where the defence is pleaded that the person who was driving the car when the accident took place was driving the car without the consent, knowledge and permission of the owner of the vehicle.

So what is likely to happen and what has been happening for some time is that insurance companies do, in fact, plead the defence, when they subrogate, on behalf of the negligent driver, the insurance company is able to take over the conduct of those legal proceedings, and they will frequently plead that the driver was driving without the knowledge, consent, permission and authority of the owner of the vehicle, thereby by exploiting a loophole in our law, and more should be said on that at a future date, because that is a loophole that I intend to bring to the attention of the Cabinet with a view to requiring some urgent remedial action at the appropriate stage. [*Desk thumping*]

Madam Vice-President, suffice it to say that what is of interest is that in hearing in the Privy Council, the Judicial Committee sought to go back into this matter to see what was done by the Executive arm of the State with respect to this matter, and this is what the Judicial Committee said—and I quote from paragraph 28 of the judgment. They said:

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“...the only records located in this regard were a letter”—to the Law Commission of Trinidad and Tobago—“dated 28th December 1992 from Attorneys at Law, Jamadar & Kangaloo”—who are now since then—both of whom are members of the Court of Appeal as judges now—“inviting the Law Commission to review areas of the Motor Vehicle Insurance (Third Party Risks) Act, including, ‘whether the defences of unauthorised driver and/or unauthorised user should be available to insurance companies vis-à-vis injured third parties and if so in what circumstances’...”

That letter, of course, Madam Vice-President, is December 28, 1992 and the Judicial Committee, it finds itself in their judgment, suffice it to say, in 1992. So when my friend speaks about nothing being done, perhaps they should remember when they point one finger, four pointing back in their direction, [*Desk thumping*] because from 1992 a letter was written and no steps were taken, but this Government will address this matter in the near future.

Madam Vice-President, my learned friend, Sen. Hinds, in what could have only been a not so clever attempt to obfuscate what were the real issues surrounding this Bill said, he had not heard a word from the FIU on the \$1 million that came into the country, and he started posing, in dramatic fashion, rhetorical questions about, what is happening in X case, what is happening in Y case, and started rattling off all these examples.

You know, I do not know if the hon. Senator read the draft Bill properly, but the reality is that section 22(1) of the FIU Act makes it abundantly clear that it is a criminal offence for the FIU to disclose that an investigation is or is not recommended by the FIU to persons other than the law enforcement and competent authorities in this country. It is a fine punishable by \$250,000 and three years’ imprisonment.

My learned friend stands here in the Parliament and says, “But dey ent disclose this; dey eh tell me that, dey eh tell...” I do not know if my learned friend still thinks that he is part of law enforcement or an agency, but the simple answer to the criticism is that you are not entitled to it. These matters are very sensitive. The FIU understands its responsibilities and they will not be railroaded, bullied, intimidated or harassed into disclosing sensitive personal private information about people that is the subject of an investigation.

In fact, if we follow that lead, it will have the reverse effect. Maybe that was his intention. It will be counterproductive, and what it will do is undermine the investigation process, compromise the very procedures of the FIU, and what it would lead to is a claim for adverse pre-trial publicity by persons who may then escape prosecution and conviction, and that is the reality. [*Desk thumping*]



Madam Vice-President, the second point which requires some response was that section 16(4) allowed the FIU to go to court to get an order to compel the Central Bank and so on to provide information, but it seemed to have excluded, on the first literal read, the FIU from getting an order against a natural person. That is in fact incorrect.

Under section 11 of the FIU Act, the FIU may request information from a financial institution and listed business. The term “listed business” includes a professional or sole trader in the First Schedule to the Proceeds of Crime Act—they may be incorporated, they may not be incorporated. In other words, they may be a natural person. So when you refer and read the term “listed business”, in fact it covers natural persons, and that is the simple answer.

May I remind, of course, on that point that it is an offence to withhold information, and the penalty on summary conviction is 500,000 and a further fine of 25,000 for each day that the offence continues, and on indictment the penalty is \$1 million and \$50,000 for each day that the offence continues. That is, in fact, sufficiently potent and demonstrates our seriousness about this issue.

Madam Vice-President, the final criticism that merits some response would have been the one that it did not target sufficiently one-off transactions. That, quite frankly, is not so, Madam Vice-President. The requirement is to report when there is suspicion that funds being used for a transaction are the proceeds of a specified offence or activity. That is in section 55(3) of the Proceeds of Crime Act.

The reporting entity is required to pay attention to one-off occasional transactions, which may be suspicious and, therefore, require a report to be made to the FIU. Therefore, if a one-off transaction is in fact suspicious, there is a clear statutory obligation to report it to the FIU.

Madam Vice-President, I was heartened to listen to the last contribution made by temporary Sen. Mariano Browne where he acknowledged, of course, that this is a continuing process of development with respect to the country’s meeting its compliance rating.

As I indicated before, FATF has issued three sets of recommendations over the years. I have no doubt that we will have to return to this Parliament, because, as fast as FATF imposes requirements and tightens up all of the loopholes that are being exploited to finance terrorist activities or launder funds, then you have the attempt to countermand that and to outmanoeuvre those stringent measures that are being put in place. It is for that reason FATF will no doubt have to keep abreast in the game of checkers that we are playing. In the international game of checkers we will have to always try to ensure that we are one step ahead of the money launderers and those that are financing terrorist activities.

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[SEN. THE HON. A. RAMLOGAN SC]

*Tuesday August 21, 2012*

So, Madam Vice-President, with those few words, I think enough was said to ensure that this Bill will get the support it clearly requires in the interest of this country's international rating and image so that we can be compliant, as far as possible, with the FATF recommendations, and that Trinidad and Tobago can enjoy a proud and respected reputation as a country that is serious about its obligations in law to combat terrorism and to deal with money laundering. With those few words, I beg to move and I thank you. [*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.*

*Question proposed:* That clause 1 stand part of the Bill.

**Sen. Deyalsingh:** Madam Chair, just for clarification, to the hon. Attorney General and just for *Hansard* records, do we in fact need to go through the full committee stage on the original Bill as promised so that this Bill could be workable? I am just asking, because we did not do that in April of 2011.

**Sen. Ramlogan SC:** The answer is no, Sir.

**Sen. Deyalsingh:** Thank you.

*Question put and agreed to.*

*Clause 1 ordered to stand part of the Bill.*

*Clause 2 ordered to stand part of the Bill.*

**7.25 p.m.**

*Clause 3.*

*Question proposed:* That clause 3 stand part of the Bill.

**Sen. Prescott SC:** Madam Chair, I do have a question, please.

**Madam Chairman:** Sure.

**Sen. Prescott SC:** Forgive me. May I invite the attention of the Attorney General in clause 3 to subsection (e), but I may have to refer to all of it in order to get my point. It is a provision for law enforcement authorities. It defines law enforcement authorities and it speaks at (e) of "any other office or agency of the State in which is vested coercive powers of a constable under the Police Service Act", slightly different from what it had been before.

I am sure that (e) refers to estate constables, for example, if so authorized by an estate, which is an office or agency of the State. So, for example, the port authority has a power under its Act to give authority to certain persons, and such persons within that estate have the powers of a constable. It is not clear to me why this Bill and the whole process of financial intelligence and the investigation of it would want to be made resident in the hands of a port authority estate constable.

I imagine that there are other agencies of the State with similar powers. The Port Authority Act says at section 74 that by simple notice in writing the authority may authorize an employee to maintain order. No doubt it is on the estate and it is limited to the estate, but it says such:

“employee...shall, in the performance of such duty, have all the powers, rights, privileges and protection of a constable.”

So it does appear to me that some authority, not today necessarily, but somebody in the Financial Intelligence Unit may well say, “I shall place in the hands of port authority estate constables or estate constables on housing development estates the power to investigate suspicious transactions.” Perhaps now might be the time for the Attorney General to make clear, for the benefit of *Hansard* and later on for the courts, whether it is intended that this provision should be so expansive.

**Sen. Ramlogan SC:** Senator, I know this issue you had discretely raised outside of the debate, and I did have a discussion about it. I also communicated with it in terms of those who advised on the matter. The intention was to cast the net very far and wide. It is not that one would as a first resort go to those who would probably be operating under delegated powers like the estate constables. So it would really not be the intention of the FIU or the State to give them that kind of power.

Having said that, it was felt that casting the net wide would cater for permutations that we cannot conceive of now, because in the sharing of intelligence and experiences with foreign intelligence units, it has been their experience that the wider the net was cast in the legislation the more practical it was for the FIU to conduct its duties and for these matters to be investigated.

For example, one can easily conceive if there is money laundering or financing of terrorism involving a cargo of illegal guns coming into the country or anything of the kind, or a shipment for which you are paying with funds in cash, as the case may be—the port is a sensitive area so it is a good example to use—but I was told that there are many illustrations they could think of as to why they wanted to keep the net wide.

Of course, that does not mean that the first port of call would be the lowest rung in the ladder. One would certainly expect that, having regard to the nature of these kinds of matters, they would obviously go to the more specific and pointed persons in the relevant and appropriate law enforcement authority and these would be more ancillary in nature, insofar as their assistance may be required at any given point in time.

**Sen. Prescott SC:** Thank you very much, Attorney General. Madam Vice-President, just for the purpose of the record, and so that the citizen would know, because the citizen ought to know where, if at all, he is likely to be faced with an authority that has the powers of enforcement—He may be conducted a legitimate transaction which would be considered illegitimate until he has had his day in court—would the Attorney General consider either identifying now which bodies are likely to come within this group or saying that when and if a body has been identified as being an enforcement authority, one which is not now named, that the Financial Intelligence Unit would make public such a statement? So, for example, “We are about to name the HDC estate constables law enforcement authority for the purpose of X”, or during a limited period it would be Gazetted or something of the sort, if some consideration should be given to that so the citizen knows that he or she is within the embrace of a law enforcement authority.

**Sen. Ramlogan SC:** That is certainly a matter to which consideration can be given—

**Sen. Prescott SC:** Thank you.

**Sen. The Hon. A. Ramlogan SC:**—when we next visit the Act with a view to amending it to comply with further recommendations that no doubt would come in the ebb and flow of the relationship between FATF and Trinidad and Tobago and I will take note of it, Sir. As I did with this Miscellaneous Provision Bill, I will no doubt give due consideration to it when we are coming back.

*Question put and agreed to.*

*Clause 3 ordered to stand part of the Bill.*

*Clause 4 ordered to stand part of the Bill.*

*Preamble approved.*

*Question put and agreed to that the Bill be reported to the Senate.*

*Senate resumed.*

*Question put.*

*The Senate voted: Ayes* 27

AYES

Singh, Hon. G.

Coudray, Hon. M.

Ramlogan SC, Hon. A.

Howai, Hon. L.

George, Hon. E.

Karim, Hon. F.

Tewarie, Hon. Dr. B.

Bharath, Hon. V.

Mohammed, Hon. J.

Moheni, Hon. E.

Maharaj, Hon. D.

Baynes, T.

Ramnarine, Hon. K.

Lambert, J.

Beckles, Ms. P.

Hinds, F.

Henry, Dr. L.

Deyalsingh, T.

Browne, M.

Ali, Mrs. S.

Ramkhelawan, S.

Baptiste-Mc Knight, Mrs. C.

Balgobin, Dr. R.

Ramkissoon, Prof. H.

Wheeler, Dr. V.

*FIU and Anti-Terrorism Bill, 2012*

*Tuesday August 21, 2012*

Prescott SC, E.

Armstrong, Dr. J.

*Question agreed to.*

*Bill accordingly read a third time and passed.*

**ADJOURNMENT**

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Madam Vice-President, I beg to move that this Senate do now adjourn to a date to be fixed.

*Question put and agreed to.*

*Senate adjourned accordingly,*

*Adjourned at 7.36 p.m.*