SENATE

Tuesday, March 19, 2019

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

PAPERS LAID

1. Ministerial Response of the Ministry of Public Utilities to the Eleventh Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA), Third Session (2017/2018), Eleventh Parliament on an Inquiry into the Efficiency and Effectiveness of the Regulated Industries Commission (RIC). [*The Minister of Energy and Energy Industries* (*Sen. The Hon. Franklin Khan*)]
2. Final Report on the Tenth Actuarial Valuation of the National Insurance System as at June 30, 2016. [*The Minister in the Ministry of Finance* (*Sen. The Hon. Allyson West*)]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the South-West Regional Health Authority for the year ended September 30, 2010. [*Sen. The Hon. A. West*]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the South-West Regional Health Authority for the year ended September 30, 2011. [*Sen. The Hon. A. West*]
5. Annual Audited Financial Statements of the National Schools Dietary Services Limited for the financial year ended September 30, 2018. [*Sen. The Hon. A. West*]

6. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the San Juan/Laventille Regional Corporation for the year ended September 30, 2013. [*Sen. The Hon. A. West*]
7. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the National Carnival Commission of Trinidad and Tobago for the year ended September 30, 2005. [*Sen. The Hon. A. West*]
8. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the National Carnival Commission of Trinidad and Tobago for the year ended September 30, 2006. [*Sen. The Hon. A. West*]
9. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the National Carnival Commission of Trinidad and Tobago for the year ended September 30, 2007. [*Sen. The Hon. A. West*]
10. Land Acquisition (Requisition) Order, 2019. [*Sen. The Hon. F. Khan*]
11. Ministerial Response of the Ministry of Public Administration to the Fifteenth Report of the Public Administration and Appropriations Committee, Fourth Session (2017/2018), Eleventh Parliament on an Examination into the Expenditure and Internal Controls of the Ministry of Tourism. [*Sen. The Hon. F. Khan*]
12. Annual Report of the Children's Authority of Trinidad and Tobago for the period ending 2016/2017. [*Sen. The Hon. F. Khan*]

JOINT SELECT COMMITTEE REPORT

Social Services and Public Administration

(Presentation)

Targeted Conditional Cash Transfer Programme

Sen. Paul Richards: Thank you, Mr. Vice-President. I have the honour to lay on the table the following report as listed on the Order Paper in my name:

Seventh Report of the Joint Select Committee on Social Services and Public Administration, Fourth Session (2018/2019), Eleventh Parliament on an inquiry into the Management of the Targeted Conditional Cash Transfer Programme (TCCTP).

PUBLIC ACCOUNTS COMMITTEE

(Presentation)

National Agricultural Marketing and Development Corporation

Sen. Taharqa Obika: Mr. Vice-President, I have the honour to lay on the table the following report as listed on the Order Paper in my name:

Twenty-Third Report of the Public Accounts Committee, Fourth Session (2018/2019), Eleventh Parliament on an Examination of the Audited Financial Statements of the National Agricultural Marketing and Development Corporation (NAMDEVCO) for the financial years 2008 and 2011.

URGENT QUESTIONS

Sale of Paria Fuel Trading

(Details of)

Sen. Wade Mark: Thank you, Madam President. To the Minister of Energy and Energy Industries: In light of reports that Paria Fuel Trading is to be sold, can the Minister indicate what impact this development will have on the supply of fuels to the motoring public?

Madam President: The Minister of Energy and Energy Industries.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin

Khan): [*Desk thumping*] Thank you very much, Madam President. Madam President, it is obvious that Sen. Mark did not read the newspapers this morning. The three headlines are very clear and very explicit. Today's *Express*, "Government stops plans to dispose of the Paria Fuel Trading Company". *Guardian* "Oops, not for sale", and the *Newsday* and the Guardian, "Paria Fuel not for sale, says Khan".

Madam President, for the records I want to read into the parliamentary records the actual press release that I sent out yesterday and it states as following:

> "The Minister of Energy and Energy Industries, Senator The Honourable Franklin Khan, has taken note of the newspaper reports that could give the impression that it is the intension of the Government to sell the Paria Fuel Trading Company Limited.
>
> However, for the record, the Paria Fuel Trading Company is a strategic state asset that plays a very important role in ensuring the security of supply of liquid petroleum fuels for the transportation sector of Trinidad and Tobago and for the general public. The Company is also invested with the ownership of strategic assets such as tank farms, port infrastructure and real estate which were previously owned by the predecessor company Petrotrin.
>
> As Minister of Energy/Energy Industries, I wish to make it"—abundantly—"clear that the divestment of Paria Fuel Trading Company Limited is not within the current mandate given by the Government to Trinidad Petroleum Holdings Limited.
>
> Accordingly, Trinidad Petroleum Holdings Limited has been directed to withdraw and retract any advertisement or Request for Proposal that may have been inadvertently issued for the sale of the Paria…
>
> The public is assured that the Government and the Ministry…"—of Energy

and Energy Industries—

Madam President: Minister, your time is up.

Sen. The Hon. F. Khan:—"will continue to maintain oversight of the restructuring of Petrotrin…"

Madam President: Sen. Mark.

Sen. Mark: Question No. 2, Ma'am?

Madam President: Yes.

Magistracy

(Dismal of Staff)

Sen. Wade Mark: To the hon. Attorney General: Given the reports of imminent 'administrative changes' at the Magistracy where more than fifty percent of the 452 employees do not have tenure, can the Attorney General indicate how many employees will be dismissed?

Madam President: Attorney General, you have two minutes.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. [*Desk thumping*] I can confirm that the information coming from the Judiciary is that no one, I repeat, no one, will be dismissed.

Restructuring at the Judiciary

(Details of)

Sen. Wade Mark: To the hon. Attorney General: In light of the restructuring exercise being undertaken by the Judiciary and its likely impact on hundreds of staff, has the representing union been consulted in the process?

The Attorney General (Hon. Faris Al-Rawi): Thank you. I thank the hon. Senator for the question. I take this opportunity to condemn in the most straight of terms, the panic that is being put out by a politician who wears the hat as the President of the Public Services Association. There is, in the expansion of the

criminal division, the creation of a number of posts, employment opportunities and a betterment for the citizens of Trinidad and Tobago in the arena that is the criminal justice arena.

I can tell you, consonant with the publication given on Friday by the Judiciary, that the representative union has been fully engaged in this matter, there has been proper consultation, copious documents were provided, and it is a fact of law that permanent workers, which is whom the Public Services Association represents, cannot be dismissed. That is a fact of law that must be put elsewhere into the public service if that were to be the case.

1.40 p.m.

Again, I am pleased to repeat in answer to a sitting politician, wearing the hat of PSA head, there are no dismissals, there is an expansion of the Judiciary for the betterment of the people, and the PSA has been properly and fully consulted. [*Desk thumping*]

Madam President: Sen. Mark.

Outbreak of Meningitis
(Steps Taken)

Sen. Wade Mark: To the Minister of Health: Having regard to the death of a pupil at a primary school in Moruga reportedly due to meningitis and the resulting fear at the school, can the Minister indicate what steps are being taken to avoid an outbreak?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. Madam President, on behalf of the hon. Prime Minister, the Cabinet, and the people of Trinidad and Tobago, I wish to express our deepest condolences to the families of two individuals, two young children age four—one was not in school yet, and one age five—for the passing of these two precious

lives. One can only imagine what their parents and families are going through and we condole with them.

The prevention of an epidemic is based around four pillars: one, environmental management which includes activities like sanitation, which has been done; public education in school; PTA; the general public surrounding the schools to look out for the signs and symptoms and when to seek medical attention; that has been the done; chemoprophylaxis, where you determine the most at-risk persons who were in contact with those two children to give them antibiotics to prevent them contracting meningitis if that is the cause. That has been done; we have given chemoprophylaxis to 29 individuals; and the fourth pillar around which we stop an epidemic is vaccination and this country has a robust programme of vaccination.

There is no one vaccination to cover all 14 or 15 causes of meningitis, but we do, prior to children getting into school, administer two vaccinations, the Hib vaccination and the Pneumococcal vaccine, and those will be given or have been given to all schoolchildren entering primary school. So that is how you prevent an epidemic. I thank the Senator for the question, and we have done all of these things since we got the news that day about two suspected cases of meningitis. Thank you very much, Madam President.

Madam President: Sen. Mark.

Sen. Mark: Madam President, can the Minister indicate whether the over- 500 pupils who attend the Moruga Baptist Primary School whether the Ministry of Health has taken steps to have those students vaccinated or at least interrogated to see to what extent they may have been infected or affected by this particular development?

Hon. T. Deyalsingh: I thank the hon. Senator for his follow-up question. As I said in the body of my answer, principals are supposed to check the vaccination

cards of all students entering their schools. So the principals are our main gatekeepers. The students before entering school are to show proof via their vaccination cards when they got the vaccination, the Hib vaccination and the Pneumococcal vaccine, where, and signed off by the nurse that administers the vaccination. So it is the law before you get into school, similarly with vaccines like MMR and polio and so on, and may I add, Trinidad and Tobago has one of the best vaccine programmes anywhere in the world and has always been so. Thank you again, Madam President.

Protection of Witnesses

(Measures Taken)

Sen. Wade Mark: To the hon. Minister of National Security: In light of the recent murder of a witness to a double murder, can the Minister indicate what measures are being taken to protect other witnesses?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I answer this question on behalf of the Government. Madam President, I first want to caution Sen. Mark that this is an ongoing police investigation and there is nothing—

Madam President: Hon. Senators—Minister—the time for urgent questions has expired, but I will allow the Minister to just complete his answer.

Sen. The Hon. C. Rambharat: Thank you very much, Madam President. There is nothing so far to indicate that this particular murder was tied to anything relating to a witness to another criminal event. However, it is a very important question and I want to say that there is a justice protection programme that is always available for witnesses who are willing to be part of that programme. If a threat assessment is done and the witness qualifies and he or she is willing to enter the programme, that witness can be facilitated. This programme has accommodated

many witnesses in the past and has a success of 100 per cent for witnesses who remain in the programme.

Madam President, on the other hand, many witnesses do not wish to place themselves in the programme, and there are hundreds of state witnesses who are not in the programme. And with these witnesses if they have any concerns about their personal safety, it is important as a first step that they inform the police or any other relevant authority, and in that case a threat assessment will be done. The Trinidad and Tobago Police Service and intelligence services will investigate any information or complaint relating to witness safety. I thank you very much.

ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you, Madam President. Madam President, the Government is pleased to announce it would be answering all questions, save and except questions Nos. 132, 167 and 169. For those three questions, we ask for a two-week deferral. On written answers, we have supplied the answers to question Nos. 141 and 165. We ask for a deferral of question No. 164 for two weeks, question No. 188 is not due as yet.

WRITTEN ANSWERS TO QUESTIONS

Former Petrotrin Workers Pension Fund

(Details of)

141. Sen. Taharqa Obika asked the hon. Minister of Finance:

Can the Minister report on the status of the Pension Fund for former Petrotrin workers by stating:

(i) what is the size of the fund as at 31st January 2019;

(ii) what is the size of the contributions being added to the fund on a monthly basis; and

(iii) what is the average monthly pension payment being made to former Petrotrin workers?

Legal Fees Paid by Port Authority

(Details of)

165. Sen. Saddam Hosein asked the hon. Minister of Works and Transport:

As regards the Port Authority of Trinidad and Tobago, can the Minister provide a detailed breakdown of the following:

(i) the amount of legal fees paid by the Authority for both contentious and non-contentious matters; and

(ii) the name(s) of the Attorneys-at-Law and/or the legal firms engaged by the Authority for the matters referred to at (i) during the period September 30, 2015 to January 31, 2019?

Vide end of sitting for written answers.

ORAL ANSWERS TO QUESTIONS

The following questions stood on the Order Paper:

HYATT Regency Hotel

(Taxes and Dividends Collected)

132. Can the hon. Minister of Housing and Urban Development advise as to the amount of taxes and dividends collected from the HYATT Regency Hotel (Trinidad and Tobago) for each year during the period 2015 to 2018? [*Sen. T. Obika*]

Heritage Petroleum and Paria Fuel Trading

(Net Profit)

167. Can the hon. Minister of Energy and Energy Industries provide the net profit for the period December 01, 2018 to February 15, 2019, for the following?

(i) Heritage Petroleum Company; and

(ii) Paria Fuel Trading Company? [*Sen. S. Hosein*]

Groups Sponsored by Petrotrin

(Continued Assistance to)

169. Can the hon. Minister of Energy and Energy Industries indicate whether a decision has been taken to continue to provide assistance to those clubs and/or groups which were formerly sponsored by Petrotrin as part of its corporate social responsibility? [*Sen. S. Hosein*]

Questions, by leave, deferred.

Tobago Sandals Project

(Projected Cost)

80. Sen. Wade Mark asked the hon. Minister of Tourism:

In light of reports that the estimated cost of the Tobago Sandals project is between TT $8 billion to $10 billion, can the Minister advise on the Government's projected cost of the project from start to finish?

Madam President: Minister of Agriculture, Land and Fisheries.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, to answer this question on behalf of the Government and I thank Sen. Mark for this question as largely relevant as it is, there have been several statements by the Government that the State had incurred no project costs as a result of its discussions with Sandals. Since it is now well known that Sandals will not proceed with the project, no cost will be incurred by the Government. Thank you.

Madam President: Next question Sen. Mark.

University of Trinidad and Tobago

(Entry Denied to Professor)

81. Sen. Wade Mark asked the hon. Minister of Education:

In light of the decision by the University of Trinidad and Tobago to deny entry to one of its professors attempting to attend its annual graduation ceremony, can the Minister explain the actions of the university to deny such entry?

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. The University of Trinidad and Tobago has advised that the Professor was at that time on administrative leave and was not supposed enter any premises of the University of Trinidad and Tobago without permission. Thank you.

Sen. Mark: Can the Minister indicate whether that matter has been now addressed? The administrative leave, has it now expired, and can the goodly—

Madam President: One question at a time.

Sen. Mark: Sorry, Ma'am.

Madam President: Minister.

Hon. A. Garcia: Could you repeat the question, please?

Sen. Mark: I am just asking whether at this time the particular administrative leave that you made reference to has expired.

Hon. A. Garcia: Madam President, the administrative leave of the Professor has been terminated with immediate effect, and the Professor was required to proceed on vacation leave from the 1st of February, 2019, until her retirement on August the 31st, 2019, as she had accumulated leave balance of 170 days. Thank you.

South Florida Human Trafficking Task Force

(Cases Involving Trinidad and Tobago)

82. Sen. Wade Mark asked the hon. Minister of National Security:

What is being done to address the issues raised by members of the South Florida Human Trafficking Task Force that Trinidad and Tobago has

recently moved up from level three to level two on the US Department of State prevention ranking and the possibility that many of the children and adults who have reportedly gone missing are cases of human trafficking?

Madam President: Minister of Agriculture, Land and Fisheries.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you very much. Madam President, while there is absolutely no basis for the issues raised by the South Florida Human Trafficking Task Force, I thank Sen. Mark for the question.

Madam President, the Commissioner of Police has indicated that there is speculation but little evidence to support the claim that many of the children and adults who have gone missing are cases of human trafficking. There have been no indicators identified by the Anti-Kidnapping Unit to suggest that any of the missing children and adults are human trafficking cases. Furthermore, the majority of missing persons, children and adults, are either subsequently located or returned home. A small percentage of missing persons have not been located, and a small percentage of that small percentage are missing persons who are subject of homicide investigations.

Madam President, the Department of State Trafficking in Persons (TIP) Report of June 2017 upgraded Trinidad and Tobago's efforts in combating the trafficking of persons for sexual and labour exploitation including women and children to a Tier 2 ranking. So the ranking was upgraded in 2017. This tier upgrade in ranking was a move from the Tier 2 watch list. Trinidad and Tobago has maintained this Tier 2 ranking in the June 2018 report contrary to what the South Florida Human Trafficking Task Force has said. It is noteworthy that Trinidad and Tobago, contrary to what the South Florida Human Trafficking Task Force has said, was never ranked at Tier 3 in the US, DOS TIP Report, and therefore, the allegation is

based on a very false premise. Tier 2 ranking, Madam President, means that significant steps have been taken to identify, protect and prevent trafficking of persons, and to prosecute the criminals involved in these offences. I thank you.

Madam President: Sen. Mark.

Sen. Mark: Can the hon. Minister indicate what efforts have been made to contact this South Florida Human Trafficking Task Force to address what he has described as misleading information?

Sen. The Hon. C. Rambharat: Madam President, the Counter Trafficking Unit of the Ministry of National Security has not met nor interacted with members of the South Florida Human Trafficking Task Force; neither can the CTU vouched for their credibility, background and knowledge of human trafficking trends in Trinidad and Tobago. Members of the public and civil society organizations are strongly advised—Senators also—to verify the credibility of persons and agencies who purport to be human trafficking experts. In particular, information on human trafficking in Trinidad and Tobago ought to be verified with an authorized local agency before making public proclamations.

Madam President, if persons have information on suspected human trafficking activities they can make an anonymous toll-free call to the Counter Trafficking Unit hotline at 800-4CTU. That, Madam President, is 800-4288. I thank you.

Madam President: Next question, Sen. Deonarine.

Recycling Waste

(Plans to Educate Citizens)

127. Sen. Amrita Deonarine asked the hon. Minister of Planning and Development:

Given the appeal by Government to citizens to begin recycling waste, can the Minister indicate:

(i) how the Government plans to educate citizens on proper recycling practices; and

(ii) whether there are any initiatives in place or planned to educate citizens on how to properly reduce their usage of non-recyclable materials?

Madam President: Minister of Public Utilities.

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): Madam President, the Government's efforts to promote recycling are led by the Trinidad and Tobago Solid Management Company, and revolves around the following five pillars: building capacity at that institution, public awareness, making recycling easy, developing the legislative framework, and developing a recycling industry.

In the areas of public awareness and making recycling easy, SWMCOL has adopted a multipronged approach in the education of citizens on proper recycling practices. The company is currently engaged in the rolling-out of a no-pollution resolution campaign utilizing the print electronic and other appropriate media. As part of this initiative, the company has relaunched a successful "Chase Charlie Away Programme" which would be taken to communities throughout Trinidad and Tobago. This is complemented by a public education initiative in primary schools with the focus on waste management, anti-littering and recycling messages. For the previous year, SWMCOL reached over 27,000 students through its primary school education programme, and to date this year they have reached over 17,000 students.

In addition, Madam President, SWMCOL has also been spearheading several programmes to educate the citizens on sustainable workplace practices through the public sector recycling programme and the workplace reduction recycling programme. These programmes aim to educate employees, both in the private and

public sectors, on proper waste management practices and to include the desired behaviour towards waste management which will rebound to the wider society.

Working in collaboration with the municipal corporations, SWMCOL has also successfully piloted the kerbside recycling projects in San Fernando, Point Fortin, Couva, Tabaquite, Talparo and Arima. Discussions are far advanced for similar projects to be implemented in Siparia, San Juan/Laventille and Port of Spain. These projects are intended to promote recycling and at the household level. SWMCOL's message to the public is not just limited to waste recycling, but rather entails the promotion of the three Rs: reduce, reuse and recycle. These messages aim to encourage environmental conservation, minimization of non-recyclable waste, and the diversions of recyclable waste from the landfills. Thank you.

Madam President: Sen. Deonarine.

Sen. Deonarine: Thank you, Madam President. Can the hon. Minister indicate when the "bring back Charlie" programme will be rolled out in the communities?

Sen. The Hon. R. Le Hunte: Madam President, the Chase Charlie Away Programme is presently being rolled out, as I said, in the schools. They reached 27,000 schools last year and is part of—

Hon. Senators: Students.

Sen. The Hon. R. Le Hunte: Students. Sorry. Sorry—27,000 students last year, and this year we have actually touched 81 schools and 17,000 students. So this particular programme is geared towards the school. There is the recycling programme that we are gearing towards the communities and dealing with the individuals, both in the workplace through the workplace recycling programme and the public sector recycling programme where we talked about—at that time it is not Chase Away Charlie, but it is a little bit more advanced because we are dealing with them at their workplace. And then also we have the community programme

which is the kerbside recycling programme, which is being done with the municipal corporations. So that particular programme is geared towards the schools and it is already in place in the schools.

Madam President: Next question, Sen. Obika.

Magdalena Grand Hotel

(Taxes and Dividends Collected)

131. Sen. Taharqa Obika asked the hon. Minister of Trade and Industry:

Can the Minister advise as to the amount of taxes and dividends collected from the Magdalena Grand Hotel for each year during the period 2015 to 2018?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you, Madam President. The taxes collected from the Magdalena Grand Beach and Golf Resort for the period 2015 to 2018, totalled $21,425,787.35 broken down as follows: in 2015, $7,136,448.17; in 2016, $5,703,072.10; in 2017—and this is all in TT dollars—$4,675,013.57; and in 2018, $3,911,253.50.

Let me break these down further. With regard to the Business Levy and Green Fund: in 2015 the contribution was $168,202.26; in 2016, $433,574.33; in 2017, $347,511.20; and in 2018, $297,862.60, bringing a total to the Business Levy and Green Fund of $1,247,150.39.

Let me now go to the hotel accommodation tax and this is broken down as follows: in 2015, $3,539,428.71; in 2016, $3,031,383.98; in 2017, $2,407,382.26; and in 2018, $278,101.54, bringing a total of $11,056,296.50.

With regard to value added tax for 2015, $1,878,916.67; in 2016, $711,902.19; for 2017, $463,452.38; for 2018, $155,332.56. A total of value added tax of $3,209,603.79.

With regard to NIS, which is a company expense, $1,549,900.53; for 2016,

$1,526,211.60; for 2017, $1,456,666.73; for 2018, $1,379,956.80, making a total contribution of $5,912,736.67, giving an all-told contribution for 2015 as I had outlined earlier before.

For the period 2015 to 2018, Magdalena Grand Beach and Golf Resort has been operating at a loss, and therefore, no dividends were paid.

Madam President: Sen. Obika

Sen. Obika: Thank you, Madam President. I thank the Minister for the detailed response. I wish to ask if the Minister could give any indication as to why the taxes would have declined consistently over the period from the $7 million to $3 million over the four-year period? Just a general indication as to why or if there is any specific indication.

Sen. The Hon. P. Gopee-Scoon: Let me give a general answer to say that Magdalena Grand has been operating at a net loss for a number of years. As a matter of fact, we have a net operating loss of TT $276 million from the period 2008 to 2018. So that gives you a sense of the performance of the business.

Madam President: Sen. Hosein.

Sen. S. Hosein: Through you, Madam President, in light of the loss that the Magdalena Grand has been operation at and the burden on the taxpayers, is the Government taking any steps to remodel the business enterprise of the Magdalena?

Sen. The Hon. P. Gopee-Scoon: Yes. Magdalena which is owned by the VHL Limited has experienced financial difficulties from the onset, and I can go back to the overruns which I can trace in terms of time and cost to complete the hotel if I go back to the early days when a construction cost with a variance of something like 77 per cent. So whereas the initial building cost would have been about $170 million, this went up to $306 million and so on, and add to that the operational losses which I just cited to you, $276 million. Yes, the Government is making

every effort to turn the prospects for the hotel around and this is being done through e TecK.

At the moment, we are in the final stages of finding an operator, an international operator, and then an international brand, and hopefully in the not-too-distant future, let us say within three months, hopefully there would be an international operator for the hotel. Concomitant with that would be, of course, renovations that would be associated with the demands of the consultant and all of these would be determined during the next few months as we finalize the operator. Concomitant with that, it is a lot of work in terms of promoting Tobago, attending to matters of airlift and all of the other kind of support. Support would be necessary to promote the tourism destination.

Madam President: Next question, Sen. Obika.

Hilton Trinidad and Conference Centre

(Taxes and Dividends Collected)

133. Sen. Taharqa Obika asked the hon. Minister of Trade and Industry:

Can the Minister advise as to the amount of taxes and dividends collected from the Hilton Trinidad and Conference Centre for each year during the period 2015 to 2018?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you, Madam President. Taxes collected from the Hilton Trinidad and Conference Centre for the period 2015—2018 totalled $81,131,777.78 broken down as follows: in 2015, $21,818,489.63; in 2016, $19,947,109.23; in 2017, $17,973,826.58; and in 2018, $21,392,352.34—all in TT dollars.

With regard to the Business Levy and Green Fund: for 2015, $154,075.55; for 2016, $412,989.62; for 2017, $391,862.93; for 2018, $308,123.77, with a total towards the Business Levy and Green Fund of $1,269,051.87.

With regard to Corporation Tax: in 2015, $1,033,086; in 2016, $2,600,047; in 2017, $1,014,000; in 2018, $780,000, with a total of $5,427,556.

With regard to value added tax: in 2015, $1,483,621; 2016, $523,930,000; 2017, $1,016,715; in 2018, $633,076, with an all-told $3,657,343.

With regard to hotel accommodation tax, $9,717,579: in 2016, $8,619,304; in 2017, $8,387,015; in 2018, $8,563,908. With an all-told, with regard to the hotel accommodation tax, $35,287,805.

With regard to NIS, which is again in the employer expense only, I speak to here: in 2015, $3,390,004; in 2016, $3,297,877; in 2017, $3,121,850; in 2018, $3,539,508, all-told with regard to NIS $13,351,239.

With regard to pay as you earn: $6,040,123; with regard to 2016, $4,490,539; 2017, $4,042,384.

2018 – $7,567,736. All told, Pay As You Earn – $22,140,783. The Hilton Trinidad and Conference Centre operates under a lease agreement with eTecK, the Evolving Technologies and Enterprise Development Company Limited and therefore the question of a dividend payment does not arise. Thank you.

2.10 p.m.

Sen. Obika: Thank you very much, Madam President. Given the profits of Trinidad Hilton being so significant, 35 million-plus just in corporation tax alone, in terms of the contribution to the state, can the Minister indicate if further engagement of this brand can be done, or will be done for installations in Tobago?

Madam President: No, that question does not arise. Next question.

Sen. Obika: Thank you very much, Madam President. Can the hon. Minister indicate regarding the dividend or given that the term "dividend" does not apply, but what contributions by way of shareholder agreement is given to eTecK?

Sen. The Hon. P. Gopee-Scoon: Thank you, Madam President. But that is not a

question. I cannot give you an answer right now, perhaps you would want to ask another question.

Directors Remuneration Packages

(Breakdown of)

168. Sen. Saddam Hosein asked the hon. Minister of Energy and Energy Industries:

Can the Minister provide a breakdown of the remuneration packages of the Directors of the following:

i. Heritage Petroleum Company;

ii. Paria Fuel Trading Company; and

iii. Guaracara Refining Company?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, the remuneration packages for the directors of Heritage Petroleum Company, Paria Fuel Trading Company and Guaracara Refining Company are based on the guidelines set out in the *State Enterprises Performance Monitoring Manual* under group C.

The package includes monthly fees and travelling allowances which are as follows: For the Chairman, $7,500 per month; Deputy Chairman, $5,550; and a Director $3,700 per month.

Sen. Hosein: Madam President, through you, do these figures that the Minister indicate to this the honourable Senate include any other benefits or allowances given to these Director?

Sen. The Hon. F. Khan: As I said, it includes monthly fees and travelling allowances. There are no other benefits that come with the job. The job is basically public service.

COMPANIES (AMDT.) BILL, 2018

Order for second reading read.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam Speaker. [*Desk thumping*] Madam Speaker, I beg to move:

That a Bill to amend the Companies Act, 2018, be now read a second time.

Madam President, I am giving ample notice to all my learned colleagues that we are going to be quite busy in the next couple of weeks in considering urgent and important work in respect of which there has been a considerable amount of preparation, analysis, consultation, double-check and then reformulation. And I say that specifically in the context of our obligations to our international reporting assessors.

Trinidad and Tobago finds itself as we know, all of us now quite well, in the middle of a global movement where there is an attempt to wrestle with the scourge of crime as it manifests itself in money laundering, the financing of terrorism, corruption, and a lack of transparency. And in this particular matrix, the United Nations Security Council Resolutions have found themselves into the national laws of our country. That UNSCR resolutions, those many conventions that we have all signed on to and are quite aware of, be it the Vienna Convention, the Rome Convention, whatever—Palermo Convention, whatever they may be, these Conventions have now found themselves quite properly rooted into the national legislation agenda and operationality of the world as a whole. That is also to be found in multiple fora. I bring to your attention, Madam President, of course, the Financial Action Task Force, the OECD and their declarations, and G20 declarations that manifest in the G20's version in the Global Forum pot.

And if we take the Global Forum environment of some 190 counties and a similar number in the Financial Action Task Force as that is operated from the central

body, the FATF and through something referred to as FSRBs, which are regional sub-bodies, FATF-styled regional bodies, there are nine of them. The world has said in treating with this scourge of criminality that jurisdictions ought to lift themselves into a degree to compliance to ensure that there is transparency so that we can follow the money in relation to activities.

This, very fortunately, coincides with this Government's agenda as is now well known to hon. Senators and the national public. The mission in the first two years was a reformation of the criminal justice system. The mission involved getting the very many moving parts working, so that laws can be operationalized, and on this particular cycle of two years including this one and the last year just gone, those two years, as a country we are focusing on the laws to treat with getting the trail of evidence as to where money resides in money laundering, financing of terrorism, corruption.

It is for this purpose that there are three particular pieces of law that this Senate will be obliged to consider and they are this Bill, the Companies (Amdt.) Bill. Secondly, the establishment of a non-profit organization regime where you are registering and regulating non-profit organizations, as they exist in their thousands in our country, unregulated at present. And the third aspect that falls for consideration, is the civil asset forfeiture, explain your wealth legislation.

Trinidad and Tobago underwent its mutual evaluation, Fourth Round Mutual Evaluation in the Financial Action Task Force subset of the Caribbean Financial Action Task Force. We had our on-site attendance and mutual evaluation in January2015. Our predecessor government elected to put Trinidad and Tobago first in line for that assessment, even though we were not prepared for the assessment, and even though we are had not completed our third round assessment. They volunteered that our third round and fourth round assessments should be

rolled up in one, and quite frankly we did not fare well on the assessment. That assessment brought us into failing grades on the recommendations that the FATF says that we ought to have managed, and the immediate outcomes. Now, we know the FATF recommendations are 40 in number and the immediate outcomes are 11 in number.

Trinidad and Tobago not having fared well, we were put into what we call two forms of supervision. On the first hand, we were put into it because of the size of our economy over US$5 billion, we were put into what is called the International Corporation Review Group (ICRG) which is the body that supervises your commitment to achieving your workout of a bad situation, and that is over a three-year period. And we were also put into something called enhanced follow-up in the CFATF regime.

These two regimes, quite simply put, tell Trinidad and Tobago give a high level political commitment, publish only inside of FATF not outside, an action plan, and be judged by way of analysis from review experts in what they call joint group face-to-face review. Let them attend upon you, check your progress and be assessed three times per year in the FATF and similarly in the CFATF. So there is a constant monitoring and evaluation process in the ICRG, FATF and also in the CFATF.

Trinidad and Tobago's mutual evaluation report was published on June 2016. And in June 2016, three years was given to this country to achieve its markers, we are down to the end right now. Our review in final form comes up in the May plenary in Orlando 2019. May 2019 is our final assessment, and we must report on a face-to-face basis by April 25th, 2019.

The last three items to be reported on, this Bill, which causes an amendment to the Companies Act, the non-profit organizations, which will be laid in Parliament this

week, and the civil asset forfeiture and explain your wealth regime which will be laid as soon as Cabinet has considered it this week; assuming that Cabinet, of course, approves it in the form that it is. So, I am putting Members on notice that we have some work to do.

Now, these laws—this amendment, in particular, is intended to treat as I said, money laundering, financing of terrorism, corruption. It is attended to treat with Recommendation 24 and Immediate Outcome 5. Recommendation 24 and IO5. These essentially talk about transparency, and transparency from the Government's perspective must be had in three places: one, companies or entities that are corporate in nature; two, land transactions; and three, cash. And that is why we have engaged in so much work in the laws that we have brought to Parliament to treat with money laundering mechanisms, et cetera.

As it relates to companies and for persons who are not schooled in law. I will put it as simply as I can. There is a distinction in law between legal ownership and beneficial ownership. Beneficial ownership is referred to as fair or equitable ownership, it is a type of ownership which prevails over legal ownership. It is to be found in the example where someone tells, for instance, me, Faris Al-Rawi, please buy a car, go down to Toyota, give them the cheque and tell them you came to pay for the car and this is the registration number.

I arrive at Toyota, I give them the cheque for the car certified draft, they say what is your name, I say Faris Al-Rawi, they write it out, and next thing you know the Certified Copy comes with my name, Faris Al-Rawi, on it, because I tendered the cheque. Who is the real owner? The person who gave the cheque and mistakenly finds himself as the legal owner on the certified document, or is it the person who in fairness and in equity gave that money. It is his money by way of a loan, or by way of savings that person is instituted as the beneficial owner and the rule of law

is that equity prevails over law. So if there was a challenge as to who the real owner is, the beneficial owner if he went to court or she went to court can tell the court, this is the evidence by which I was the beneficial owner. I really paid for the car, here is my cheque, here is the certified copy this is the circumstance, Faris Al-Rawi, in this example is not the real owner and therefore equity prevails.

This Bill, 11 clauses long, treats with amendments to the Companies Act in an interrelated and very logical fashion. The first fact is that in these 11 clauses, the first one is the short title, we all know that that is straightforward. The second one says, the Bill shall come into operation when you proclaim it. The third one says this Act, what it means, it refers to the Companies Act, what the Act means. Then we deal with sections 4, 5, 6, 7, 8, 9, 10 and 11. Clause 4, clause 8 and clause 11 all relate to the same thing. They relate to different sides of the equation for local companies and external companies and how we treat with something called bearer share warrants or share warrants, and I will explain that in a moment.

Basically it is like a dollar bill, he who holds the dollar bill owns the dollar bill, unless you can prove otherwise, it was stolen, et cetera, et cetera. You present a dollar bill and you pay for something you transfer ownership of the dollar bill—a $100 bill. That is effectively a negotiable instrument which is owned by the bearer, and bearer share warrants or share warrants in the very simple term is that the person may own stock or shares in a company in the fashion of simply holding the certificate. So clauses 4, clause 8, and clause 11 treat with that and I will come into the nitty-gritty in a while.

Clause 4treats with the local side, clause 8 treats with external companies and clause 11 amends the regulations that relate to both. Clauses 5 and 9 relate to how we deal with certain aspects of record keeping, the regularity of record keeping making it more than just annually or before your first anniversary. And importantly

clause 9 treats with a concept called beneficial ownership that you must declare who the real owner of a share in a company is, and I will explain that in detail in a moment.

Clause 10 treats with the official receiver. It is a lacuna in the law caused by way of a repeal of the Bankruptcy Act and the replacement by that Act by the Bankruptcy and Insolvency Act where there was an omission to state who should manage property that fell to the benefit of the State, effectively there was no real owner, and we put that in the official receiver. That is the simple purpose of this law. Madam President, what time do I end?

Madam President: You end at three minutes to three.

Hon. F. Al-Rawi: Thank you very much. Let us get to aim, proportionality and legitimate purpose of this legislation. Why do we need this? Why do we need to have a conversation about who the real owner of this is? Our Companies Act is pellucidly clear, you can go to the registry; you will see who the real owners of shares are as they relate to legal ownership by way of the filed documents called annual returns. Annual returns are filed Form 28, Form 29 and Form 23. External companies file annual returns, non-profit companies file annual returns, and limited liability companies file annual returns.

Now there are different types of companies, you have companies that are limited by shares or guarantee. You have companies that are externally registered companies. You have companies that have no shares. You have companies that are effectively non-profit or not for profit entities and, of course, you have what we call former act companies which existed under Ch. 31 No. 11 which is the old laws of Trinidad and Tobago. In this environment, what we are now required to look at is whether there a mischief in Trinidad and Tobago that this Act seeks to treat to claim by way of amendment some remedy for? And the answer to that is, of

course, yes.

Let us go to the statistical information in our country. On the register, the public register of companies in Trinidad and Tobago there are standing as March08, 2019, 104,168 registered companies. Of that, 86,190 are actually active, the rest of them some 20 per cent of the registry is inactive. And you will see in today's newspaper a notice that the Government is moving to strike off companies that are inactive, and I will explain why in a moment. Total profit companies, we have profit non-public companies, there are 77,472. Profit public companies there are 129, total non-profit companies 7,958. That does not include the non-profit entities that are not registered, which are in the thousands as well. And total external companies 596, and then no category 35.

But it is the Financial Intelligence Unit's statistics that really jump out at me. Hon. Senators, in the period 2015 to 2018, the Financial Intelligence Unit which is the entity which receives Suspicious Activity Reports (SARs) and Suspicious Transaction Reports (STRs) that FIU which relates financial institutions in terms of reports aspects and listed businesses pursuant to the first and second schedules of the Proceeds of Crime Act which are lawyers, real estate agents, pawn brokers, et cetera. The total figure for suspicious activity for the period 2015 to 2018 inclusive is, in our little country, $14,931,119,316. Let me repeat that, in our little Trinidad and Tobago in a three-year period, $14.9billion of suspected activity and suspected transactions.

But in that pack, 353 companies were found in that. Three hundred and fifty companies registered in Trinidad and Tobago were involved in that suspicious activity or suspicious transaction matrix. And it is important to note that the activities included this is the suspicious activities; breach of exchange control, corruption, drug trafficking, financing of terrorism, fraud, human trafficking,

money laundering, suspicious activity, tax evasion. And we have had in that aggregation of that 15-odd billion, we have had transactions that have been completed and transactions that have been stopped by way of the operation of the FIU.

But in getting to these companies, how much use is it to just see a nominee person, and driver who you cannot find, a made-up name who has a forged identity. How useful is it to have a legal owner who really is not the beneficial owner or the real owner of shares or worse yet, to have defunct company which someone left on the register, simply because they could not afford to update the fines that are associated with late filings, and this is quite hefty. And therefore they leave the company in a defunct state, and then you do like, I gave the example in the House and I will repeat here, you take the juice cans that went to the United States of America, $1billion worth of cocaine inside the juice cans, and you use a defunct company not up-to-date in Trinidad and Tobago and all the shipping documentation is in that company.

So, do we have a problem in this country? Yes. Is it to the tune of billions of dollars? Yes. Do with know who the real owner of something is? No. And hon. Senators, this prevails equally as it relates to land and cash. So today we are dealing with companies. I can tell you we are coming to deal with land and we are going to deal with cash.

This Bill, let us deal with the clauses of the Bill. The clauses of the Bill are really quite simple. If I look to, before anything else, the preliminary provisions in the legislation that we are seeking to amend. Let us start off with clause 4 as it relates to clause 8 and clause 11. If we look at clause 4 of the legislation, we are looking at an amendment to section 33. What we are seeing in the amendment to section 33 is we are saying, 33 deals with share issue, that is the Companies Act. Now, the

Companies Act is a robust piece of legislation. It is in need of some updating, I can tell you we are doing a general overall of the Companies Act now, as a result of case law, as a result of movement, the fines and penalties are far too low. We are harmonizing that approach. But today we are dealing with beneficial ownership and we are dealing with share warrants and bearer share warrants.

Section 33 of the Act, which we seek to amend by clause 4 of the legislation previously said:

> "No company may issue—"—in subsection (2)—"bearer shares or bearer share certificates."

It omitted bearer share warrants. And therefore we propose that we insert now bearer share warrants as a specie alongside bearer share certificates, and we seek to take care of the three aspects in which that can be manipulated.

Firstly, the issuance of those species. Secondly, the conversion into shares. Thirdly, the exchange of those shares. And then we, of course, provide a penalty that no company may issue those bearer share warrants or bearer share certificates.

We then go on in that clause to provide a formula for rational association. Effectively, this clause requires the company to put out a notice calling for the holders of bearer share warrants or bearer share certificates to bring them in, there is a process and a timeframe for that. Once brought in they are converted into a register where it is known who the owners are they are converted in that process. If the bearer shareholders or share warrant and share certificate holders do not bring in the certificates, then they approach the court under the due process environment to move for a cancellation of those instruments. And, of course, we put the corollary to that, or I should say the flip side to that, we provide for the utilization of the remedies provision in the companies law, section 245, well-known to practitioners who practice in this area where you can apply to the court and say,

listen my share certificate was cancelled, I did not know about it. You approach the court and you have it restored and then the register goes across with your name on it. So we have provided the balanced proportionate measure to the treatment of the cancellation, the calling in, the registration, the cancellation and the restoration provisions that exist in the law.

We have, of course, said that there are to be penalties provided along the way for failure to do certain things and then we provide that annual returns must be provided, and that there must be a register established for shares. And then we define what a bearer share warrant is in the last position.

This is to be replicated in our consideration of clause 8. In clause 8, we are taking for externally registered companies, remember there are different types of companies. You can have a company which is home-grown; that is a company under the companies old ordinance which was continued under the Companies Act. You can have a freshly incorporated company under the Companies Act by filing your Articles of Incorporation, et cetera, the package of documents that go.

And very importantly you have another method, where you can bring your company from abroad from any jurisdiction in the world, you can have them notarized, translated, and then you come under the provisions of Part V of the Companies Act for external registration of companies and then you transplant that corporate entity from its foreign jurisdiction into your local jurisdiction and that, of course, has significant advantages to people who deal with it as it relates to taxation, as it relates to write-offs, as it relates to transfer pricing, tax avoidance, et cetera, carry forward losses. And that is obviously why many of our international oil and gas companies seek to register themselves as external companies under the companies here. So that is a specie in and of itself.

Insofar as bearer share warrants and share certificates, bearer share certificates can

exist in the external registration environment. Clearly in clause 8 we have got to factor the same methodology that we did in clause 4 to have the notice, the calling, the registration, the cancellation, the restoration and the limitation. But we can only limit within our territory because another jurisdiction may very well allow negotiable instruments of that type, bearer share, to exist. So we have only confined ourselves to our territoriality not going extra territorial, because those transplanted companies may very well allow it in their jurisdictions though I doubt in today's world.

If we go to clause 6 and clause 5, if we look at clause 5 first. Clause 5 treats with the records of a company and clause 5 is treating with section 177 of the Companies Act. The Companies Act allows for that provision recordkeeping 177 says:

> "A company shall prepare and maintain at its registered office"—its—"records"—membership—"showing—
>
> (a) the name and the latest known"—as—"a statement of the shares…"

The number of shares and the category and classes of shares is what we seek to add now, because we did not have a statement of shares moving beyond that. We did not subcategorize what is really of interest to the world, which is what the shareholding has associated with it in terms of rights and privileges, limitations if any, more than just the stated capital in the company. So we want to make sure that we know what that is in the event that there is something outside of the Articles of Incorporations or continuance that may provide for limitations that are not expressed.

2.40 p.m.

We then move in that same clause to say:

"A company which issued share warrants or bearer share warrants prior to the commencement…shall prepare and maintain a register..."

And, again, we deal with the particulars of that, so in making sure in the record section in section 177 that we capture what we have done in clause 4 and in clause 8 as it relates to record keeping in a company. We then propose in clause 5, sorry 6, where we are dealing with access—

Sen. Ramdeen: Attorney General?

Hon. F. Al-Rawi: Sure.

Sen. Ramdeen: Madam President, thank you. Hon. Attorney General, thank you for giving way. Just before you move on to another point. Madam President, I just wanted to ask the hon. Attorney General, having prescribed these mechanisms that are supposed to eliminate bearer share warrants, bearer shares, and—we have bearer shares already, what do you foresee, if you can just address it before you finish, you do not have to do it now, how do you foresee that persons who continue to engage in this kind of activity would be caught within that net to be prosecuted under the provisions that we have prescribed for in this?

Hon. F. Al-Rawi: The golden question, operationalization to make law makes sense, as Sen. Ramdeen always brings sensible arguments to the floor, I hope to catch it in just a moment, as soon as I finish these. Okay? So, access to records in this clause 6, 190, we are making sure that you capture the records which you are keeping, both for the beneficial ownership side in the new 337(6), which we will come to in clause 9, and also for the bearer share aspects that we had before in those points.

I have already dealt with clause 7. In clause 7 we are treating with section 318 of the Companies Act, we are making sure that the number and category, in the same fashion that we treated with number and category in clause 5, for record

keeping, that we harmonize that for local and for externally registered companies.

I want to get to clause 9, because that is the big one. Clause 9 is where we treat with beneficial ownership. Now, the concept of beneficial ownership is quite well-known in our jurisdiction. The securities legislation has it, the FIA has it, the Financial Obligations Regulations has it, the Companies Act has it. The Companies Act actually has it in the definition section, section 4 where beneficial ownership includes ownership through a trustee, legal representative, agent, or other intermediary. But what we are seeking to do in a new part, and this is where we are adding in the crunch aspects for a new Part VA, we are adding in a whole part to the Companies Act to treat with beneficial ownership.

We now propose in a new 337A through E, inclusive, new sections, that we create this regime for the establishment of beneficial ownership, and we do it this way. The first thing that we do, which is material, is that we define beneficial owner, and beneficial owner as it sets out in the Bill captures the natural person or ultimate owner. It captures the circumstance where you may not know who the natural owner or ultimate owner is, and therefore there is a legal assumption or designation of who that person is in the definition of beneficial ownership

We have taken this from the Commonwealth examples from the laws of India, from the laws that we have traversed in coming to this exercise, and for the record I can say that in our consultation and reflections we looked at the laws of India, Jamaica, United Kingdom, Cayman Islands, and certainly Barbados, and in our consultation we consulted with the TTSEC, Stock Exchange, the Bankers Association, Law Association, Registrar General, the FIU, the National Anti-Money Laundering Committee, Finance, the Ministry of National Security, and, of course, the Attorney General, and we had public comments coming.

But, in treating with this expansive definition for beneficial owner, as we

have put it here, we ultimately seek to capture who really is the de facto, meaning the person in fact that controls the arrangement behind these entities, and very critically what this law does is to put in an obligation, which is a very important one, by way of a marker in the new subsection (8). And listen to what new subsection (8) provides for in this 337B:

> "No right or interest in relation to any share in respect of which a declaration is required to be made under this section but not made by a beneficial owner, shall be enforceable by him or by any person claiming through him."

That is the nuclear bomb in Part VA. This regime says to Trinidad and Tobago, company limited except for public companies, and I will come to why we have accepted them in a moment. All companies, go and knock on the door of all your shareholders. Send out a notice asking for beneficial owners to present themselves. Make sure you have done it diligently, such as to exculpate yourself by way of evidence that you have asked for this information. After you get the information, effectively, it says go to the Companies Registry and file a declaration as to who your beneficial owners are. If you do not file, not only is there a penalty for not filing, but subsection (8) comes to say, because you did not file, and unless you file you will be denied acting in the usual fashion, which is where in the example I told you, equity prevails over law. In the usual fashion the beneficial owner would have his way. And this now puts a bar more than in estoppel, it is a legal bar that says you cannot seek to take advantage of your position.

And let me tell you why ladies and gentlemen, in the allegations of corruption which gripped this country, where people have not bothered to put themselves openly onto companies registries, as you ought to, and I see Sen. Ramdeen smiling as I expect positions to come later in the debate. But, as we look at the position where the allegation is that corrupt people not wanting to be on the

record know for the whole world to look at, corrupt people use proxies, and the proxies that they use are men of straw, or relatives, corrupt entities go out and buy properties, corrupt entities have them registered in other people's names, usually in a corporate structure, as we saw in umpteen examples, and then what happens is many years later people roll up and say, "I am the beneficial owner". They may go so far as to say, "Look I had a trust registered, I am unwinding the trust, I paid my stamp duty of $25 for that registration, I have no penalty, put me on as the owner, or put the person on whom I direct."

Now, if you ask my daughter, if you ask the average teenager in Trinidad and Tobago, who Johnny O'Halloran is, as an example of allegations of corruption, et cetera, "dey doh" have a clue who Johnny O'Halloran is. But a descendant of Johnny O'Halloran can roll up at the registry and say, "Oy, this property was registered in John Brown's name, but I am the beneficial owner of that share of that company, which owns that company, I was too afraid to be known in the public domain, so I hid." And that beneficial ownership allows all of that corruption to pass, because the memory is fickle, the memory is not complete, and in Generation Z, or the millennials they have no clue. That is the ages 15 to 35, they have no clue who most people are.

And therefore, putting this bar, this legal bar in respect of which there is redress in the courts, putting this legal bar is to stop corruption in its tracks. And I am quite surprised that nobody in the media has covered this. We had this debate in the House of Representatives. Not an ounce of coverage came on a measure of such force as this, because the law ought to be, if you are certain of what you are doing, put your name or the record for open transparency. Let people know who you are. Let them check your assets. Public registers are for that purpose.

And, hon. Senators, lying before us now is a golden opportunity for Trinidad

and Tobago to take a giant step, as you now contemplate why we did all of that law prior to this one, criminal justice reform, indictable abolition, making sure that money laundering was triable either way, creating divisions of court, having rules of court, putting more judges, moving roadblocks. Start to connect the pictures, the work that is going on in the Companies Registry; the digitization, the harmonization of information from birth certificate to death certificate, to change of name with Board of Inland Revenue. You are beginning to understand the approach that this Government has taken, and that this country subscribes to, and that is, transparency. Take your name forthright on the record, because that is really where it ought to be. There is no odium to be suffered there now. One always has the opportunity under the mechanisms of the law of trusts and secret trusts to still take advantage of that, but I would tell you, the next piece of law that I intend to introduce very shortly here, will treat with the registration of trusts. Such that a trust other than by way of operation of law ought to be registered in a country, so that you cannot hide the beneficial owner. And who in this country uses secret trusts? How many people in this country will actually use a secret trust? It will only be the extremely wealthy people in this country, or people well-advised, but they have no fear, because those secret trusts can be private registered. For the record, this is a public registry. A public registry.

This is, in my view most respectfully, dynamic law; simple, potent, powerful. So, if I connect the dots, there is a legitimate aim, the measures that we bring to this legislation are rationally connected to that legitimate aim, the data shows what the legitimate aim is. We are not going any further than the measures require, we have now satisfied the umpteen cases that treat with proportionality, and they are well known to all of us. This is a requirement not only of our external assessors. This is the Government's agenda. Step up, be transparent in your

Companies Registry. Your Companies Registry is a public place. It is there for the whole world to look at. For TT $20 you can inspect the entire record of a company, full stop. Very shortly, within a month's time, fingers crossed, public service willing, we will have full online access and full e-payment at the registry for all services. And that would be a first in this country, followed by the Ministry of Works and Transport, Licensing Division, Intellectual Property, et cetera. We are transforming this country. It takes a while to get there. It is why I have always said in my advocacy to you, just start.

Madam President: Attorney General, you have five more minutes.

Hon. F. Al-Rawi: Much obliged, Ma'am. Just start. If we start on the road we can fix our way as we are getting there. This model is ultimately closest to the Indian model, that is the law of India, and it is quite successful and robust in that jurisdiction. It is certainly something that is being tweaked as many jurisdictions progress in their positions. I do hope that I will be able to answer—Sen. Ramdeen asked a very important question about the enforceability effectively, because what happens if people do not bring in their warrants, et cetera, or how is it to be managed, well, that is why we have put in the provisions that say that the company will effectively have to go and cancel the warrants. It is to be noted. In our look at this law we did not come across any actual issued bearer share capacity in companies that we have had, including external companies, but that is not to say that they may not be out there. That is why we are on a very aggressive drive, to ensure compliance at the Companies Registry.

I look forward to the contributions of hon. Senators. I pray to be able to address the arguments that you put forward, and any questions that you may have, and I beg to move. [*Desk thumping*]

Question proposed.

Sen. Wade Mark: Thank you very much, Madam President. Madam President, I rise to make my contribution to this Bill, a Bill to amend the Companies Act, 2018. And to indicate from the very outset that when we examine the provisions or the clauses in the Bill before us, we see a certain degree of deficiency, we discern a certain degree of weakness in the legislation, and quite frankly, we do not know from what we are debating here today, if it does become law, the efficacy of its final delivery would really benefit in a very serious and effective way the people of Trinidad and Tobago.

I want to indicate that we understand the legislation, as the Attorney General has said. It is aimed at ending ownership secrecy. It is about transparent company ownership versus secret company ownership, by disclosing, as we are advised, the identity of the real owners, the real beneficial owners of entities operating and conducting business in Trinidad and Tobago. And the Attorney General did bring to our attention that there are a lot of people in this country who use proxies in order to hide their wealth, and that the measure that we are debating today will being about some degree transparency, accountability, openness and by extension good governance. But, this Bill that we are dealing with has been out there, I would say, for almost three years, but it has now arrived here. When I looked at the contribution in 2016 of the Attorney General, on the 10th of October, 2016, the Companies (Amdt.) Bill was supposed to be tabled, and the whole issue of beneficial ownership was supposed to arrive here three months after. So in December of 2016 it was supposed to be here. We are three years later, and we are now debating this Bill.

Madam President, there are several issues that we would like to address. The European Union—and the hon. Attorney General did not share with us this development—has blacklisted Trinidad and Tobago. And they have blacklisted us

because of our inability to pass legislation to deal with the exchange of beneficial ownership information—to deal, because we have failed to deal with customer enhanced due diligence, and because we have failed to deal with this whole question about e-traceability of funds. And the Attorney General has brought this piece of law hoping to address the European Union's concerns, and of course, the concerns as was indicated of FATF.

But, Madam President, we are dealing with what is called bearer shares in the legislation, and bearer share certificate, and bearers' warrant, which is almost one and the same at the end of the day. And we are told that when the Attorney General did some research, in his closing remarks, there was no evidence in Trinidad and Tobago that this particular medium was being used in any serious way in this country. But it is in the legislation. But the key area that we have to pay attention to is the area of beneficial ownership, Madam President, which constitutes, as you know, a completely new section of this legislation that is the Companies Act. So that is literally clause—in fact, it is Part VA of the legislation.

Madam President, what I would like to ask very early is the definition we have been given in legislation, whether the Attorney General would have taken into account the concept of beneficial ownership as was proposed by the Trinidad and Tobago Extractive Industries Transparency Initiative. There is a report, Madam President, that seeks to give a definition of a beneficial owner, and I was wondering whether the Attorney General and the Government paid any attention to this particular definition, which is extremely useful. And this definition on page 15 of a report by this TTEITI states that, and I quote:

> A beneficial owner is defined as a natural person who is directly or indirectly the owner of a company or controls at least 10 per cent of the shares or total votes, exclude persons acting as a nominee, intermediary,

custodian, or agent, on behalf of another person.

And it goes on, Madam President to say:

> Politically exposed persons who otherwise benefit economically from the company are also considered to be beneficial owners.

So here it is, Transparency International, through the EITI, and we are an implementing country, is saying that you not only have to deal with the real persons, natural persons, but you also have to look at nominee, intermediaries, custodian, or agent, who may be acting on behalf of such persons.

And it went on also, as I said, to deal with politically exposed persons. We know, under the FIU, that is a concept that is clearly stated in that piece of legislation. So I bring this to the attention of this House so that, for instance, we can determine as a Parliament, whether, Madam President, we would like to look at the definition that has been advanced in the legislation for beneficial ownership and beneficial owner to include, not only beneficial ownership, but also politically exposed persons, and have those persons captured as well in the legislation.

Madam President, I would also like to have some clarification very early. I have seen and maybe the Attorney General when he is winding up can address this matter on page 33 of this particular report, I mentioned, it is a report on beneficial ownership produced by the Trinidad and Tobago transparency institute, no TTEITI. So it is Trinidad and Tobago's Extractive Initiative Transparency—Industries Extractive Initiative. And this report which was done by a lady called Terra Green stated on page 33 that, and I quote:

> The Companies Registry electronic database contains 700,000 companies and 110,000 businesses.

But we are told by the Attorney General that we only have 104,000 businesses, or companies, in the Companies Registry. But this report, which was dated March

2018, talked about on the electronic database some 700,000 companies, and over 110,000 businesses.

So, I do not know, Madam President, if this information that is here is misleading, because we were just told by the Attorney General that there are only 104,000 businesses in the country. So, I would like him when he is winding up to address that particular matter. And, Madam President, we know that in Trinidad and Tobago there are a lot of activities that are taking place that even though they may appear to be legal and lawful, they leave a lot to be desired. And I want to go immediately to the decision of the Government in clause 9 of the legislation, and I am referring to section 337E, which states:

> "Sections 337A to 337D shall not apply to companies publically traded on the Stock Exchange."

So, we are being told that the concept of beneficial ownership and all that it implies and entails will only be relevant to persons who have companies, but those companies are not listed, or they are not traded on the Stock Exchange. They will have to be governed by the section of the legislation that we are dealing with at the moment. Once you are listed on the Stock Exchange, Madam President, you would not be covered by the legislation that we are currently debating.

3.10 p.m.

But, Madam President, the hon. Attorney General made it very clear, and I would argue that there is something called the securities law or Act and there is a body called the Securities and Exchange Commission that is supposed to be dealing with those companies that are publicly traded and are publicly listed. But, Madam President, would you believe that some of those companies that are publicly listed are some of the biggest, greatest violators of the very law that we are seeking to apply to small, medium-sized businesses that are not listed in the country's stock

exchange.

So, Madam President, we were told about how people hide their wealth and we need to follow the money. But in doing that, we have evidence in Trinidad and Tobago where either the Securities and Exchange Commission—and I cast no aspersions on the Board of Commissioners of that body, it could be that the staff, they do not have adequate resources to properly monitor those listed companies that are being excluded from the legislation, but when you look and you examine what is taking place in Trinidad and Tobago you realize that those very listed companies are not providing the kind of information that they are supposed to declare under the Securities Act of Trinidad and Tobago. And the question that has to be asked, Madam President, what is the Securities and Exchange Commission doing about it? Is it because they are a client of some of these very listed companies, these publicly listed companies? Is it because of that?

We understand that the Securities and Exchange Commission is a client of a company called RGM, and I say no more about that.

Sen. Ameen: Who are the directors?

Sen. W. Mark: RGM is Royal Bank, Fahar; G is for Guardian Holding and M is for Mutual Funds, which is now Sagicor.

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

So I just raise the question as to, Mr. Vice-President, I just raise the question here as it relates to who is looking after the welfare and the interest of the citizenry of Trinidad and Tobago? And I do not understand when the Attorney General says to us, that in his work, in preparation of this Companies (Amdt.) Bill, he has looked at Jamaica and Cayman Islands and a number of other countries. But, Mr. Vice-President, if he looked at the Jamaican legislation, which I have a copy of, they dealt with the trust under the amendment to the Companies Act.

Why is our Attorney General in 2019, with one and a half years to go before he demits office and they are removed completely from this place, [*Desk thumping*] why is the Attorney General not bringing into this legislation an amendment to deal with trust? Why? Because that is a vehicle that has been used by persons in Trinidad and Tobago to not only hide their wealth but to engage in corruption and all kinds of things that my colleague referred to, that is the hon. Attorney General. So I do not buy the argument advanced by the Attorney General that he will have to bring the legislation, and, you know what, he did not even give you a time frame. But I have the Jamaican legislation and I am going to propose an amendment to this legislation.

Mr. Vice President, you have certain strategies being used by these publicly trading companies that we are excluding from the legislation in order to hide their wealth, in order not for the country to know what is taking place. So you have this nominee shareholder, you have a nominee director, you have a nominee corporate secretary, and you know what, Mr. Vice-President, today if you go to a company called Republic Bank, which is majority owned by the people of Trinidad and Tobago, thanks to the collapse of what took place in 2009 and it hurts my heart, but that is what happened; CL Financial collapsed. The Government, they came for bailout, the Government is now in control of CL Financial and they owned Republic Bank at that time. So the Government has over 50.5 per cent. So they owned close to 60 per cent of the shares of Republic Bank or close to that. So they are in charge of Republic Bank.

So, Mr. Vice-President, this is a publicly traded company where you supposed to have, as the AG said, transparency and accountability and good governance. When I looked at the report of the Republic Bank, the last one that was published, what you see, you see something, Mr. Vice-President, called Trintrust Limited,

Trintrust. Who is Trintrust? But, Mr. Vice-President, this is a public company and they are under the supervision of the Securities and Exchange Commission and they are governed by what is called exposure to beneficial ownership. All those things are supposed to be in the law that is governing the Securities and Exchange Commission. But you have companies in Trinidad and Tobago that are publicly traded and, Mr. Vice-President, when you look at the top 10 shareholders in that company, you see a company called Trintrust Limited. How many shares; 14,936,289 shares, equivalent to 9.2 per cent ownership of the entire company called Republic Bank. You know what is the value of that, Mr. Vice-President, when I last checked? One share of Republic Bank is $120. You know the value of that?—$1.4 billion.

Mr. Vice-President, you cannot know who is Trintrust. You are supposed to know and the country is supposed to know who is Trintrust. But that is why I asked the question whether we should have included in the legislation, in 377E, that this section 337A to 337D shall not apply to companies public traded on the stock exchange. So what we are debating here today would not apply to publicly traded companies, only private companies that are not listed on the stock exchange. And, Mr. Vice-President, this requires an investigation. What is the stock exchange doing? What is the Securities, rather, and Exchange Commission doing? Mr. Vice-President, so you see something called Trintrust Limited with shares amounting to $1.4 billion and when you go now and you trace now, you get into the registry as to who this thing is. It is only Republic Bank directors. Republic Bank directors are in charge of Trintrust. [*Crosstalk*] ESOP is included too. That is another aspect of it. I am not talking about ESOP. ESOP is another vehicle that is being used by them in order to hide wealth. So this debate that we are having here is not going to do anything to deal with the control of the elite of this country.

[*Desk thumping*] This is almost like Mickey Mouse legislation that we are dealing with here. And the Attorney General is not serious; he is not serious. If the Attorney General is serious he will bring serious legislation.

So, Mr. Vice-President, there is another one that you might want to know and I myself would like to know; First Citizens Asset Management. What is that? Who is that? Who is behind that? We do not know, but this is a publicly traded company. That is why I ask that we should delete that clause, excluding these publicly trading companies, because right now, Mr. Vice-President, they are not being monitored properly by the Securities and Exchange Commission. That is only one aspect of this situation that we have to deal with in Trinidad and Tobago.

When you go to another publicly traded company, I think it is—you have something called Massy. That is another company, Massy. I hear they are taking over the whole south-eastern block in terms of gas. BPTT and Massy taking over energy in T&T. But hear what is going on here, Mr. Vice-President. When you go to this particular report from Massy you see something called RBC/RBTT Nominee Services Limited. There is something called the National Insurance Board. Mr. Vice-President, you know who is the National Insurance Board. You can identify with National Insurance Board. We have money with them. We pay so we know that they invested on our behalf. Mr. Vice-President, this is a publicly traded company. You see something called RBC/RBTT Nominee Services Limited 10—How many shares they have here, Mr. Vice-President?—10,245,639 shares. Who are these people? Who are these people? Let us lift the corporate veil so we can see who these people are. [*Desk thumping*] We do not know.

Mr. Vice-President, Trintrust, you know "them existing", this company existing since independence, having a good time. And, Mr. Vice-President, look they appear in this thing too. They are also in Massy. There is another one called

RBC/RBTT Nominee Trust Limited. We do not know who these people are. So, the point I am simply making, we are dealing with legislation in our Parliament today and as lawmakers we appear to be puppets of a larger agenda. So we are passing legislation that will not be able to bite in any serious way. This is weak legislation. It will not accomplish the objectives that the Government is seeking to deal with and therefore I ask the Attorney General to deal with the whole question of beneficial ownership in a broader sense. And that is why I include politically exposed persons. I am very clear, you know. I am a politician, I am a public figure. If I do the crime I am going to do the time. I have nothing to hide. And once you are in public service you should be exposed to public scrutiny. And if you are talking about beneficial ownership you should include politically exposed persons in that concept as well. Do not leave them out.

Hon. Al-Rawi: They are included.

Sen. W. Mark: Where? Where? I did not see it in the definition. [*Interruption*] Mr. Vice-President, I give you—you see the hon. Attorney General, I know you are disturbed, you know.

Mr. Vice-President: Sen. Mark, no.

Sen. W. Mark: All right, let me just address you.

Mr. Vice-President: We are not going to go down that route.

Sen. W. Mark: I am not going down any route. You are anticipating me, "man". You know I am a very decent fella.

Mr. Vice-President: I know you are a very decent fella, but telling this Attorney General that he is disturbed is not allowed. [*Interruption*] No, that is the word I am talking about. Continue.

Sen. W. Mark: So what I am saying, Mr. Vice-President, is that when we are dealing with the big sharks in Trinidad and Tobago, people are demanding fair

treatment in this country, they want people pay their fair share. There are corporate service providers professionally operating in this country who are manufacturing shell companies. They are manufacturing shell companies by the hundreds in this country and those shell companies are being purchased at a price by their clients whenever they need it. Is that allowable in a society that is seeking to promote accountability, transparency and good governance? Is that allowable? Are they not creating vehicles?

Mr. Vice-President, I would like to tell you that when I look, I do not know if you read like I did, but I read. It was on page 11 in the *Sunday Express*, March the 10th. The headline is:

"SEC to settle with Lok Jack, Ahamads"

And when I read this I could not believe what I am reading. What is the SEC doing? Mr. Vice-President, you have a takeover bid that is being made by a company called NCB Holdings Trinidad and Tobago Limited—

Mr. Vice-President: You have five more minutes.

Sen. W. Mark: Yeah—holdings limited. And you know what is going on, Mr. Vice-President? They want to take over 62 per cent of this company called Guardian Holdings. But I saw where the value of the shares, 69 million shares, is valued at 207 million. But the person who is taking over from Guardian Life, NCB Holdings, is being given a loan by Guardian Life, who is being taken over, to buy over Guardian Life. I do not understand what is going on. So what is the Securities and Exchange Commission doing? Is this allowable on the stock exchange? I am taking over your company and I am lending you money so that you could take over my company? Is that allowable? Is that allowable? I do not know. These are issues that are bothering me and we want to get some clarification as we go along.

Mr. Vice-President, there are provisions in the Jamaican legislation that I would like the Attorney General to pay attention to. The Attorney General—there is a section that deals with notice of trust. This came in the amendment of the Act called, an Act to amendment the Companies Act of Jamaica in 2017. And they included trusts in this. So why are we leaving out trusts in the legislation that is before us? So we would like to call on the Government to deal with the following issues: One, the Attorney General said it takes $20 to go and search for a company. Mr. Vice-President, to register to search for a company you have to walk with $500. It is not $20; $20 is per search, but to become registered to access, you pay $500. Why is the Government using the weapon of money to disallow people from searching the registry? We are trying to determine how much Valsayn Resort Limited got for Kay Donna. "Doh" matter how we try we cannot get it, we cannot get it Mr. Attorney General. We are hearing figures of 33 million, 40 million, 50 million—

Sen. Sinanan: Three hundred million.

Sen. W. Mark: We "doh" know. I hope the Minister will be kind enough, seeing that he is the real owner, to tell us this evening how much money he got for the Kay Donna, because I "cyah" get the information. Try as I may, try as I may, I want to get to the—Mr. Vice-President, I know that my time is coming to a close, sometimes I wonder whether we should have a registry for the Government. Because we have legal persons in the Cabinet, but the natural persons who control the legal persons, we need them to be identified. [*Desk thumping*] We need to know who are the real owners of the Government of Trinidad and Tobago. It is not the people. So sometimes, Mr. Vice-President, I feel that we should have a beneficial ownership register for the Government of Trinidad and Tobago so we will know if Espinet is the real owner of Petrotrin, Legacy. [*Desk thumping*] I feel

sorry for the Minister of Energy and Energy Industries to be honest with you; under pressure.

So, Mr. Vice-President, when we come to this reality that we are dealing with in Trinidad and Tobago we call on the Attorney General to make—EITI is calling for a public central registry in Trinidad and Tobago that is accessible to the public. We support that. I support what is happening in England today, in the UK. There is something called a "Persons with Substantial Control". There is a registry called "beneficial ownership". You can stay in any part of England and punch in your password and at no cost to you, Mr. Vice-President, you can get any information on any director, any company, anybody in the United Kingdom. We want the public to have free access to the beneficial ownership registry in Trinidad and Tobago, Mr. Vice-President. I thank you very much, Mr. Vice-President. [*Desk thumping*]

Sen. Anthony Vieira: [*Desk thumping*] Mr. Vice-President, the corporation must rank as one of mankind's greatest inventions. And given the ambit of section 3 of the Companies Act it is indispensable for trade and business as:

> "No association, society, body or…group consisting of more than ten persons may be formed for the purpose of carrying on any trade or business for gain unless it is—
>
> incorporated under the"—Companies—"Act";

It was—

> "a partnership"

—or was—

> "formed under some other written law…"

—such as an act of incorporation.

Section 21 makes it clear that:

"A company has the capacity, and"—all—"the rights, powers and privileges of"—any—"individual, including, the power to…"

—own property, capacity to carry on business, capacity to enter contracts, capacity to sue and to be sued.

Most importantly, companies shield shareholders and owners from liability so that their personal assets are protected and generally not in jeopardy to satisfy corporate obligations and creditors. Companies also have great flexibility of ownership. Incorporators and shareholders can be individuals, 18 years of age and over who are not mentally ill or undischarged bankrupts. Shareholders can be foreign or domestic. They can be other companies and shares can be held in trust or via some other legal tool.

So, almost anyone or anything can be a shareholder. And this allows a business to seek partners in capital from a variety of sources. Companies offer credibility. As most of us would have discovered, it is easier for a company to raise financing from banks and other financial institutions as investors and businesses will sooner deal with a company than with an individual. And companies, like trademarks, have the potential for perpetual existence. In other jurisdictions some companies have actually been around for centuries. So all things being equal, most companies will outlive their shareholders. And companies offer great flexibility as well when transferring ownership. Shares can be sold in whole or in part, new owners can be brought in and ownership can pass down within a family. Companies can be and are often used as an asset protection vehicle.

So, it is no exaggeration to say that companies may be the most influential institutional model of our time and the Companies Act and the Companies Registry are its life blood. But companies can also be vehicles for dark money and wrong doing. Because companies can own property, bid for contracts and operate

businesses just like individuals, they can engage in bribery and corruption. Companies can facilitate money laundering and terrorist financing where the persons ultimately behind the operations are not readily identifiable. And because of the powers and privileges afforded to companies and because of the potential available to them for both good and evil, the principles of transparency, accountability and good governance are paramount.

Now, as the Attorney General has indicated we have a huge underground economy in this country. You are talking about 350 companies participating in over $15 billion in suspected criminal activities. Members of the public, persons engaging in legitimate trade and business, financial institutions and law enforcement should not have to deal with companies on a cat-in-bag basis. Everyone should be able to know at any point in time: who are the incorporators and shareholders; who are the directors and officers; where to find the company; where is its registered address; whether the company is a private one, a public one; what are the classes and numbers of shares in each class that the company is authorized to issue; restrictions if any on the transfer or ownership of shares; and it is important that the Companies Registry be updated as and when changes occur.

So compliance with the incorporation process, annual returns and disclosure requirements are critical. And where companies are tardy, negligent or wanting in meeting these important obligations, it is only right and proper for effective and appropriate penalties to be imposed. People need to know who they are dealing with. The veil of incorporation merely means that a company is to be distinguished as a separate person from its members but it should not be used as a cloak by criminal organizations, terrorists and corrupt individuals for hiding the proceeds of crime, corruption or other forms of wrongdoing.

3.40 p.m.

And that, as I understand it, is the primary purpose of the amendments being brought under this legislation. When a company acquires land, it bids for public contracts or it engages in business, everyone should know who exactly they are dealing with; who is behind the operation; who are the investors and the owners of the company; who has significant control and who ultimately benefits. And that is what beneficial ownership is about and why clause 9 is so important. By requiring the ultimate beneficiaries and persons of significant control to reveal themselves, transparency is increased and the opportunities for money laundering, terrorist financing and wrongdoing are concomitantly decreased.

The prohibition against bearer shares, bearer share certificates and share warrants is also part of this thread. Clause 4, (14) defines bearer shares as a negotiable instrument that accords ownership in a legal person to the person who possesses the bearer share certificate. Well, the objections against bearer shares and bearer share warrants relate to the lack of transparency and control as ownership of these shares is not recorded. And because bearer shares allow for anonymity of ownership and transfer they are vulnerable to misuse. Because these shares are not registered to any authority, transferring their ownership involves mere delivery of the physical document, that is, by the individual who is entitled to the company's underlying assets by virtue of physical possession of the bearer share certificates.

Not surprisingly, bearer shares have been, or are being eliminated in most jurisdictions. Indeed, many countries have outlawed the issuance of new bearer shares and where bearer shares are already issued, they are strictly regulated. Now, our Companies Act at section 33(2) prohibits the issue of bearer shares and bearer share certificates, and that has been the law since 1995. But there are disparities, as we have heard from the hon. Attorney General, which this

amending Bill hopes to clarify and resolve. So, for example, where bearer shares were issued prior to the Companies Act—this is in relation to former Act companies—the company will now have to prepare and maintain an appropriate register. The SEC that Sen. Mark was talking about, will be empowered to get information from companies about their bearer shares and bearer share warrants. External companies will now be prohibited from issuing bearer shares and bearer share warrants, and where such were issued previously, they must be duly registered.

These provisions are all part and parcel of being able to identify and to register the real owners of companies. So given the potential for mischief and the risks involved, I fully support administrative restrictions, criminal sanctions and fines for non-compliance. But I want to say, though these measures may bring us in line with international best practice, FATF and emerging global standards, but that is not the only reason why I support them. I support these new requirements, having seen first-hand the type of injustice that can be perpetrated against the innocent, be they employees, those legitimately involved in trade and business, those going through the throes of a divorce, and law enforcement; the sort of justice that can take place where entities are allowed to give misleading or false information or are unwilling to identify those who exercise ultimate control or significant influence.

Now, it has been said that the enemy of excellence is perfection. And I want to say that it is important to bear this in mind because no legislation is perfect. Much still needs to be done to expand the scope of corporate criminal liability and to make it easier, for example, for prosecutors to establish corporate criminal liability for offences where persons constituting the directing minds of the company are found to have the necessary acts with the necessary intention and

mental state. So much still needs to be done in terms of prosecuting corporates and ramping up our legislation, but it is a work in progress. This is an important step. This legislation is relatively straightforward. Government exists to act in ways that improve the lives of its citizen or their security. These transparency measures are, in my view, proportionate, timely and necessary for those objectives. I thank you. [*Desk thumping*]

Mr. Vice-President: Sen. Simonette. [*Desk thumping*]

Sen. Gavin Simonette: Mr. Vice-President, I thank you for the opportunity to make a contribution to this very important amendment to our Companies Act, entitled: A Bill to amend the Companies Act. Mr. Vice-President, the backdrop of my contribution is going to attempt to simplify the focus and intent of the amendment Bill being proposed by the Government.

[MADAM PRESIDENT *in the Chair*]

As my honourable friend, Sen. Vieira, indicated, the existence of the company came into being to permit for economic activity of a legitimate nature and for the expansion of trade carried on by persons engaged in business for the benefit, obviously, of those participating in the company both as to ownership and, as well as those employed by the company. And so, the birth of the modern limited liability company way back in the United Kingdom came about to facilitate legitimate activity, legitimate business and legitimate trade. And the incorporation of this vehicle, or this entity called a company, also permitted the assumption of a certain degree of risk by those purporting to engage in that legitimate trade and/or business. As is known by those of us who practice in the area of company law and by many legitimate business persons, the company exists as a separate entity from those who own it and those who have incorporated it, and permits for a limitation of liability to those who own the company, as the company's existence is treated to

be separate from that of its incorporators.

And so, modern company law, starting in England and Wales, transported to Canada and elsewhere, including, of course, Trinidad and Tobago, recognizes what is called the veil of incorporation. And the veil incorporation may also be looked at as the mask of incorporation, as some learned authors in this area of the law have chosen to describe it. And what that means is that the company exists as its own entity in its own name, and one is entitled to treat with it as such without having to look deeper inside to determine who are the persons, the actual—what are called the alter egos or the actual human beings behind the company. And the veil of incorporation also emerged to facilitate a certain degree of privacy, dare I say in modern era, secrecy, in terms of the proliferation of what has come to be known in the wider world as international business companies. And whilst Trinidad and Tobago does not have such a regime of companies, our sister Caricom nation of Barbados provides for such companies.

And so, there is a degree of secrecy that applies to companies via the traditional regime of incorporation. Company law has long recognized that that veil of incorporation could be pierced where there is the practice of fraud, where there is the practice of tax evasion. And by tax evasion, one is addressing the issue of the non-payment of legitimate and due taxes to the Government. So that when we look at what is being pursued now in the modern era of transparency and disclosure of those who stand behind companies, it does not come entirely as a shot in the dark, or in the realm of some intrusion to any constitutional right or privilege. Mature company law has long recognized that the veil of incorporation would be pierced where companies are being used for improper purposes and for engaging in fraudulent activity.

But what has transpired, Madam President, in the regime of rules and

regulations being advanced in the modern era of confronting money laundering and the financing of crime and terrorist activity, is the creation of rules and regulations that permit for the more readily available access to credible information of what has been called the beneficial ownership of companies. And in simple terms, what that beneficial ownership phrase depicts is this: We ought not to await something to have gone wrong to pierce the corporate veil to determine who ought to be made liable for unlawful and illegal and illicit activity. There ought to be a system which enables those with the duty to enforce the law to very speedily identify who the true and actual wrongdoers are. Because what the successive life existence of companies has demonstrated over the last—since 1948 with the coming into being of the consolidated Companies Act in England, is that lawyers, accountants and other financial advisers have been very competent at creating layers of ownership that mask, at the end of the day, the true ownership of companies.

And so, that skill ordinarily sometimes used in the legitimate purpose of trying to achieve anonymity and secrecy has, of course, in the proliferation of sophisticated criminal activity, been also now used to hide the identity of wrongdoers, and wrongdoers, not just in terms of heinous crime resulting in physical harm and the abuse of human beings, including children—and by that I speak of human trafficking—but also those involved in the hiding of illicit-gotten gains from corruption, from illicit drug trafficking and also, as well, those who seek to evade paying their just contribution to the public coffers by way of taxes.

And so the emergence of the international organizations that have now corralled, virtually, all modern states to agree to a system of transparency and disclosure aimed at eliminating those who wish to use the veil of incorporation and other legal instruments to hide and to obscure their existence and their participation in wrongdoing, is now of general application, as the hon. Attorney General has

shared with us, to countries such as Trinidad and Tobago. So that the aim of this amendment Bill is to ensure that there is credible registration-recording, and dare I say, consequences to flow in terms of penalties and criminal liability for the failure to properly register the beneficial ownership of shares in companies.

Now, Madam President, again, to attempt simplifying the mischief that the amendment Bill seeks to address, one must appreciate the structure of companies and how they come to make decisions, open bank accounts, transfer money, own property, and so on. A company is incorporated by persons who initially promote the company, that is, they seek to bring it into being by the act of incorporation which is, as lawyers know, a legal mechanism of registering, paying certain fees, obtaining prior to that, approval of a name and bringing the company into being, but the owners of the company are the shareholders of the company. The company also operates via its directors who are said to be the controlling minds of the company, but as those of us who are familiar with the company law, the true controlling and largest controlling and dominant controlling body is the body of shareholders when they meet in general meeting. And so, those who control the shares of the company—the shareholders—are, in fact, the controlling persons or entities of any limited liability company.

However, the law prior to this amendment Bill provides for shares to be owned by nominees of the true owners and those true owners are the persons whom the hon. Attorney General has been referring to as the beneficial owners, and for shares to be owned by also other legal personalities, such as companies and trusts. Sen. Mark made heavy weather of trust companies not being addressed by this Bill and by public companies not being addressed by this amendment Bill. Dare I say, Madam President, that the control of public companies is well documented to be under the purview of the Securities and Exchange Commission,

and I would say no more on that. I know that the hon. Attorney General will deal with that in, perhaps, more detail than I would in the time allowed. So that the beneficial owner of the share is the person who ultimately owns the share, and ultimately controls the shareholder who may own the share or be registered as the owner of the share on behalf of the beneficial owner.

What the legislation seeks to do—the amendment—is to unmask or lift the veil of all of that prior permitted secrecy which, of course, as we are aware, has been used for wrongdoing in the area of money laundering and illicit activities, including the financing of terrorism. So that without having to prove or to pierce the veil, as in under the old law regime, via having to take action and application to the court, what this compliance with the directives of the Financial Action Task Force and the Caribbean Financial Action Task Force is seeking to do in the several sections of the Act, is to create an obligation on those who currently own private companies. And I wish to make an intervention here, Madam President, on the apparent dismissal as being ineffective of the legislation, because the real mischief exists in public companies. This was the point being made by my learned friend, Sen. Mark. The statistics, however, show an entirely different picture, or rather a picture that fully demonstrates the enormity of the corruption and of the existing wrongdoing within Trinidad and Tobago. And the statistics are as follows: For the year 2016/2017, 117 companies were involved in 14billion suspicious transaction reports and suspicious activity reports identified by the Financial Intelligence Unit. That is $14.5 billion for 2016/2017.

Madam President, that is no small sum of money, and they are not transactions allocated to what is known as public liability companies or companies registered on the stock exchange. So let us be very serious about what we are about here and about what the realities are in relation to the existence of a serious

problem in our economy and in our society. And dare I say, the requirement to tackle this problem has been with this country well before the current Government embarked in September2015. And as a nation we ought to be extremely proud of, and recognize, the outstanding work of the Attorney General and his office and those in the Ministry of Legal Affairs. [*Desk thumping*] Let us make no joke about it, Madam President. These matters were not tackled by the previous government. [*Interruption*] They were not tackled by the previous government. Indeed, as my learned friend, the Attorney General, has shared with us, they put us on a fast track to evaluation without having done the underlying work.

So that when we come to consider the regime under which the disclosures are being required to be made, we see that the registration requirements in this amendment Bill are proportionate and, indeed, one can liken them to the period where we converted from the old Companies Act to this current Companies Act, the 1995 Act, and provided for a period of the continuance and a regime, for the continuance of old Act companies, to the new Companies Act—then new Companies Act in 1995. So that everyone engaged in company existence and company activity in the private company sector will be permitted a reasonable period of 30 days within which to bring themselves into compliance with the disclosure and the filing of disclosure information on true beneficial ownership. Of course, the Bill would be impotent, not as my learned friend Sen. Mark indicated, but impotent if it did not provide for a sanction for failure to comply. And so, if you fail to comply in certain instances, your name can be struck off. But, again, if you can show reasonable cause why you had not complied—as this is the proportionality of the Bill—you can make an application to the court pursuant to the current provisions of the Act, to be reinstated.

Madam President, the world movement towards transparency and

disclosure—Madam President, could I ask how much time I have left, please?

Madam President: You have until 4.26.

Sen. G. Simonette: Much obliged, Madam President. The world movement towards further transparency and disclosure also requires that we comply with the issue which may not be known to the ordinary citizen of bearer shares and bearer share warrants. And in this area it is important to note that whilst, as Sen. Vieira correctly observed, our current legislation does not provide and prohibits the issue of bearer shares, it does not mean that bearer shares may not be in existence to pre-1995, Chap. 81:01 companies incorporated under what is called the old company law.

4.10 p.m.

So what then is a bearer share, and what is a bearer share warrant? A bearer share is a certificate that, in the possession of the person, the bearer, entitles that person who is in physical possession to the underlying ownership of the share and what the share represents in the relevant company. And why is this issue of the bearer share of such importance? The issue is of such importance because a bearer share is not required to be recorded or registered in any register, and, additionally, its transfer or its exchange from one person to another can be done with the utmost anonymity and accordingly used very effectively in all manner of wrongdoing.

Similarly, Madam President, a bearer share warrant is a document which is certified by the company. The relevant company that issues the warrant that the bearer is entitled to the amount of money recorded in the bearer share warrant in respect of the ownership in the capital of the underlying company; again, a document that is easily transferable without any requirement prior to now to register same.

So that the amendment proposed is that those who hold bearer shares, and those

companies who are aware that they have issued bearer shares, or that they have bearer share warrants that are valid, are required to register the true owners of these shares. And if those shares are not registered by the true owners then the company has an obligation to so do, and in default of so doing there are penalties that flow, and dare I say, Madam President, the proportionality of the proposed legislation permits a reasonable time period within which to comply with these requirements.

In addition, Madam President, a feature of the Bill is the requirement for certain disclosures and status reports to be the subject of statutory declarations, and again such a provision goes very firmly in answer to the potency of the legislation and the potency of how the legislation will operate to deter wrongdoing and illicit activity. As we are all aware, if you contravene the truthfulness of a situation pursuant to a statutory declaration, you are subject to criminal penalty.

Madam President, the Bill in its focus on the unmasking of secrecy and on the unmasking of true ownership in that regard is in keeping with the focus and commitment of this Government to bring our laws into effect, to ensure that laws do not just exist either in archaic Chambers unamended, unattended to, but that they are relevant to the ordering of our society in a manner intended to uplift the society and uplift the compliance of those of us who require there to be orderliness, a respect for the law. And dare I say, a respect for contributing to our due share to the public purse for the delivery by the Government of the care for what those of us who are old taxation commentators call the care of the Government from the cradle to the grave, but that care requires financing, and that financing comes in the main from proper administration of our taxation regime.

And so, this law seeks to achieve that, both in terms of our own national population, but also in terms of the interrelationship amongst the members of the world community that are seeking to ensure that those who are hiding their ill-

gotten gains or hiding their money in different jurisdictions are able to be identified for the purposes of raising, certainly in the area of taxation, of raising and imposing appropriate, adequate and fair taxation.

So, Madam President, I must disagree with my friend, Sen. Mark, that the legislation is either impotent, inadequate, irrelevant, or insufficient. I think that the hon. Attorney General and his dedicated staff, and the assistants, have done an incredibly good job in the suite of legislation that has brought us to the point where we face the next evaluation with confidence that we can stand proud of having complied with our obligations, both international as well as our obligations to the people of Trinidad and Tobago with regard to making Trinidad and Tobago safer, making those who are resolved to continue pursuing illicit activity aware that these instruments, that these legal mechanisms, will permit them to be identified and to be held to account.

Madam President, the issue of non-profit organizations being brought into this regime is, as the hon. Attorney General indicated, being addressed, and no doubt that regime will likewise permit for the transparency and the appropriate regulation required in the circumstances of keeping within the objective of limiting the access to using the veil of corporation or incorporation to perpetrate illicit activity.

Madam President, the last thing I would like to say is that, not that it requires us to follow fashion, but our amendments are no dissimilar to those of our Caricom neighbours in Jamaica, in Barbados, and as the hon. Attorney General has indicated we have quite respectfully—in St. Lucia as well—learnt from the very solid work of our Indian Commonwealth neighbour. Having said that, Madam President, I beg to move that we support this amendment Bill, and with those words I thank you. [*Desk thumping*]

Madam President: Sen. Ameen.

Sen. Khadijah Ameen: Thank you very much, Madam President. Madam President, I want to thank you for the opportunity to contribute today. As I sat and I listened, several speakers gave explanations, gave definitions, and indicated their positions in terms of support or concerns that they have. I do not think that any person who sits in this Parliament has any objection to transparency, to measures against corruption, against secrecy, against shady dealings. So that is an area where I do not expect us, on either side, to have any strong objections in principle what is the objective of this legislation.

Madam President, it is very clear that this Government intends to list as achievements legislations brought to Parliament, legislations passed, and while that is, of course, the portfolio of the Attorney General to pilot legislation, I want to add it should be to pilot good legislation and to bring good law. But, Madam President, my main concern is that while the Attorney General would have brought legislation, there are a number of pieces of legislation that required special majority and required the intervention or the cooperation of the Opposition, and we have always said in Opposition that we will support good law and that remains. We have cooperated with the Government on the anti-terrorism, on the FATF, on the anti-gang legislation and others, but I want to implore this Government that your real achievement should not just be the fact that you come in Parliament and on paper you have legislation. Your real achievement should be what have you done in enacting that legislation, in enforcing that legislation.

In all the pieces of legislation that you have moved—and granted that sufficient time will be required to implement these measures—can you at the end of your term account to the nation in terms of who have you caught, who have you, not just by arrest, but by complete prosecution and seeing it through where justice is really brought? And that is an area I think the Government is really short on. In this

particular piece of legislation, Madam President, the Bill to amend the Companies Act, the challenges to start off are issues that already exist and have to be corrected. The condition of the Companies Registry, for example, is one of those things that falls under the Ministry of Legal Affairs and it should be—I am sure it is of concern to the Attorney General and his colleagues.

Madam President, even now the computerized system within that registry, where you have divisions in Arima, in San Fernando, and the main branch in Port of Spain, are not well linked. If you do a search in Arima you are very likely to come to Port of Spain and get different information. I have known of people who conducted searches, applied and registered companies and were told afterwards, "Listen, we have to scrap that registration because we did not realize that there is another company with a very similar name, or for some reason we cannot give you to go ahead with that name". And particularly when you have businesses that are just starting up, those things could throw them off, when people start to do their branding and their advertising, their artwork and marketing, but the point is that the registry is not well coordinated. So that is something that I think, I am sure, in order to streamline things, should be corrected and should be a concern of the Attorney General, or the Ministry of the Legal Affairs and those there.

The agencies who would be responsible for monitoring the enforcement of the measures, there are certain clauses that identify fines for example, that identify what the punishment would be if a person commits an offence. These agencies, Madam President, the question again comes in terms of the resourcing of these agencies, and every time you bring legislation that gives a department or an agency more work, the question must come in terms of—do they have the capacity at present, or does the Government intend to improve their capacity so that they can deliver effectively to make this legislation, to make your good and excellent

legislation, as the speaker before me described it as, to make it effective?

Madam President, we have heard on numerous occasions, issues with regard to the Financial Intelligence Unit and constraints they have in terms of their resources, in terms of—well, I should not say "their resources", their challenges. It is broader than just their resources, but their challenges in terms of the number of successful cases they have investigated and brought to court and successfully pursued. All of those issues are very relevant in these instances.

In terms of the national police, the fraud squad, and the other relevant departments, including—it could even extend as far as the cybercrime and so on—are they sufficiently equipped to deal with the offences created under this legislation? Some of these offences existed before. The fines may be changed and improved and that is good, but the question is: Does the police have the technical skills, the technical support, the equipment, the manpower, to treat with this in addition to all the other pieces of legislation that we, as a Parliament, would have agreed to?—and they are quite numerous.

I do not need to repeat also, Madam President, the Office of the DPP. We have had numerous debates where we talk about the court, changes in the Family Court, in other pieces of legislation where the DPP's Office would play a critical role, and the accommodation of the DPP's Office in a mall, to the staffing, to the number of vacant positions, to the fact that they do not have paper to photocopy sometimes—all of those things have been ventilated.

Madam President: Sen. Ameen. Hon. Senators, at this stage we will suspend and return at 5.00 p.m. This sitting is suspended until 5.00 p.m.

4.30 p.m.: *Sitting suspended*.

5.00 p.m.: *Sitting resumed*.

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

Mr. Vice-President: Sen. Ameen.

Sen. K. Ameen: Thank you very much, Mr. Vice-President. Mr. Vice-President, before we went on the break I was very close to wrapping up, and I spoke about the lack of resources and the challenges in places like the Companies Registry, the Financial Intelligence Unit, the Fraud Squad and the DPP's Office. So, Mr. Vice-President, I want to ask—I know that this Bill deals with specific things and the Attorney General was very clear in his piloting of the Bill in terms of what the Government hopes to achieve, and I think quite frankly that this piece of legislation is really coming so that we could come off that blacklist. It does not appear that in this legislation there is any intent for the Government to go in a particular direction in terms of their own objective to ensure greater transparency and so on.

This Bill brings to this Parliament the very minimal, very, very, minimal requirements when it comes to meeting the FATF recommendations. Those recommendations are in fact beneficial to a country, but I would like to encourage the Government that when we have these international standards that we put the recommended legislation in place, of course, to meet the requirements. We are presently on the blacklist and you are aiming to get to—as the speaker before me, Sen. Simonette, indicated—that in the next rounds you will get a "bligh". That is what it is and that is all that it is. So, I do not see this as a major achievement in terms of legislation of the Government. Many of the provisions already exist for companies trading on the stock market and so on, many of those requirements are already there, so it is not really doing anything major in terms of new things.

I also want to, Mr. Vice-President, just say for the record, you know, we sit on opposite sides of a political fence and those on that side make statements that, you know—they "throw shade". One side is always throwingshade at the other side,

but the truth is that there are—the reason for secrecy is not always because of wrongdoing, and I want us to remember that because we debate in this Parliament against each other, but we must remember that we debate for the entire population of Trinidad and Tobago. And I want to say that there are good, honest citizens who are in business and who want secrecy for different reasons other than corruption. There are many people who feel that they are entitled to—[*Interruption*] No, I am not promoting. I am saying that citizens, who we all represent, want secrecy for different reasons. Right? So there are people who are very legitimate in their business, in the conduct of their business, they meet all the requirements, they submit, they pay their taxes, they operate very well, but the purpose of wanting secrecy could be for their own protection. [*Crosstalk*]

Sen. Haynes: Privacy, as opposed to "secrecy".

Sen. K. Ameen: And, Mr. Vice-President, particularly with the rate of crime in Trinidad and Tobago, there are many who would have that concern and that concern would be heightened, and sometimes that is the reason that could be a reason. I am not saying that I endorse it. I am saying that could be their rationale for wanting privacy to hide. Well, I should not say "hide", but to keep that information away from the public. And what is happening could lead to people further depending on surrogates, and that is something we have to be mindful of.

So, while those on that side would want to accuse and make suggestions about those on this side, or vice versa, or even members of the public making suggestions about all Members of Parliament, all politicians, the truth is that there are many private citizens who are in business, and who operate legitimately, and we must be mindful that they also require our protection while we encourage the transparency and the proper reporting and meeting the requirements.

So, I just want to put that on the table and be careful that by continuing to make

inflammatory statements or suggestions about companies and businesses, that we are not in fact encouraging people to want to hide their wealth, or want to hide their business affairs, or their conduct, simply because they are afraid. Mr. Vice-President, that is just providing because I feel it is important for us to have balance when we come in this Parliament. We are politicians, but there are many citizens who really "eh business bout de politics" and we also represent them.

So, Mr. Vice-President, this Bill is one in a series that the Attorney General has indicated is intended to follow the money, and I just find it so ironic that we are debating this today and there are issues with regard to the creation of shell companies, the creation of companies to hide the real owners in the public domain now. There are issues as well on the opposite side about the owners, the persons who hold beneficial interest, being open about it, and that is in the public domain right now. There are Government Ministers who will have questions to answer about both scenarios, and while the Government brings this piece of legislation with the minimal requirements simply to meet the requirements, we must remember that your action speak louder than your words.

So we are at this time, Mr. Vice-President, interestingly, facing positions with senior Government Ministers who have questions to answer about both scenarios. So I want us to keep that in mind, but I want to thank you, Mr. Vice-President, for this opportunity to contribute. [*Desk thumping*]

5.10 p.m.

Sen. Amrita Deonarine: Thank you, Mr. Vice-President. Taking the entire listening public into consideration, I would like to start my contribution today by talking a little bit about the concept of an informal economy and its implication for economic policy making.

An informal economy, also referred to as the underground economy, a

shadow economy, or a black economy, is defined as an economy where economic activity escapes official detection deliberately or otherwise, that is, economic activity that would generally be taxable if it were to be reported to the Board of Inland Revenue. But what is the motivation behind not reporting economic activity? In some instances, legal activity goes unreported, that is, because in terms of self-employment, income from unreported work, do-it-yourself work, et cetera. However, in most instances, the motivation for not reporting economic activity is to hide illegal trade of goods and services, that is, the trade of stolen goods, dealing of drugs, drug and weapon manufacturing, prostitution, gambling, smuggling, fraud, tax evasion and the list goes on and on.

According to a study conducted by the University of the West Indies in 2004, the size of the informal economy or the underground economy in Trinidad and Tobago is estimated at around 27 per cent of GDP between the years of 1973 and 1999. In a more recent study conducted by the IDB in 2017 that looked at the period 1991 to 2014, it showed that the estimated size of the shadow economy averaged between 26 per cent and 33 per cent of GDP. This means to say that the size of the economy is significant which means that illicit financial flows to commit fraud, acts of corruption, tax evasion, money laundering, terrorist financing, financing of illegal weapons and drugs, manufacturing of illegal weapons and drugs, have been a problem since the 1970s.

All of us in here are well aware of the increasing prevalence of this activity around the world and that there is an effort by global organizations to establish standards of transparency, transparency standards that are capable of preventing the misuse of companies for these purposes which, in my humble view, is exactly what this Bill is courageously trying to do.

Mr. Vice-President, high levels of informal economic activity of a country tend to

have several implications for its sustainable economic management, firstly, having implications on what the optimal tax burden should be, and secondly, as unrecorded activity, undermine national income accounts. So too does economic policy derive from these statistics. So, Mr. Vice-President, this Bill, in an economic sense, is not only trying to reduce the occurrence of tax evasion and related crimes through companies but it is also attempting to somewhat reduce this 33 per cent of GDP that goes unreported so that policy decisions can be more adequately informed.

Increased transparency through proper disclosure of beneficial ownership can assist in closing the gap between the GDP reported according to CSO and the economy, inclusive of the underground economy. Once properly operationalized—and I focus here on the operationalization of this piece of legislation—it will become more difficult to conduct illegal financial activities with the more transparent processes for establishing, transferring and reporting ownership. It would become difficult for entities to hide their money and use it for unrecorded exchanges. Furthermore, once income is reported, then it becomes difficult to avoid taxes.

This Bill, therefore, seeks to make amends to the Companies Act in such a way that future issuance of bearer share warrants and bearer share certificates are avoided. It becomes mandatory to disclose or declare who the beneficial owners are. It ensures records are kept up to date through the declaration of previous issue of bearer share warrants and it categorizes the official receiver of cancelled shares and other company assets that, in the event of bankruptcy, it goes to the Chief State Solicitor; all these points that were already mentioned in this honourable House.

Now, there a few areas of clarification and comments that I would like to mention. The areas of clarification I would like to seek from the hon. Attorney General is

that in the event where the bearer share warrant holder fails to register the bearer share warrant to the High Court, and the High Court rules for the cancellation of this bearer share warrant, what happens to the record in the records of the company? Are the records deleted from the company? I say this because what we are trying to do with this piece of legislation is to establish a more transparent system where corporations are used for corrupt and fraudulent purposes. An expectation would be that those criminals who we suspect may very well not come forward to register their shares and in such instances, we may not have any information being maintained on these bearer share holders. Secondly, upon registration of these shares, if ownership is subsequently transferred to someone else, that is, the shareholder sells their shares in the company, how would the company keep the record of the previous owner?

The next point of concern I have is pertaining to the operationalization of this piece of legislation when it is passed. From reading the Bill, it is quite evident that the amendments require a lot of work from the Registrar General's office. The Registrar is required to receive returns declaring the number of share warrants, establish the registry of share warrants. They have to look at the external companies and ensuring that they declare their share warrants. The Registrar is also in receipt of the returns from old companies every time it issues or registers a transfer of shares to a shareholder. The Registrar is also in receipt of declaration of beneficial interest. Now, this is a significant addition to the workload for the Registrar General's office: to register, process, analyse, act and make public such a large volume of information for almost 80,000-plus active companies. This would require adequate resources, capacity directive and frequent oversight. Hon. Attorney General, through you, Mr. Vice-President, can you assure us that the necessary procedures will be put in place to efficiently operationalize this process?

Can the corporate community be guaranteed that this would not be another tedious process flawed with lack of information resulting into disruptions for company's ease of doing business? What public sensitization programme will be administered to prevent these occurrences?

I reiterate, Mr. Vice-President, for this to work, for this to even make a dent in what we are trying to achieve, that is, a reduction in tax evasion to better articulate economic policy and reduce crime, it is critical that the process of compliance, enforcement and management should be well documented, communicated, well-resourced and monitored. I thank you, Mr. Vice-President. [*Desk thumping*]

The Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Thank you, Mr. Vice-President, for allowing me the opportunity to contribute to this debate. Mr. Vice-President, as the hon. Attorney General has already asserted, our attempts to comply with our FATF standards on transparency and beneficial ownership are tailored to prevent the proliferation of illicit flows to commit a slew of crimes including fraud, acts of corruption, tax evasion, money laundering, terrorist financing and the financing of the acquisition and manufacture of illegal weapons.

Trinidad and Tobago, as a sovereign State and a party to several international agreements, has both the responsibility and a vested interest in addressing and arresting the increasing levels of transnational crime and illicit activity. While the focus of this amendment Bill is primarily aimed at bringing us in line with our FATF requirements, it is also critical in Trinidad and Tobago's efforts to meet our Global Forum obligation on tax transparency and exchange of information.

Mr. Vice-President, as this honourable House may already be aware, the expressed mandate of Global Forum is to promote the exchange of information through a robust and comprehensive monitoring and peer review process. As it stands,

Trinidad and Tobago is the only non-compliant jurisdiction in the world. We have that unique distinction. However, we are proceeding on a course to correct this and as the Attorney General would have indicated, we are seeking to do this in the shortest possible time so that at the next stage of our review, we will remove ourselves from that unique distinction and become compliant with our obligations. So contrary to what Sen. Ameen would have indicated about this not being a major achievement, I do not think anybody on this side certainly has sought to promote the fact that we are of the view that it is a major achievement. What we are saying is that it is an essential step in getting us to the place where we need to get to in the shortest possible time.

Mr. Vice-President, the hon. Attorney General went into detail as to how this Bill addresses FATF concerns, but how exactly does the Bill address and improve our compliance with Global Forum? The Global Forum, in 2011, identified two striking shortcomings upon reviewing our companies legislation. It recognized that companies incorporated external to Trinidad and Tobago but having their central management and control in Trinidad and Tobago, under our current legislation, are not required to provide information identifying their owners as part of the registration requirements. This runs counter to due diligence requirements. Furthermore, these foreign companies are not required to keep a share register in Trinidad and Tobago. What this means is that the availability of information that identifies the owners of search entities is wholly dependent on such information as may be available outside of Trinidad and Tobago which may not exist or may not be available to Trinidad and Tobago, and that is a situation that is not tenable and cannot be allowed to continue.

Mr. Vice-President, in an attempt to veer Trinidad and Tobago onto the side of keeping our international tax transparency and exchange of information

commitments, through clause 7 of the Bill, we are seeking to lift the corporate veil of secrecy over the beneficial ownership of foreign multinational corporations and all other companies registered in Trinidad and Tobago, and to lift this veil once and for all so that people can no longer hide behind companies to carry on their nefarious activity. While we fully accept that there are people who form companies and prefer to remain behind the veil for legitimate reasons, the implications of allowing this secrecy to continue are too significant in the modern world to not address this problem.

Mr. Vice-President, clause 9 of the Bill drills to the very epicentre of beneficial ownership and how we intend to address this in our domestic legislation by compelling beneficial owners to be declared as such. For instance, the new proposed section 337B mandates any company within 12 months of this Bill coming into force and regularly thereafter to ascertain all the beneficial owners holding an interest in the company, whether the person held the interest prior to or subsequent to the passage of the Bill. What this does is allow companies a temporary window to get their affairs in order after which they will be compelled to comply or be subjected to the sanctions outlined in the legislation.

Mr. Vice-President, I fully acknowledge and appreciate the importance of complying with our global obligations as we live in a global village and Trinidad and Tobago's ineffective regulations of persons within its borders may well create havoc and increase opportunities for the financing via T&T entities of terrorists and other activities which pose a global threat. However, let us not ignore the benefits which this legislation brings to Trinidad and Tobago itself.

Specifically, my pet topic as it relates to tax. It is imperative for the tax authority of Trinidad and Tobago to be able to ascertain with a fair degree of certainty the ownership and affiliation of persons who the tax administration seeks to regulate

and to tax. There are several provisions in the tax legislation in Trinidad and Tobago which hinge treatment of persons and treatment of income on the place of residence of the taxpayer. The legislation in Trinidad and Tobago says that a company is deemed to be resident in the place where its central management and control is located and while there is a plethora of cases of what that means, how I have essentially interpreted that for general purposes is that a company is regarded as resident where its strategic decisions are made.

How can you determine where strategic decisions are made if you do not know who is the real owner of a company? Because anybody can be appointed as a shareholder, anybody could be named as a shareholder, anybody can be appointed as a director, but are any of those persons making the real strategic decisions? To allow you to determine who is doing that, you have to know who the beneficial owner of the entity is and that is the only way you can properly determine where a company is resident. This concept of resident is so fundamental to the operation of tax that, for example, it determines how a company is to be taxed. So, in Trinidad and Tobago, a resident company pays tax on its worldwide income whereas a non-resident company only pays tax on income arising in Trinidad and Tobago. It is that fundamental.

While section 21 of the Corporation Tax Act allows the Board of Inland Revenue, at the moment, to request information on the beneficial ownership of companies and get it there, in my view, this legislation removes that burden from the board, places it on the taxpayers and therefore makes administration so much more effective because it does not have to weigh a situation where the board determines maybe there is something suspicious, let me ask a question about beneficial ownership. It will have the leeway, after this legislation has passed, to check the Companies Registry, determine where the beneficial ownership lies and therefore

base its decisions on that information.

So what kinds of decisions does the Board of Inland Revenue have to make that is affected by the ownership of a company? For example, section 67 of the legislation allows the board to ignore artificial transactions; artificial transactions between related parties. If you do not know who the beneficial owner of the company is, how do you determine whether the company is transacting with a related party to invoke this provision? So knowing the beneficial ownership, which this legislation will allow you to do, allows you to determine should I ignore this transaction because it is between related parties and designed in a way to benefit the company to artificially reduce the tax liability that a company should otherwise pay.

Other issues that would be impacted would be utilization of losses. The legislation currently allows a company to fully claim brought-forward losses without restriction. However, if there is a change in ownership, that entitlement to claim brought-forward losses is impacted. Unless I know when there is actually a change in ownership, I do not have the opportunity to invoke that section. Group loss relief is another one. Group loss relief is only available to companies that are resident in Trinidad and Tobago. As I indicated earlier, I need to know who the real owner of the company is to determine who is making the strategic decisions and therefore where that company is resident. I can only properly do that if I know who the beneficial owners of the company are.

There is a series of provisions in the income tax legislation that deal with companies that are owned and controlled by a limited number of people. It is called "close company provisions" and it allows the Board of Inland Revenue to disallow certain expenses claimed by these companies because it is based on the premise that if a company is closely controlled, then it is more able and more likely

to manipulate its affairs to reduce its taxes and therefore, it gives the Board of Inland Revenue certain additional powers. In order to properly administer that, the Board of Inland Revenue, again, needs to know where the beneficial ownership of the shares of the company resides. So it can, for example, in respect of close companies, limit the deduction of director's fees, disallow interest paid to related parties, disallow all or some of the rents and royalties, again, paid to related parties. This requires knowledge of beneficial ownership.

Double taxation relief when you are earning income from a non-resident company is only available in Trinidad and Tobago to companies that are resident in the Trinidad and Tobago. We currently have companies that are operating in Trinidad and Tobago, carrying on significant business activities, earning income from outside of Trinidad and Tobago and reporting that income in Trinidad and Tobago who would normally qualify for double tax relief unless the board can establish—and the board has been able to do that, in certain cases—that these companies are not resident in Trinidad and Tobago.

Exemption from tax, mutual fund income, the income provided by the Unit Trust and other mutual funds. We have grown to accept that such income is exempt but it is only exempt to persons who are resident in Trinidad and Tobago. So again, we need to know where these persons are resident and that, again, is based in large part on who holds the real ownership of the company, who is the beneficial owner.

The legislation, finally, requires a person making a payment to a non-resident to withhold tax from that payment. You cannot determine whether you have an obligation to withhold unless you know whether the person you are paying is non-resident. That, too, relies on beneficial ownership.

So these are just a few of the examples of places in the legislation that require the Board of Inland Revenue to have much more intimate knowledge of the companies

that it is seeking to regulate in the tax field than it currently has. So the Board of Inland Revenue, for decades, has been seeking to administer the tax legislation but it really has been doing so with one hand tied behind its back because at the moment, they do not have the wherewithal to have the proper information to determine should I look more closely at this company, at this transaction, at this activity. Should I question it? Should I disallow expenses? Should I disallow loss relief claims? Should I impose tax on it on certain categories of income?

So while this legislation does, in fact, give us an opportunity to comply with our international obligations, which are important, and it gives us the wherewithal to strengthen our administration of other legislation like anti-terrorism and anti-money laundering, we must not forget that it also gives us the opportunity to more properly and more closely and more effectively administer our tax laws. And what that will do is that it will give us the opportunity to collect the correct amount of tax from our range of taxpayers, and the taxpayers who will be most affected by us having more of this information are the taxpayers who are in a position to afford the tax advisors and to afford to create complex structures to conceal the true nature of what they are doing, how they are doing it, who is bearing expenses, who is earning income. So the people who are most able to contribute more to the coffers of Trinidad and Tobago will be placed in a position where—well, the board will have more power to ensure that they properly comply with their tax obligations.

So this bit of legislation, as simple as it appears, really starts giving the Board of Inland Revenue a significant tool to more properly do the work that it has been trying for years to do. So on the basis of the fact that one, it allows us to fulfil our illegal obligation; two, it allows us to more properly combat the various types of international crime that have been becoming more and more significant in the

world, and three, because it allows the Board of Inland Revenue, the tax authority, to more effectively conduct its business, administer its taxes. I would like to express my full support for this legislation.

Before I close, Mr. Vice-President, I really would like to express my surprise at Sen. Mark's attempt to suggest that the Attorney General, and the Government, in general, is seeking to provide public companies that have been doing their jobs and as far as we are aware, complying with their obligations, to imply that they are using corporate structures to carry on nefarious activity. He called a couple of companies in the Republic Bank Group, in the financial services group and suggested that in the absence of including them in this legislation, what we are doing is giving them a free ride; and nothing could be further from the truth. Because, as we are all aware and as I am sure the public is aware, these entities that he referred to are financial institutions. They are financial institutions that fall under the Financial Institutions Act. They are regulated by the Central Bank. They are answerable to the SEC.

The financial institution legislation, as fairly recently been amended, not only prescribes how they must operate but prescribes how they must organize themselves if they are operating as groups to ensure that there is increased protection for the public in terms of what kind of activity they carry out, that financial organizations must operate only in groupings with financial organizations, and so to suggest that because they operate through companies and because they are not caught by the provisions that we are dealing with today, that they are going to be given a free ride and they can operate at will and disregard the law, it really is irresponsible. I would like to condemn that.

So, Mr. Vice-President, as I indicated, this legislation is, in my view, relatively simple but extremely important and it is required for the purpose of our law

enforcement and as well as an ancillary benefit, it will give the tax authority the power that it needs to do its work more effectively. Another aspect of it that we need to recognize is the fact that what this bit of legislation does is that it helps us to get compliant and as we become compliant, we put ourselves in a position to receive information from the other countries in the group, and that also enhances our ability to enforce our laws locally and to properly administer the tax.

5.40 p.m.

So, apart from the fact that yes we recognize, Sen. Deonarine and Sen. Ameen, that we do have to ensure that administration of the legislation is effectively done, the first thing we have to do is pass the legislation. So we are hoping for the support of both Senators who, based on my understanding of their comments were—the only concern raised was could we effectively administer. So we ask for your support in passing the legislation and we assure you that the intention is to put things in place to ensure effective administration of the legislation. So with that, Mr. Vice-President, I thank you. [*Desk thumping*]

Sen. Saddam Hosein: Thank you very much, Mr. Vice-President, for recognizing me to contribute to this debate in this honourable place today.

Mr. Vice-President, we must understand why we are here today as a Parliament and specifically the Senate to pass this piece of legislation so that Trinidad and Tobago will stand some chance in order to become compliant with whatever international obligations that we may have.

But from the onset let me say, Mr. Vice-President, that this Bill alone is not enough, because the passage of this Companies (Amdt.) Bill will not take us off from the Global Forum. It will not make us fully compliant with our FATF recommendations, but it may assist.

And I know I was preempted by the Minister of Trade and Industry before I ended

my sentence, but she anticipated me, Mr. Vice-President. You may think that we on this side, six Senators who sit on the Opposition Bench, are obstructionists but, Mr. Vice President, nothing is further from the truth. Because it was under a People's Partnership Government that the work started for Trinidad and Tobago to become compliant with FATF. It was a Government led by the hon. Kamla Persad-Bissessar, Senior Counsel, that gave the commitment to the international community that we would be sharing tax information through the Global Forum requirements, and this is the commitment that we gave to the country, and these are the requirements that we signed on Trinidad and Tobago to. And today we stand here and we have a single piece of legislation that will try to take us off the backlist.

Let me just say that all of this came from when the world was changing. The world was changing because of this phenomenon called terrorism, and it was in the 9/11 attack that terrorism became a worldwide global phenomenon. So countries had to take certain measures in order to prevent the financing of terrorism. So, therefore, we have all these 40 recommendations given by FATF so that we can try to curb terrorism financing, try to curb money laundering. We know money laundering is probably an issue in Trinidad and Tobago, but terrorism, in terms of the financing of terrorism, I do not know whether or not we have any evidence that it is a real issue in Trinidad and Tobago.

The fact that we are passing this Bill, Mr. Vice-President, with respect to share warrants and bearer shares, is it that this is really a problem in Trinidad and Tobago, or are we going to create a problem? The reason I say this is because I do not know if the Attorney General offered any evidence in this place or in the other place, whether or not the issuance of bearer share warrants, there are any statistics or any evidence of it right here in Trinidad and Tobago. And this Bill, the crux of

the Bill is an attempt to sort of address those issues with respect to persons not being allowed to issue these bearer warrants and these share warrant certificates.

Mr. Vice-President, you would know that there are 40 recommendations in FATF, and this Bill will touch and concern two of those recommendations and those recommendations would be recommendations 24 and 25 that deal with transparency and beneficial ownership. We have heard so far in debate all the various reasons, the manners in which companies can be used in order to conduct illicit and criminal activities. We have heard where the beneficial owners will hide behind the cloak of the registered shareholders, where directors may be placed there in order to do the biddings of the beneficial owners, Mr. Vice-President. And we must, as a country, take this issue seriously if we are to be globally competitive.

When you look at the Bill, Mr. Vice-President, I must say that from a cursory reading of the Bill when I first saw it, when it was laid in the House, when I looked at clause 4 of the Bill that will amend section 33 of the Bill, I went back to the original, well the Act that currently exists, and section 33 of the Companies Act, Chap. 81:01, states at subsection (2) that no company may issue bearer shares or bearer share certificates. So when I saw that, I said: "Well these things are already illegal."

And when you look at section 513 of the Companies Act, you would realize that if someone issues bearer shares or bearer share certificates, well then they would be liable to a fine of $10,000. So I looked at that and said: "Well, it is already illegal. So what is really the legislative intent of this piece of legislation?" And when you look at clause 4 and you read going along, you see that the Bill now tries in an attempt to ask these persons or these companies who may have issued these bearer shares or share certificates, to come forward and bring it to the registry and let us register it for you.

Now the issue that raises is my mind, Mr. Vice-President, is that you are asking someone to disclose an illegality that they would have committed. Now, what incentive will you give a person or a company to come forward and say: "Well look, I was issued a share certificate, a bearer share certificate, in the past. Am I now liable to a fine of $10,000 because I issued this certificate?" And that is one of the issues that troubled me while I was reading this piece of legislation. Because it would seem that you are asking a person or a shareholder to incriminate himself or herself. I know that when you read the Constitution there is a constitutional right to non-self-incrimination and that is a point that I was looking at, Mr. Vice-President. Because it seems as though the Bill is asking a person to reveal an illegality that was committed.

Then when you look at subsection (4) of clause 4, it reads:

> "Where a company has prior to the commencement of the Companies (Amendment) Act, 2018,"—which is the current Bill—"issued share warrants or bearer share warrants, it shall within six months of the commencement of the…Act,…deliver to the Registrar a return in the prescribed form of the number of share warrants and bearer share warrants it has issued accompanied by the prescribed fee."

So is it that the legislation is going to operate retroactively? And that is a question I would ask the Attorney General to probably address during the wind-up.

It also speaks of a prescribed form in which these warrants are to be filled out. Now I looked through the Bill and I did look through the Companies Act and I did not see the form. So maybe that form should be in a prescribed manner, as stated in subsection (4). Because when you pass legislation, Mr. Vice-President, there must be a level of certainty, because Parliament is meant to create certainty and when we make laws persons will clearly understand what their obligations are, and

that is one of the issues that—it was a bit unclear in that subsection.

Now I am going along, Mr. Vice-President, to subsection (5). And subsection (5) says where a company fails to comply with the subsection I just read, which is subsection (4), with the disclosure of the share warrant, you will be convicted of a fine of $10,000 and to imprisonment for three years; for every day for which the offence continues, a further fine of $300.

Now, the people that we are dealing with here are directors of companies, officers who may be known as the president of the company, the vice-president of the companies and you are moving away from just charging them $10,000 to the addition of a custodial sentence. So the judicial officer now has a discretion whether or not they should impose a non-custodial sentence, which is the fine, or a custodial sentence, to a maximum imprisonment of three years.

Now, looking at it from a criminological background, Mr. Vice-President, is it that an imprisonment is a proportional fine for the non-disclosure of a bearer share warrant? Is it that if you are going to deter this type of conduct, is it that you would want to imprison these persons, in terms of not disclosing, or is it that there should be some other mechanism that would actually force them to do this? For example, maybe a company; there may be some mechanism where you can use some device such as the company cannot conduct business because of the nondisclosure or something to restrict their trading? So therefore, they will feel the real brunt of the sanctions, so therefore, they may comply.

Because most times it is very difficult for a judicial officer who sits in a court to say: "Well, I am going to throw you in jail because you did not disclose you had a bearer certificate." That is one of the issues, whether or not a judicial officer will really sentence somebody to imprisonment for this offence. So I did not see the practicality in it. Maybe this could have been thought out a little better in terms of

what can really compel someone to disclose that they had a bearer warrant or a bearer share certificate. And that is an issue that we need to look at.

The Attorney General has returned to the Chamber. When I looked at subsection (6), it speaks about a notice when—subsection (4) speaks of the passage of the Bill. But then subsection (6) speaks about giving the person six months to bring in their share warrant or bearer share warrant and it speaks about six months from the date of notice. But when you refer to subsection (4), hon. Attorney General, there is no notice being prescribed in that subsection. So I do not know if that may require and an amendment.

Also at subsection (6), you will see that there is a typographical error after "six months", I believe the word "of" should be inserted there also. That is a very minor error. Those are the issues I would like to raise, with respect to clause 4.

One last issue with respect to clause 4 is at subsection (13), where it says that:

> "The Registrar"—who I assume is the Registrar General—"shall establish a register of share warrants or bearer share warrants issued before the commencement of the Companies (Amendment) Act…"

Now, are we asking the Registrar to maintain a record, and we probably would want to prescribe the manner in which the Registrar maintains his records? For example, when we did the land Bills, there is a prescribed form in which the rules will take for the registration of the interest. So maybe we may want to consider that also, in terms of the form of register that the Registrar General will be able to maintain.

When I looked through the other parts of the Bill, there was one mention that, I looked at the Law Association's comments also, when you look at the definition section in the Companies Act, you will see that a public company is defined. Should we now define what is a private company?—because private company is

mentioned throughout the legislation. So I do not know if we may want to give consideration to the definition of a private company in those circumstances, and I think the point on the retroactivity of the legislation, we should look at and also that point I raised earlier on in the disclosure of an illegality.

Mr. Vice-President, with respect to the other parts of the Bill, when it dealt with the beneficial ownership, there are a few issues I am seeing here with respect to beneficial ownership. Now, the beneficial ownership speaks about companies also governed by Corporation Sole. Now, Corporation Sole is the Ministry of Finance, and I wonder whether or not that may at all ever be applicable in terms of the issuance of a share warrant or a bearer share certificate from a state enterprise. So that was an issue I saw there, with respect to the beneficial ownership.

But, I promised that I would not be long, and those are the issues that I looked at when I read the Bill. I would like to say, Mr. Vice-President, that we come here time after time with respect to trying to get Trinidad and Tobago compliant with FATF and sometimes the Attorney General brings us here, very short notice, where there is an imminent deadline and I just want to ask—and this is a consideration for the Government and the entire Parliament—whether or not it might be time that we lay the FATF 40 recommendations, that Mutual Evaluation Report of June 2016 in the Parliament and have a Joint Select Committee of Parliament set up and really examine this report and see whether or not we can come up with one comprehensive package of legislation, so that we do not have to come here time after time—[*Interruption*] Well, we still have one report, the report outlines all of our deficiencies. Let us look at it, bring one comprehensive suite of legislation, and let us try to see if we can reach somewhere. We can do it in phases. I remember I sat in a JSC, together with Sen. De Freitas, in National Security where we looked at the Police Manpower Audit Report, and there were several

recommendations being given there, and whether or not we can really sit and look at those pieces of legislation.

So that, FATF we can take care of, Global Forum is a different issue. We are still on the blacklist in the Global Forum arena. We have a lot of work to be done there. When we did discussions on the Income Tax Bill, one letter was disclosed to us by the Ministry of Finance, and the Companies (Amdt.) Bill found itself in that letter, and that would have come about because of the G20 leaders in July 2016, that called for transparency, in terms of tax exchange and tax information sharing, Mr. Vice-President.

So, those are issues which Trinidad and Tobago face. I think it is time that we come out of the blacklist because we want to be globally competitive. We have been given an indication. We gave the country an indication, the Leader of the Opposition, that Trinidad and Tobago, when we have a UNC Government installed, that we are going to focus on technology and a technology-driven economy. And in order to attract those investments, we must not be on any blacklist. Trinidad and Tobago must be seen as attractive for any global investor.

Mr. Vice-President, I think that the time is now. We on this side, we will give our commitment in order to make Trinidad and Tobago compliant and attractive because we understand the economic climate. Notwithstanding that we have our sovereignty, we belong to part of the global village. With these few words, Mr. Vice-President, I would like to end my contribution. Thank you.

[*The Attorney General rises*]

Mr. Vice-President: Wait Attorney General. Who is the next speaker? Sen. Deyalsingh or Sen. Dr. Dillon-Remy?

Sen. Dr. Maria Dillon-Remy: Mr. Vice-President, I thank you for the opportunity to speak on this Bill, the Companies (Amdt.) Bill, 2018. I do

commend the Attorney General in seeking to close the gap in providing this legislation to deal with the things he mentioned, things like money laundering, corruption, terrorism, transparency.

I too echo many of the previous speakers who talked about the fact that we should not just be interested in putting legislation into the—making legislation but making sure that we make the—not just put them into action, but make sure that they are active in the country.

I am also of the view that this is more than being compliant with these international organizations. I think that as a nation it is time we understand that Trinidad and Tobago should be seeking to grow in terms of integrity at every level. So if we are talking about moving corruption in companies and stuff like that, we should be seeking as a nation at every level to rid our country at every level of these scourges; so not just to have our nation not blacklisted anymore, because if we continue along the way that we are going, it would not be blacklisting in this area but in another. And if I know that I am probably being idealistic here but I choose to think that, as a nation, we are able to move in that direction.

My contribution would be very short and would focus on two areas, Mr. Vice-President. I understand that there are several small companies who never issue shares and it is legal and they file annual returns and say no shares issued. I think I heard the Attorney General, in his presentation, indicating this was perfectly legal. How would the Government know who owns money in these companies? Could it be very easily an area where the money launderers put their moneys and just never issue shares? If that is so, how are we going to deal with it in this legislation?

And my other question is: In clause 9, section 337C(9), it says:

"Nothing in this section shall prejudice the right of a shareholder to receive

dividends declared by the company."

I just found it very strange. We have just been talking here about people who can have beneficial shares, who can have shares that are now—you can be bringing these shares to a company and saying: "I am getting dividends as a result of my ownership of these shares, but I may have broken the law in not registering these shares but I still have them with me." How would you know? How would the company know that this is now illegal? Therefore, the bearer share certificates, share certificates, et cetera, that I am now bringing and saying I am—because the law says that nothing in this section shall prejudice the right of a shareholder to receive dividends declared by the company, I am unclear as to what that means.

[MADAM PRESIDENT *in the Chair*]

Hon. Al-Rawi: I thank the hon. Senator. The two sections are separate. So in the bearer share warrant/share certificate aspect you are going to cancel those shares. You do not bring them in, they are all going to be cancelled. So there can be no dividend to that person, because that category for external and local will disappear, unless they apply to the court to reinstall them under section 265 of the Companies Act; in the case this particular clause, 337C(9), in the realm of the beneficial owner. So, where you have a legal owner and a beneficial owner, what we are saying here is that if there is no declaration as to who the beneficial owner is, that person cannot come around and claim some right later. But nothing ought to stop the legal owner on the register from receiving dividends. So they are two separate issues.

Sen. Dr. M. Dillon-Remy: That is the end of my contribution, Madam President. Thanks. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you for the opportunity to speak on this

Bill to amend the Companies Act. Madam President, the Bill is essentially two main clauses, clause 4, which seeks to add 12 subsections to the existing section 33 of the Companies Act; and clause 9, which introduces some detail to this concept of beneficial ownership.

Madam President, I want to open by saying this, if it was not for corruption, this Bill would not be here. Let us not lose sight of that. Let us set aside the Companies Registry and the inefficiencies, and so on. We are here because of corruption. Madam President, if it was not for our obligations to our global counterparts we would not be here.

And I took a special interest in making a short contribution, just to remind my colleagues of something I referred to on the Insurance Bill. I worked with one of the world's largest financial institution and we had to deal with a 2012 decision of the Department of Justice in the US to impose a $1.9 billion fine on the entity. The fine is not—it sounds a lot, US $1.9 billion. It sounds like a lot, but the more important thing is that the license to operate in the US and deals in US currency would have been lost, if the requirements of the DoJ were not satisfied. The movement of funds around the world, and the movement of funds through financial institutions, via corporate entities among other types of vehicles, is a very serious matter, and we are here because of our obligations to the global community.

The third thing in opening I want to say, Madam President, is that we would not be here if it was not for the pervasiveness of this thing called bearer shares, share warrants and numbered companies and a series of instruments that gives anonymity. And if you want to be convinced about the pervasiveness of these instruments, you just have to go to the recent Panama papers. It is replete with references to that. So, that is why we are here, to tackle corruption, to meet our global obligations, but to also be, perhaps, the last or if not one of the last countries

to deal with this ancient thing called bearer shares and certificates, which exist in anonymity. Madam President, the financial world and legislators like us have been combating two things, secrecy and anonymity, and we are blacklisted because of elements of secrecy.

In 1934, the Swiss joined the international financial community largely on there being a need to hide moneys gained from post-World War I activities in Europe. The Swiss, in 1934, gave the world this thing called secret accounts and secret banking. Sen. Mark, we would not know much about that. We bank with the credit union. [*Interruption and laughter*] But it took a while, Madam President, to deal with it, but clearly, clearly, the global financial community has severely attacked this concept of secrecy in bank, and this piece of legislation deals with the second pillar, which is anonymity.

6.10 p.m.

And this issue of international banks, of corporate and other types of vehicles and corruption, is not new to us. It might be new—some of my younger colleagues would not remember some of the stories. But I remember quite a few of them. And I want, Madam President, in order to highlight the pervasiveness of these companies, to highlight two parts of our history.

The first, Madam President, deals with—and these are published records I am going to refer to, so it is really no secret. The first deals with a company that I heard of when I was in Standard 2 or 3 in primary school. And I took keen interest in it, I saw it on a *Guardian* front page. I remember it very, very clearly; Sam P. Wallace, I really wanted to know what that was about, and in later years I found out.

But, Madam President, this document from the US Department of Justice deals with charges brought against this company called Sam P. Wallace that

operated in this country. And it dealt with improper payments made to one John O'Halloran, Chairman of the Trinidad and Tobago Racing Authority, an agency of the Government of Trinidad and Tobago, in order to secure the award of a contract for the construction of a grand stand known as the Caroni Race Track Project. And the allegations and what was agreed to in this 1981 filing was that approximately $1,391,000 in improper payments were made in connection with the project.

Wallace—the company wired the money for the improper payments to off-the-books bank accounts in Puerto Rico, Wallace created false purchase orders to fictitious suppliers in order to conceal the payment made to O'Halloran. As a result, on August13, 1981, Wallace Company and officers of the company consented to the entry of a final judgment agreeing to avoid future violations and so on. The company pleaded guilty of breaches of the anti-bribery provisions, and Alfonso Rodriguez pleaded guilty to the bribery of a foreign official.

And that was Sam P. Wallace, that was 1981. So this corruption and payments through foreign accounts, fictitious accounting, fictitious suppliers and so on is nothing new to us. And this piece of legislation, particularly clause 4 which introduces 12 new subsections to the existing section 33 of the Companies Act, seeks to give us an additional opportunity to eliminate the use of these types of entities in corrupt practices.

Madam President, the filing by the Securities and Exchange Commission, the 1981 filing is also a public record in the Sam P. Wallace matter and it confirms. I do not want us to live in denial thinking that because of political history we ought to live in denial. These things have happened, and if not in our jurisdiction it is recorded on dockets and in judgments anywhere, it is recorded in other parts of the world and this is a serious matter.

Madam President, in this publication—and in fact this Bill should be called

the "puppet masters" Bill. Because what the law has allowed us to do, from 1811 when the state of New York first introduced the concept of "limited liability company", the limited liability company has been the number one vehicle for corrupt behaviour—in 1811. And it was not until it was introduced, the concept was introduced in 1845 in the UK, and the Companies Act of 1862 in the UK recognized it, it took us until about 1897 for this issue of the veil to be lifted. My colleague referred to it in the Salomon brothers' case which did not lift the veil in that instance. But the limited liability company has been the primary vehicle which allows people to control, to make decisions, to conduct transactions without being personally involved in a lot of it. And nothing summarizes it better than this publication called *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*.

And Trinidad is not new as I said. Trinidad is not new to all of this. I remember in the Anti-Terrorism Bill, I also said we were not new to faith-based concerns and so on. We are not new to corruption. In fact in this publication there is a section called, "Grand Corruption: 10 Case Studies" and Trinidad and Tobago finds itself at No. 9 and that case has to do with the Piarco International Airport scandal, and if I may quote, Madam President, the overview on page 207 of this publication says and I quote:

> "From 1996 through 2000, the government of Trinidad and Tobago conducted what was intended to be a competitive process to award and pay for various contracts in conjunction with the construction of the Piarco International Airport in Trinidad."

The contract intended to be awarded—I do not want to call the names, but I would just say on page 208, I will just quote this finding. And I quote:

> "The misuse of corporate vehicles…was essential in this case. As will be

discussed below, they were used not only to provide additional layers to the scheme, but also to give the scheme the appearance of legitimacy."

And that is the point, anonymity and secrecy helps us to build the appearance of legitimacy. And we are dealing with accounts held by entities which we do not know the true owners of it and the true controllers. And clause 9 of the Bill introduces the concept of beneficial ownership and the need for us to know in dealing with this type of vehicle who the beneficial owners are.

Madam President, in relation to the issue of investigation and asset recovery the publication on page 210, "The Puppet Masters" makes this point. And I quote:

"This"—Piarco International Airport—"case presented various investigative obstacles. As discussed, the tactic of layering can obscure the trail of funds. The fact that the layered CVs were created in different jurisdictions also created an additional obstacle. According to the civil complaint, CVs from a wide variety of jurisdictions including—but not limited to—the Bahamas; Florida, the United States; Panama; Portugal; and Trinidad and Tobago were employed in the scheme. For a criminal, such a structure of…layering can be convenient for hiding the trail of money—but from the perspective of an investigator, it creates a number of other investigative issues." —So on and so forth.

So, Madam President, we are dealing with a very simple Bill that—it has already been determined around the world that what we are trying to do today was necessary maybe 20 years ago. Particularly at the dawn of that Piarco International Airport case if not before, and we have not done that.

And another publication, this one from the US Immigration and Customs Enforcement also known as "ICE", highlights some of the most important cases in corruption dealing with corporate vehicles. And Piarco finds its way into this

publication too. And this case specifically, this publication specifically deals with Birk Hillman, for those who do not know, Birk Hillman was a partnership owned by Eduardo Hillman. Birk—I cannot remember Hillman's first name but—

Hon. Al-Rawi: Clarence, the concern is if you are sub judice.

Sen. The Hon. C. Rambharat: Is it?

Madam President: Yes. I actually—Minister, I allowed when you read from the first publication, you did not call any names. But I think you need to veer away now, because there are pending matters with this.

Sen. The Hon. C. Rambharat: Okay. I am guided, Madam President. The point is that, Madam President—and I have made it—these are serious issues in dealing with this issue of corruption, this issue of layering and the use of financial intermediaries. And what we are doing today is a significant step that we should have taken a long time ago, but we are here today to deal with it.

Madam President, Sen. Ameen in her contribution made it look as though absolutely nothing was being done. And it is something I hear very often, that nothing is being done. And I want to make the point that successive governments—maybe the last administration for whatever reason, did not deal with this particular issue. But successive governments have been grappling with the need to meet the CFATF and FATF requirements, and the need to keep abreast and keep the law evolving.

And I want to make the point that when you look at the publications, for example, when you look at our annual report of the FIU, you see some of the same things over and over, but every so often in the report, every year you see new trends and new issues which are to be addressed. And I do not think there will be a time when we will ever have a perfect line-up of the law, the regulations, the institutions, the resources and so on. And that is why we call it "a battle against crime", and

financial crime is one that is evolving.

So, for example, I remember when we dealt with the Insurance Bill, I made the point in relation to crypto currency, and so far in this country we have not felt the need to deal with crypto currency. But there will be a point, there will be an FIU report that points to the growing use of crypto currency in the commission of financial crimes. And there will be a report that points to the use of crypto currency for money laundering, for movement of cash, financial resources across borders. And one day a group of Senators will sit here to deal with that.

When we look at, for example, what we are dealing with, Madam President, as I talk about in response to Sen. Ameen, in the 2018 report of the FIU there are two important pieces of statistics that caught my attention. The first is that while we are in here constantly trying to keep the law updated, the FIU points to a 21 per cent increase in the reporting of suspicious transactions involving law enforcement officers and security personnel. So could you imagine that? As we try to keep the law updated, and as we try to comply with the international requirements, the FIU is saying "we are seeing a trend where suspicious transactions are increasingly being reported in connection with law enforcement officers and security personnel" and that is something we have to take note of.

Another thing is that, in relation—and I had referred to it previously, but now we have even more updated statistics in the financing of terrorism. In 2015 there were 16 instances in which there were STRs or SARs filed in relation to the financing of terrorism, in 2015 there were 16. Three years later in 2018 there were 167. So again, our attention needs to be focused on what the FIU is saying, that this is a significant phenomenon, and maybe we will find ourselves back here dealing with further improvements to the legislation that we recently passed because of what is happening and what is reported and what we are encountering in the environment.

So, I do not want it to be said that as a Parliament or as any Government we have sat and done anything. I think that this has been a constant battle to deal with the emerging issues, the issues that are pervasive and the recommendations that come through our international partners in dealing with it.

And, Madam President, if anybody has any doubt about the use of corporate vehicles in corruption and in particular, movement of criminal funds, I suggest that you look at page 34 of the FIU report of 2018 and you will see on one single diagram the FIU highlights a particular transaction that they describe as "blackjack". And you will see four elements of a typical money laundering transaction involving four typical elements: a criminal, friends of a criminal, a financial institution, and fourthly, corporate vehicles, limited liability companies, trusts, or other things relating to that. You must have one of these vehicles, but the most important element of this vehicle is the difficulty in tracing the beneficial ownership and more importantly, the anonymity in which the ownership is shrouded.

Madam President, I consider this to be important legislation. I want to say that clause 4 is the important clause, everybody I think has referred to it. It introduces 12 new subsections which will essentially prohibit the issue of certain things which are listed: bearer shares, bearer share certificates, share warrants and bearer share warrants. It will prohibit the exchange of those and the conversion of those into shares—the conversion of bearer shares into what we normally we know as shares. It introduces penalties, there is a transition period as my colleague Saddam Hosein has pointed out, and there is a transition period and it introduces penalties for failure to do what is required in the transition period.

I want to just close by referring to Sen. Mark, I was quite—very, very, very surprised that—I just wanted to say to my colleague that he once worked in the

bank and insurance workers union—

Sen. Mark: Bank and general.

Sen. The Hon. C. Rambharat:—bank and general, representing a lot of people in these institutions. In fact in 1996 when I was involved in the famous Clico/Republic Bank matter, Trintrust and Viveka Holdings were at the heart of that. They are the vehicles that hold the shares, it is not unusual. It is not unusual in the sale of an asset that the seller provides a loan to the buyer; that is not an unusual transaction. Where the buyer takes on debt, and the debt is a debt which has to be repaid to the seller. That is not unusual. First Citizens Assets Management, quite surprised, I have seen many publications from Larry Howai when he was CEO and when he was Minister. Guardian Asset Management should not be unknown to you Sen. Mark, you know how pension funds are held, you know how they are managed, you know how the interface between employees that you once represented and their pension funds—and the number of intermediaries including asset management entities and trustees.

And these are not meant—this is not like the "buck" some people say they are seeing down in South. These are—[*Laughter*]—these are very, very legitimate entities, I am not saying—[*Crosstalk*]—that they are not capable of mischief but there is a reason why—I will say two things in relation to the SEC. This Bill actually ties in to the SEC, and the other thing I would say is that—so the proposed clause 6 of the Bill ties into the SEC, and where the publicly listed companies are excepted from the Bill it is because the Securities Act which was passed under your administration makes provision for covering publicly listed entities and issuance— [*Interruption*] "Uh?"

Sen. Mark: You seem to be sleeping.

Sen. The Hon. C. Rambharat: Sen. Mark, I do not have jurisdiction over that.

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

Sen. Taharqa Obika: [*Desk thumping*] Thank you very much, Madam President. I intend to make a short intervention and the only "buck" I will be speaking of will be United States Dollars. I really hope that that part that was raised before does not repeat itself in this debate.

Now, Madam President, basically my decision to rise at this stage in the debate really speaks to one issue that I felt was not addressed. The hon. Attorney General raised this at the other place, and I think it was not addressed in this debate— and I really want to raise it—which is the mechanisms with which the financial sector would have at its disposal and would not be able to exercise given the limitations of this Bill with respect to the fact that persons who are involved in violent crime would use surrogates to conduct their activities.

So, therefore it may be very difficult, nearly impossible in some instances to really identify the beneficial owners. So that specifically is where I want to circumscribe my contribution on. And given the fact that the Central Bank is the authority required to administer the anti-money laundering mechanisms in the financial services sector, I think the Central Bank will be interested in a debate that answers that question. So as the Attorney General would be winding up, my contribution is really to ask this question, but to give some background so that he can shed some light as to what mechanisms will be in place, whether it be in the confines of this Bill in clause—I believe that would be clause 9, or if it would be addressed subsequently and how so it can be addressed.

I just want to read a short part from ICLG, this is the International Comparative Legal Studies and it is titled Beneficial Ownership Transparency: A Critical Element of AML Compliance, *Anti-Money Laundering 2018* and it is a very short part regarding the risk for financial institutions. And what is the risk for financial

institutions? The risk is severe because governments have delegated the duty of regulating on a daily basis the anti-money laundering activities to financial institutions and why that is dangerous is because it is very difficult, it is becoming increasingly difficult for financial institution operators to really identify who are the beneficial owners.

The case of the Panama Papers with the legal firm, Mossack Fonseca of Panama, where there were over 140 politicians from more than 50 countries connected to over 21 offshore tax havens, is one very clear example of the recent past where the financial sector got it wrong and depended on a different type of professional, Madam President, journalists who disclosed the global scale of hiding beneficial ownership.

So the risk for financial institutions is severe and they would need support from the Government and the article—and I paraphrased a short part of it on the risk to these institutions where it states, I paraphrase to say, corporate accounts pose unique compliance challenges not just for the financial institutions opening and maintaining these accounts, but also for firms acting as intermediaries, particularly corresponding banks, processing wire transfers to or from accounts.

Well, this is very important for what we are debating here today because the spirit of this Bill really is to address, as the hon. Minister in the Ministry of Finance stated very clearly, the FATF and Global Forum requirements. And if that is the case and we have an institution none other than the International Comparative Legal Guides giving this submission that the risk to financial institutions is severe, and it is difficult for them because of compliance challenges in this current dispensation, we must shed some light, we must make sure the Government's actions provide some level of remedy for the Central Bank and for the financial institutions.

So there is a question that I want to put in detail to the Attorney General in his winding-up, and it is very simple. We have two cases in Trinidad and Tobago's history, one is of Dole Chadee and the public secret of his use of surrogates to conduct his business affairs to launder money and to hide beneficial ownership in most of those activities.

Now, Madam President, I am sure I do not have to stress the point for persons in this honourable House to understand that it would be very difficult for one who acts as a surrogate for a drug lord of his stature, of his ill repute, to be able to disclose themselves, to disclose this information to the authorities. It may come at the risk of their lives or the lives of their family members if they were to even disclose that they are actually not operating on their behalf, but on the behalf of a sinister drug lord; so that is one.

There is another example in Trinidad and Tobago again, of one Kerwin Phillip, alias "Fresh", was head of the "G-Unit" gang and there were many street parties at that time—he died in 2007, I believe, he was killed coming out of a fete in Port of Spain, I believe. There were many street parties across the length and breadth of Trinidad, I am not sure if there were in Tobago as well, called "Passa Passa", all right? And what happened in these street parties, Madam President, was the community organizers would have their own event and they would actually pay most of the proceeds to the "G-Unit" gang and Fresh through his agents. And why is that important? If one turns to the FATF Guidance on Transparency and Beneficial Ownership for October2014, on page 16. It says that in terms of—under the heading identifying the natural persons who are the true beneficial owners, this is part (d), it says, and I quote:

> "…natural person(s) who exerts control without ownership by participating in the financing of the enterprise, or because of close and intimate family

relationships, historical or contractual associations, or if a company defaults on certain payments. Furthermore, control may be presumed even if control is never actually exercised, such as using, enjoying or benefiting from the assets owned by the legal person."

That is just one, there are several others, the points (a) to (f).

But I want to focus on that one, because in the both cases that I outlined, Madam President, the case of Dole Chadee and the case of Kerwin "Fresh" Phillip with the "G-Unit" gang, it would have been difficult whilst the law might state beneficial ownership, it may give a catch all and it will cover it legally in terms of identifying that these persons are actually beneficial owners, Chadee and Fresh, there may not be a mechanism for the bankers apart from innuendo, apart from gossip to be able to actually identify that these persons are really the beneficial owners, because for fear of persons losing their life, lives of their family members they may not disclose. And I wish for the Attorney General to shed some light as to whether or not there are mechanisms in this Bill or in the apparatus of state for the Government to really address that, because to me that is the main issue regarding proceeds of crime, and extortion, and inability of persons to come forward. I thank you. [*Desk thumping*]

6.40 p.m.

Sen. Deoroop Teemal: Thank you, Madam President, for the opportunity to contribute on this debate on a Bill to amend the Companies Act. Madam President, notwithstanding the international conventions that we are trying to meet, any initiative, any Bill, that deals with anti-money laundering, terrorism, corruption and white collar crime, I will give my support in principle, and also we heard from Sen. West, the many avenues this Bill affords for increased tax revenues.

I just have a couple of points regarding the Bill, Madam President, and on page 2, clause 4, (3) where it states:

> "Where a company contravenes subsection (2) the company and every director and officer of the company commits an offence."

I just note that no penalty is stated here for the particular offence, and when I checked the Explanatory Notes to the Bill, what is indicated there is that this would be considered a general offence as per section 513 of the parent Act and, as such, would incur a fine of $10,000. So, if that could be noted.

Also, on page 3, subsection (6), it states that:

> "Where a company under subsection (4), has notified the Registrar of the previous issue of a share warrant or bearer share warrant, the company shall, as soon as possible…"

And I am just noting that term "as soon as possible" and whether or not that we should put a specific time frame instead of the words "as soon as possible".

Also within that same subsection (6), the opportunity is there for "within six months" for the share warrant or bearer share warrant holder to give notification, and just as a point to encourage or to ensure a response, good response to this subsection, is whether or not the company should issue a second notice within that given period of six months. I go on to page 4, subsection (12), where it states:

> "A company under subsection (4) shall on its next annual return after the commencement of the Companies (Amendment) Act, 2018, include such particulars as may be prescribed of all share warrants or bearer share warrants…"

I am just looking at the feasibility, the logistics of this happening, because when we say:

> "…on its next annual return after the commencement of the Companies

(Amendment) Act, 2018…"

Under subsection (4) of this proposed amendment, we are allowing for six months after commencement of the amendment Act—that is for the registration—and subsection (7) is allowing another six months, and overall we can accumulate it as a possible 12 months. And if we are looking at after the commencement of the Companies (Amdt.) Act, the next annual return of a company may just be a couple of months after the commencement of the Act and, as such, that six months plus six months, may not prove to be realistic.

I am suggesting that maybe instead of linking the annual return with the commencement of the Companies (Amdt.) Act, whether or not it should say:

"A company under subsection (4) shall on its next annual return after the…"—return registered in subsection (4).

—Instead of:

"…the commencement of the Companies (Amendment) Act…"

I think that would allow the time frame to work more effectively and it is much more practical.

On a general note, should the company issue share certificates within a specified period after surrender of share warrants or bearer share warrants, whether or not this amendment in this Bill should specify that the company on the surrender of share warrants or bearer share warrants should actually specify a period for the company to issue share certificates to the holders, and if the Memorandum or Articles of Association of the company allow for share warrants or bearer share warrants, then whether a requirement should be for the company to amend their Memorandum and Articles of Association and submit to the Registrar of Companies?

Madam President, proposed clause 8, (2), where it is allowed for external

companies a period of 12 months to notify the register, I am just wondering, through you, Madam President, to the Attorney General, why 12 months for the external companies when the local companies are being given six months? [*Crosstalk*] Okay.

Madam President, I go to clause 9, "Beneficial Ownership", particularly new section 337C, on page 15 of the Bill, and note that there is a time of 30 days that is stated in 337C(1), (2), (3), (4) and (6), and concerns have been expressed by Sen. Deonarine and Sen. Ameen about the capacity of the Registrar of Companies to deal with this within 30 days, but I would like to also add, it is the ability of the companies to respond to this within 30 days.

I think not all of the companies have the necessary in-house resources and will have to outsource, and running concurrently with the declaration of the registration of beneficial ownership is also registration for share warrants or bearer share warrants. Considering all these things would be running in parallel, it is whether 30 days is really adequate for not necessarily only the Registrar, but for the companies themselves to respond in a meaningful manner to this legislation.

Madam President, trusts and other legal arrangements are mentioned in section 337A(2)(d), and the Attorney General did mention in the opening of this debate, the question of registration of trusts, a registrar of trusts, because section 186 of the parent Act deals with the record of trusts, but only with regard to a registered member or debenture holder of a company. And just as we are fairly detailed in terms of the share warrant and the external companies, in terms of details with regard to prescribed forms, times for registrations and penalties regarding trusts and other legal arrangements in this proposed legislation, there are no such details.

From what I understand, I mean, our laws regarding trusts and trustees are rather ancient, and I could understand what the challenge here is really, because who

would function as the registrar in this case? Who is the effective registrar when it comes to trusts? I see the need to try to cover trusts and legal arrangements in this legislation, but without having the details in terms of registration and penalties and all of those things including a registrar, maybe in his wrapping up the Attorney General could advise.

Madam President, on the issue of access to information, I know the intent is there, and in terms of the Registrar and the work that is being done, a lot of work has gone into this, but in terms of everything that is intended with this legislation, the issue of public access to information, I think needs to be—I would just like to emphasize on that in terms of, is the intention controlled access for a fee or are we going to head towards online access, open access for the public so that all of this information is readily accessible?

And lastly, the last point I would like to raise, Madam President, through you, is beneficial ownership with regard to partnerships. There is a Partnership Act, 81:02, but within this legislation itself, this proposed legislation, the whole question of beneficial ownership with regard to partnerships is not there. So I am just, through you, Madam President, if the Attorney General, could also advise in terms of: Is there a proposed legislation coming that would ask of partnerships to register beneficial ownership? Thank you, Madam President. [*Desk thumping*]

Sen. Gerald Ramdeen: Madam President, good afternoon and thank you for giving me the opportunity to contribute to this debate on a Bill to amend the Companies Act, Chap. 81:01. Madam President, we are in the season of Lent, and it is always a good time when we are in the season of Lent to do some reflection, and I think it is important in this debate to do a little bit of reflection, because the Attorney General in piloting this particular piece of legislation, again informed the Senate that this was a part of the Government's crime-fighting plan, part of the

implementation of the fight against money laundering and terrorism financing, and part of the entire all of Government approach, or whole of Government approach to fight criminality and white collar crime in this country.

So, in doing a little bit of reflection, Madam President, I managed to get my hand on the legislative agenda that has been completed by the Government going into their fourth year. And the reason why I think it is important for us to do a little bit of reflection, Madam President, is that we have done a lot of work as a Senate and as a Parliament in order to pass different pieces of legislation. We have done a lot of work to bring ourselves in line with our international obligations to take ourselves off this blacklist to comply with the CFATF requirements, to comply with the Global Forum requirements. But I wonder if we really ask ourselves after all of this legislation that has been passed—and usually when the Attorney General pilots any piece of legislation, we are told of what the Government has done—they have opened courts, they have put staff, they have passed all these different—and let me just go through it so that we could get a kind of scope as to where we are: Whistleblower Protection Bill, 2018; Tax Information Exchange Agreements Bill, 2018; the Sexual Offences (Amdt.) Bill, that is in a special select; Mutual Administrative Assistance in Tax Matters Bill, 2018;Motor Vehicles and Road Traffic (Spot Speed Camera Enforcement) (Amdt.) Bill; the Miscellaneous Provisions (Trial by Judge Alone) Bill, and then I come to a very important one.

We have heard everybody talk this afternoon about this fight against money laundering and corruption, the use of corporate entities as vehicles to carry out criminal activity, and that is what we are here for, and then I came across this piece of legislation called the Public Procurement and Disposal of Public Property Act, 2015, and one has to ask themselves, Madam President, this Government criticized the People's Partnership Government about the implementation of public

procurement legislation. They won an election on the idea that they were going to bring to this country good governance, accountability and transparency, and we are going into four years, four years—they did not have to draft a Bill, they did not have to go to a select committee—they had an Act that was the principal piece of legislation to fight this thing called corruption. The Minister of Agriculture, Land and Fisheries emphasized the fact of why we are here. And going into four years, this administration cannot implement or, I want to put it in my words, will not implement the public procurement legislation. [*Desk thumping*]

So it is quite hypocritical, Madam President, to bring pieces of legislation as we have done here, piecemeal—bring pieces of legislation, bring pieces of legislation—but the principal piece of legislation to stop corruption, the Government—I make no apologies for saying it—deliberately has not implemented that particular piece of legislation [*Desk thumping*] and one has to ask, when you come to bring these pieces of legislation about anti-terrorism financing—terrorism financing, anti-money laundering, you know, Madam President, it is not very difficult. All you have to do is go to the FIU report and you will get a breakdown.

The Attorney General, in the other place, gave us a breakdown of how many suspicious transactions, the monetary value and what is the value of the underground economy in Trinidad and Tobago that we are here to say that this piece of legislation, when we pass this piece of legislation, we are going to fight corruption, we are going to fight terrorism financing and we are going to fight money laundering—STRs and SARs, $22 billion in the report of the FIU, page 30, and you have the whole list for money laundering, fraud, drug trafficking, suspicious activity, financing of terrorism, tax evasion, human trafficking, extortion, organized criminal gang, murder and firearm.

But, Madam President, the truth about it is this. After having passed all these pieces of legislation, what is the result? That is what we have to ask ourselves. It is not good enough to come with a shopping list of legislation and say, as a Parliament, we have passed all these pieces of legislation, today we will pass the Companies (Amdt.) Bill. Have we sat down and done any reflection and asked ourselves the very relevant question of: Has the legislation borne fruit? How many more prosecutions have we had? The answer is none. Are we equipped? And when you ask that question, you have to ask the question that follows that: Why? And "why" is answered by a very simple answer. Passing legislation is not good enough. It is not a panacea for the fight against money laundering and terrorism financing.

And the truth about it, Madam President, why is it that after we have a report that says you have $22 billion in an underground economy, you cannot get any prosecutions? Why? There is no lack of legislation. That is for sure. You have laws—passing laws, man; hands down, de-siloing, giving everybody the information—the SSA monitoring people's phones—sharing the information, but why? You know, it comes back to a simple thing. You know, I said it in this place, in the Senate, when we did the criminal division Bill, and in that piece of legislation, I said we are going to be—the Government has this idea that they are opening all these new courts. They have Magistrates Registrars.

I saw advertisements went out for that a week ago. I saw the advertisements two days ago for puisne judges and judges of the Court of Appeal. And when people are caught, if they are caught—let us start from the very beginning. If you get evidence, if you are charged, if you are brought before the court, well, when you reach that stage, right, in the whole scheme of fighting this scourge called anti-money laundering and terrorism financing, have we realized that while we are

opening more courts and we are proud about that—that is the Government, because I am not taking part in that. I have said here before, while you are opening new courts, the principal court that has to do the work of implementing this piece of legislation for the last two days was shut down. [*Desk thumping*] We do not see anything wrong with that?

This piece of legislation tells us it creates offences. One expects that the police will have to investigate these offences. I was pleased that the Attorney General gave way in piloting the legislation to say, well, how are we going to operationalize this? Are we going to have, after we talk all the good talk about lifting the corporate veil and beneficial interest, beneficial ownership, equitable owners—the Attorney General explained the difference between an equitable owner and a beneficial owner, and the equitable owner trumps the beneficial—let me ask a serious question, Madam President. Just rhetorically, let me ask a serious question: How many people in the Trinidad and Tobago Police Service understand the difference between beneficial ownership and legal ownership? When the legislation is passed, how many police officers understand the difference between a legal owner and a beneficial owner? [*Desk thumping*] But you know what? How many police officers understand what is a bearer share or a bearer share warrant or understand these provisions? So, who is going to do the investigation to bring this to life? Right? How much training has been done? Perhaps, the Attorney General will tell us. Where is the special unit to deal with these kinds of offences? Because a week ago, the Attorney General told us—it is on the *Hansard*. I read it in the *Newsday*—I think the *Express*. The Attorney General said almost half a billion dollars, we have spent on one investigation. I do not think that it is people in the Trinidad and Tobago Police Service that that money has been spent on. But the truth about it is, we have spent as a country half a billion dollars on a financial

investigation and have nothing to show for it, and I do not think we have that kind of money, Madam President, to be able to throw half a billion dollars after every big investigation and have nothing to show for it.

So, I want to suggest that while one understands the policy and the mischief behind this particular piece of legislation, it is one aspect of a bigger picture that will not bear the fruit that we all hope that it will bear if the other elements of the system are not fixed and put in place. [*Desk thumping*]

I asked the Attorney General, and I am sure in the wrapping up the Attorney General will tell us, when someone does not bring in their bearer shares, the Attorney General has told us—and I am going with his figures—there are 104,168 companies on the record, of those, 86,190 are active. That means 20 per cent of the listed companies are not active, and the Attorney General gave us a very real example, a wake-up call to the idea that in the juice cans example, it was a bogus company, an inactive company, that was used as the vehicle for filling out the customs forms, carrying out the transactions. But you know what we have not heard, Madam President? If 20 per cent at the Companies Registry are inactive, well, what is the Registrar of Companies doing to get rid of that 20 per cent, almost 20,000 companies that we here have been told are vehicles that are being used to carry out criminality? Well, that should be one of the priorities or it should have been something that should have been done before we even came here to debate this piece of legislation, because you do not require this piece of legislation to fix that problem of getting rid of the 20,000 companies. So that, Madam President, is something that the Attorney General has highlighted—a billion dollars in cocaine—and that is one company and things have to be put in place to get rid of those 20,000 companies that more so have the ability to carry out criminal activity. So, I would like to hear as to what we are going to do about that.

Madam President, these amendments that we are being asked to pass today in this Bill are 11 clauses. One understands how difficult it is, why I complain about the results. I have said in almost every single debate that we have had in this Senate for the last three years dealing with anything to do with the fight against crime—this is the fight against money laundering, terrorism financing, I have said over and over—in the anti-gang legislation it was most relevant—that you are not going to be able to break this Mafia-style operation that is the underworld in this country unless your give an incentive to people to come forward and give evidence.

You see, this that we are doing here today is going to amount to nothing again, and nobody wants to pass legislation that is in the public interest for the benefit of the people of Trinidad and Tobago to cut out the criminality and find that you have these laws piling up. Just now we are going to have another set of red books that we will have to print and you have all this legislation and it cannot be implemented because you have no witnesses. You cannot prosecute people without witnesses, and we have been for the last four years—every piece of legislation that has been brought to this Senate, we have been crying on this side, what is going on with the Witness Protection Programme? Well, the truth is, nothing is going on with it. I will give you a real-life example of a matter that finished, Madam President, not sub judice.

A person walked into my office last week. The person is a state witness. He just came off a plane from Grenada. He was the state witness in the Permanand kidnapping. You know what the man says to me? "Yeah, Mr. Ramdeen, I do not know what to do, you know. My family and me, they stop paying the agreement that they are supposed to pay. We were in Grenada, the programme just stopped paying us and we come back to Trinidad."

7.10 p.m.

If I had highlighted that and let that man tell this country what he went through as a state witness, you think any witness coming forward to join that Justice Protection Programme? Not one. That is what we are faced with and that is why you cannot get successful prosecutions. This legislation is not going to help that. So what we are going to have, Madam President, is, in 2019 the FIU is going to produce another report, you are going to have an increase in the number of suspicious activity and suspicious transactions, and what is going to happen? When you go through the Financial Intelligence Unit report, Madam President, you will see in almost every different section, one of the things—let me just run through it quickly—2017, this is the 2017 report, page 57; this is under Information Systems and Technology Projections:

> "Further upgrade of the FIUTT's Data Centre by replacing outdated ICT equipment and the completion of the first phase of a disaster recovery solution by the third quarter of the next reporting period."

These are the things—there are lists under every single section; filling of vacant positions. And this is not something that is unique to the FIU. The FIU is the unit that is supposed to be directly linked to operationalizing this piece of legislation. You have the same problem when you go to the DPP, you have the same problem when you go in Customs and Excise. In Customs and Excise, the first 52 positions are temporary.

Madam President: Sen. Ramdeen, I have given you a lot of time to present your context of your contribution. I just want to, as you are on this point, a lot of what you are saying has been said, particularly by Sen. Ameen, so I am going to ask you to refine the points that you want to make and not be repeating what has been said by Sen. Ameen.

Sen. G. Ramdeen: I am obliged, Madam President. Let me get down to the real

law then. Madam President, we have been told that the shield that protects the corporate entity from being examined and the reason why we have these sections, the amendments to section 33 and the amendments that are being made to allow or to compel, I should say, persons to declare their beneficial interest as has been defined by the legislation, is because the corporate veil protects these persons.

Let me just put on the *Hansard* a quote from a very relevant matter to what we are discussing here, and what I wish to quote, Madam President, is from a Privy Council Appeal, Privy Council Appeal No. 21 of 2016. It is reported at [2017] UKPC 32, and let me just tell you what the Privy Council says about this. It brings home to light exactly what we are doing here. Let me refer it back exactly to where I am in relation to the amendments to section 337A of the Companies Act, which is to be found in clause 9 of the Bill before us. This is what is said at paragraph 15—and let me just tell you who is saying this—a speech of none other than Lord Neuberger. It is probably one of his last speeches, but at paragraph 15 it says:

> "In upholding this decision, the Court of Appeal"—that is the local Court of Appeal—"explained…'[a] court may pierce the corporate veil when there is an abuse of corporate personality to evade or frustrate the legal consequences of one's actions.'"

And then this is what the Privy Council says:

"As the Court of Appeal rightly acknowledged, piercing the veil is only justified in very rare circumstances…"

—a point which was implied in the UK Supreme Court decision of *VTB Capital plc v Nutritek International Corporation*, 2013, two appeal cases at 337.

So many of the speakers have talked about the fact that the corporate veil is what protects the corporate entity and allows the corporate entity to be used as a vehicle

for these unlawful transactions, and one has to understand that the amendments that are proposed to section 337A of the Companies Act and—I want to say this in context, Madam President—while we as lawyers understand what is being done here as part of this piece of legislation, with 100,000 companies in the Companies Registry, many of those companies are not like the companies that Sen. Mark made reference to. Many of these companies are family-oriented companies, simple companies just carrying on a family business, and I think it is quite important for a certain amount of education to be done when this legislation is passed so that people will understand what their obligations are. The Ministry of Legal Affairs has a website but I think that it would be very useful.

These companies come from very far and wide, the lengths of Trinidad and Tobago, and I think it is important when this legislation is passed for the different concepts of beneficial ownership to be explained to persons who are caught by this legislation because there are consequences, criminal consequences, for failing to abide by the provisions of the legislation, Madam President. And therefore I want to ask the Attorney General to use the Ministry of Legal Affairs to carry out a scheme of education so that people would understand the changes that have been made, perhaps we could have a few seminars around the country or a leaflet could be prepared, something that we would put on the website that explains, not only puts the legislation there, but explains what the definitions are, how they are to be caught. So I think that would go a long way to, not only educating the public, Madam President, but causing a certain degree of compliance by persons who are caught by this particular piece of legislation.

Madam President, one hopes that the mischief that the Attorney General has outlined in piloting this piece of legislation will bear fruit and that this is a piece of legislation that will be able to provide law enforcement with a legislative

foundation upon which they can go about fighting this underground economy. The Attorney General has said that this piece of legislation is one of many, and what I want to say, Madam President, is that at the end of the day the passage of legislation is one element of this entire process to reform the position that we are in. The international obligations, we have to comply with those. We are part of a global village and one understands that particular aspect of it, but I have always said, we do not need as a country to be compelled to pass legislation that fights these different scourges that terrorizes our economy for the simple reason that we are blacklisted. We should not need to get to the point of being blacklisted to be able to come up with these, and I have said it on more than one occasion.

The things that this Bill captures, and I think the Minister of Agriculture, Land and Fisheries said, the things that this Bill has captured are things that have been implemented for a number of years. I think when I did the research on bearer shares, the only economy that continues to have bearer shares is Antigua, and one understands why, because of the nature of business in Antigua. But, Madam President, it is a step, I think, in the right direction. I think it is a step that will cause, one hopes, the Companies Registry to be a little bit more user-friendly, a little bit less used as a vehicle for criminality, and I want to say that with respect to this particular piece of legislation, the Government ought to take a special step, emphasize that the operationalization is what is important, provide the different arms of law enforcement with the resources, and perhaps we will be able to see the benefits of this particular piece of legislation. I thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Deyalsingh. [*Desk thumping*]

Sen. Dr. Varma Deyalsingh: Thank you, Madam President, for allowing me to comment on this Bill, an Act to amend the Companies Act. I must say, I was

enlightened to get some memories of the O'Halloran affair. We have resurrected the ghost of O'Halloran again, the Sam P. Wallace case and bitter memories of the Piarco fiasco. So we have seen that all these elements of corruption, alleged corrupt practices that occurred, all of those were things that we had in the past that haunted us in the past and we have seen we had a duty to correct these. Even if we look at our very brilliant Permanent Secretary, we had Lennox Ballah, he had a report in 1992 looking at Government to Government arrangements when all these ideas, all these thoughts came about of Government to Government arrangements, the moneys being hidden, moneys being sent abroad, and those were in existence. So I think now that the Attorney General is now attempting to put legislation in place is commendable. I must say that I am getting the impression that it is because also of the fact that we are being put in a corner due to the international organizations telling us, you know, we have to get aligned to the international best practice, and we found that even though we are blacklisted in the Global Forum—and even as one of our Senators, Ms. Seepersad had actually brought up the point, even in the European Commission we are also blacklisted.

If we looked at the 2018 Corruption Perceptions Index we are in a bad way in the sense that if international investors are looking at us, and even as countrymen, when we are looking at our country and we are seeing these blacklisting and where we are in the Corruption Perceptions Index in comparison to Barbados who is 25, we are 41, from a scale of zero to 100, so I am saying when we are looking at these things we have to do something about it. So any sort of legislation which will assist in showing the world and showing the countrymen that we are pursuing corruption, I will have that tendency to support it because it will bring back the financial investor confidence, and also any moneys gained from these activities that are being hidden and as tax havens for certain people, like, you

know, those sources of funds, if returned, will definitely help our taxpayers, definitely help our country in providing services. But this, the need also to have this piece of legislation come to us, the need to have the existence of the beneficial owner, since 2016 this need was there because the EITI and Anti-Corruption Summit in 2016, which was held in London, so the EITI, the Extractive Industries Transparency Initiative, this Anti-Corruption Summit that was held in London, our Prime Minister there actually pledged this country's commitment to prosecuting those engaged in acts of corruption to recovering assets unlawfully gained from these acts and to identifying the real owners of locally registered companies.

So since 2016 it was on the agenda. People who were paying attention would have realized that the registry of companies, the beneficial ownership information, all those were legal, you know, things that were in the making that we would have as a country to declare, because out of the 51 EITI implementing countries they have a deadline that by 2020 all those countries must ensure that the companies disclose by the year 2020, their owners of corporate entities that bid for, operate or invest in extractive assets, including the identity or identities of beneficial owners, the level of ownership and details about how ownership or control is exerted, and where possible beneficial ownership information should be incorporated in existing filings by companies to incorporate regulators, stock exchanges or agency-regulating extractive industry licensing. So it was there. It was in the making since 2016. We have signed into that, and I think there is a deadline there that we have to get this legislation in place so we may not further embarrass ourselves when, out of the 51 countries, we have to show that this legislation, we have it on board and we will be able to present the owners or the beneficial owners of any of the companies that may be involved in trading or acts of trying to hide money elsewhere.

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

I would like to look now at the actual Bill itself, and I would just like to get some clarification from the Attorney General. Looking at clause 8 of the new section 333A(c), where it requires that the external companies to enter the name of a holder of bearer shares, bearer share certificates, share warrants, or bearer warrants, which has been brought in, in the Registrar of members as the shareholder in respect of the shares represented by the instrument. So I look at this and I realize this is actually meant to bring out of the shadows those puppet masters, as the Minister said, to bring out the puppet masters, and with that I have full agreement, we have to get to name those persons there. But looking at clause 9, where we looked at 337B, this:

> "…would require a company within 12 months of the coming into force of this Act and regularly thereafter to ascertain all the beneficial owners holding an interest in the company whether the person held the interest prior to the coming into force of the Act or after."

So I want to find out this, now if you are naming the beneficial owners but some beneficial owners may have gotten wind since 2016, that, "Hey, the law may be changing", and they somehow sell their shares or get out of it, how far back will this piece of legislation go? Will it go back to see who were beneficial owners probably three, four years back?—because people may have had time to be in that situation, but knowing that legislation was coming would have given enough time to send their funds or their assets elsewhere. So this is one clarification I would have liked to get from the Attorney General.

Again, I must say, I am a little disappointed though with the Attorney General, because when I got the startling figures, 2015—2018, FIU said, $14.9 billion were amongst 350 companies. That was like the hidden economy, the hidden economy

which these 350 companies had. When I looked at that figure, the amount of money, I was disappointed when I saw 337C, 337D(4), and I looked at some of these pieces of legislation, when I looked at the provision that:

> "…failure to submit the declaration is an offence and the person is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years and a further fine of three hundred dollars for every day the offence continues."

I am disappointed because I think, looking at the billions of dollars that is in this trade, I think those figures should be more, hon. Attorney General. I think the $10,000, somehow we are looking at a disparity that if people are hiding their money, I think a greater punishment should be afforded to that figure.

So, in conclusion, I may say, I will support any measures to get our country in a better standing. I would support any measures to make sure that with the EITI deadline of 2020 that we have the legislation in place to not further, you know, embarrass our country that we are not coming into place with the beneficial ownership and laws that be. Thank you. [*Desk thumping*]

Mr. Vice-President: Attorney General. [*Desk thumping*]

The Attorney General (Hon. Faris Al-Rawi): Thank you, Mr. Vice-President. May I express my gratitude and thanks to the hon. Senators all present today, Opposition Bench and Independent Bench, and certainly the Government Bench for a very constructive criticism for some inviting of thought and perspective into the legislation. I think that my reply can be divided into a few sections; firstly, it can be done in answer to the specific sections, as Sen. Teemal really demonstrated some very careful thinking on the logistics and operationality of law, and I thank the hon. Senator and other Senators for their enquiry, Sen. Hosein and others. So there is the technical answer part. There are also the issues as to the

operationalization of the law, which is a very real issue that many Senators have certainly raised as of importance and central figure in efficacy, and then of course there are a few tangential issues that, I think, probably need to be answered in the round.

Mr. Vice-President, may I start with some of the technical issues? Perhaps it is best to reflect upon where Sen. Mark laid some of the questions this afternoon. Sen. Mark raised the definition of "beneficial ownership" and then went into an analysis of laws of Jamaica as being one of those laws that he preferred, the Senate ought to consider as in priority to this. And I would like to say, Mr. Vice-President, that in looking at the definition of "beneficial ownership", not only did we look into the laws that I have mentioned earlier, and in particular the laws of India, which stood out most for us, most for us because of the robust strength of those laws having withstood challenge and operationality in a very large economy, because the Indian economy is a powerhouse in the world and in corporate structures in the states of India, in the federal environment of India are extremely large in volume, over one billion people in active enterprise.

[MADAM PRESIDENT *in the Chair*]

We looked at that, we looked at the laws of England, and those were the two real competing models apart from coming into the Commonwealth Caribbean and in looking at some of the models that we saw in the CFATF arena. In looking at this we looked, of course, at our mutual evaluation report. We looked at the FATF Guidance on Transparency and Beneficial Ownership publication of October, 2014. We looked at the FATF Report to the G20 on Beneficial Ownership of September, 2016. We looked at the methodology published again by the FATF for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems. It was updated as published October, 2018.

We looked at the international standards on combating money laundering and the financial of terrorism and proliferation. Again, the FATF recommendations published by them, updated October, 2018. We looked at the Egmont Group, a set of indicators for corruption-related cases from the FIU's perspective. That grouping of course is the combination of all of the FIUs that coordinate in the FATF arena, that some 198 countries, Financial Intelligence Unit entities operating. And of course we looked to the IDB, Inter-American Development Bank publication, "Regulation of Beneficial Ownership in Latin America and the Caribbean", a publication entitled "Prepared for Innovation in Citizen Services", prepared by Andrés Knobel, November2017. And, yes, we did look to the transparency TTEITI publication, "Beneficial Ownership Study", prepared by Tira Greene, March 06, 2018.

We looked at all of those laws. We looked at very single definition, and the definition which we have elected to use in the beneficial ownership is set out in clause 9 of the Bill is the most comprehensive definition, and it does capture the arrangements of trusts and legal representative. So it does transfer that. Tied onto that in a technical question asked by Sen. Teemal, where would the registry for trusts lie? There is no registry for trusts. What we did in clause 9, in coming up with the definition of what a beneficial ownership is—set out in the new Part VA, section 337A(2), in beneficial ownership we said it means, "the natural person", effectively, who has control, et cetera, (a) and (b);

"(c) and in respect of companies subject to this Act;"

We dealt with it in all the iterations coming down to:

> "(d) in respect of legal arrangements such as trusts, the identity of the settler, the trustee, the protector, the beneficiaries"—et cetera.

So what we did was to specify the layers of persons who would be viewed to be the

entity with ultimate control. It may be a natural person. It may be a limited liability entity. It may be another form of corporate vehicle, or it may be when you look to another layer in terms a legal trust or in terms of another instrument, a different specie of entity that has ultimate control.

Now, Sen. Mark mentioned the—I should say the lack of transparency, as he put it, when he was analysing and putting forward considerations with respect to public companies, because of course this Bill does seek to have no application to public companies. Sen. Rambharat dealt with that in some good measure, I just was to add a little bit to that. In the new 337E, we say that 337A to D shall not apply to companies publicly traded on the stock exchange, and of course the rationale for that is that the Securities Act, the Financial Obligations Regulations, the Financial Regulations, the Stock Exchange Rules all provide for a whole gamut of beneficial ownership capture. But the reason that we have excluded them—because initially we did include them. It was after consultation with those entities that we removed them, because when you think of the frequency of reporting, every time shares crossed the floor where there are 7,000 shares traded one day, the volume goes up, the volume goes down, your index looks to climb or decrease, you would have to change the registration requirements within 30 days every time for every transaction. So, obviously, we took a risk-based approach model to applying the beneficial ownership laws.

The securities exchange, the Securities Act, the stock exchange, the frequency of volume trading, make sure that you capture that under that legislation and therefore you are looking at the beneficial point. Plus, Madam President, as I welcome you back some time now to the Chair, there is a phenomenon known as dematerialization, and dematerialization is in reference to the fact that at the stock exchange you do not really hold a paper certificate in a company. You have a

readout that says how many shares you have, because it is the virtual version of your share, the dematerialized form of the share that really does the volume trading.

In that environment we are seeing through FinTech mechanisms and other mechanisms, you are seeing really the immutability of transactions being anchored by new technology. That is where blockchain technology is most valuable in having transaction between one and two, between individual A and B on an immutable level, and of a level where you cannot change it or forged it. And so that dematerialized environment, that regulated securities industries environment, that stock exchange environment properly fits into the prudence of this Bill having left out securities of a public nature, and I think that that ought to satisfy Sen. Mark's concerns.

I can tell Sen. Mark that the deposit for $500 where you load that as an attorney-at-law for instance, you create a little cash account at the Registrar General, when you put that $500, if you are checking for a company online, $20 is the deduction that comes for that, but that would very soon be a thing of the past. Because we in the Attorney General and Legal Affairs office, as I recognize a man of longstanding in the public gallery, Mr. Francis Sandy, Deputy Registrar, who has been with us. He has "long pants" in this arena. When I first qualified Mr. Sandy was in the register and has guided me as a young practitioner and now as Attorney General for many, many years. [*Desk thumping*] And it is people like him that I pay salute and tribute to today, and the hardworking Registrar General is Ms. Karen Bridgewater, Ms. Nicole Monan, Ms. Rionne Boyke, the whole bunch of them, and our IT staff in the AGLA Ministry that home grew the IT product for registration and for e-payment. It is our Registrar General team, together with iGov, together with indigenous banks such as FCB that have actually birthed a

product already in beta testing. Attorneys-at-law in practice are right now testing the beta product, meaning the product before you put out your true product, with testing the beta product for all online services at the Registrar General; all. You know why?—because in taking the philosophy that I asked my colleagues and persons who work with me at the AGLA to adopt, that is that philosophy of "just start", we have said we will not accept the rest of the public service telling us "You cannot do electronic transactions till 2025". And I will give you a real example.

7.40 p.m.

All of us would remember the electronic transactions roadblock that we came to with CourtPay. CourtPay was not something that some Members of the Opposition supported. I think in the Senate there is sometimes a different voice from the House, but we went to the public service—and Sen. Ramdeen made reference to, you know, he is correct. You can pass all the laws in the world, are you operationalizing your laws? My colleagues opposite when in Government passed the Data Protection Act. [*Interruption*]

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (**Sen. The Hon. Franklin Khan):** Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand, inclusive of matters on the adjournment.

Question put and agreed to.

COMPANIES (AMDT.) BILL, 2018

Hon. F. Al-Rawi: Thank you, Madam President. What time am I to end?

Madam President: At 14 minutes past eight.

Hon. F. Al-Rawi: Thank you, Madam President.

I was saying, Sen. Ramdeen was correct; you can pass all the laws on the

books of Trinidad and Tobago—the last Government, we passed the Electronic Transactions Act, Data Protection Act, DNA Act, Electronic Monitoring Act and public procurement. The public procurement legislation spent a whole five years in a joint select committee, even though the Government had a full special majority in the House of Representatives. We tinkered and tinkered and tinkered till the point where, when I sat on that committee in Opposition, we boycotted the meetings because we were going nowhere. And we said, "You must come with a policy statement as to what the Government's policy is on this or we are not coming back to committee". That is how we got public procurement going. But the operationalization of the public procurement Act is a matter for the regulator, and the regulator has to produce the regulations. So what did we do as a government? All state enterprises, all government agencies have Public Procurement Divisions, officers designated or performing the function in preparation for the Act.

We gave a mandate through the Ministry of Finance, and Minister West is testimony to the hard work she and the Minister of Finance have put into this in saying, you will provide your audited accounts, you will provide your management accounts, you will do so on a regular basis. The Leader of Government Business comes to the Parliament and lays reports from 2009, '10, '11, '12, '13 straight up to 2019. Is it not lost upon us that surely these things do not miraculously become available? It was because we insisted that the audited accounts be available and the public procurement be made, that these things have happened. So we have done our part. The regulator having produced regulations, those now have to be brought in. There were certain constitutional issues which arose on that, and that is the reason why.

So when I hear Sen. Ramdeen pour scorn on this Government, saying that

after four years we did not operationalize the law, check again. It took a previous President sitting in office as His Excellency to appoint the board, to appoint the procurement management, effective personnel and body. It was that President that had to find the person and then have the regulations. So, most respectfully, that is much like complaining about food being cooked when there is no gas, no stove, no ingredients, "buh yuh complaining"—"yuh eh cook de food yet". So we have to really attribute blame, merit or apportion the balance between the two in a very careful way.

The EU blacklisting came up, and Sen. Hosein, Sen. Mark and several other Senators raised the concept of two aspects of this. Number one—Sen. Hosein—are we being driven by an external agenda? A lot of people have asked that. "You know, we are hearing a lot about FATF, and really is it someone else's imposition on your sovereignty that causes us to do these laws?" Good Senators, I sat in Opposition for five years and three months, right where Sen. Ramdeen and Sen. Obika sit. Sen. Vieira was in that Parliament with me. I think I may have heard the FATF doctrine, philosophy and status for Trinidad and Tobago twice. Nobody knew, and certainly the person who knew the least was then Attorney General, not because he did not personally know, but appeared to not want to explain the dynamic of where we were. I am sure if I could ask Sen. Vieira now if he knew where we were in third round listing versus fourth round listing, and if we were going to be on-site examined in January 2015, and what the consequences of that were, et cetera, none of us knew that. So we have taken a very different approach as a government to include all of us in the conversation.

Now, Sen. Hosein has put forward, I think, something that needs some explanation. He said it is time for us to table the MER, the Mutual Evaluation Report, and let us come up with one piece of law to deal with all of the obligations.

Well, I am sure that Sen. Ramdeen will assist Sen. Hosein in his understanding of the perspectives of how we get there. Let me give you an example. The Income Tax (Amdt.) Bill is relevant. The Proceeds of Crime Act is relevant. The Anti-Terrorism Act is relevant. The Companies Act is relevant. The non-profit organization laws are relevant. The civil asset forfeiture and explain your wealth is relevant. The Financial Obligations Regulations is relevant. The Mutual Assistance in Criminal Matters Act, the Exchange Control Act, the Customs Act, the Data Protection Act. You cannot possibly debate one Bill with all that law. Imagine mixing three-fifths majority issues with simple majority issues, when the history of this Parliament demonstrates that you will not get the support for certain Bills on certain occasions from certain people. Because it is Lent, and I will be reflective and not be caustic, as I accept Sen. Ramdeen's caution on that round.

But the mere fact is that you cannot possibly put one law to deal with—that would make a mockery of the Parliament. And I would think that Sen. Hosein ought to know that, or perhaps take it under advisement, because I understand the bona fides of what he is saying. Do not get me wrong. There is merit in trying to simplify the process, but that is to confuse the way in which laws are made. It means we would spend five years in a massive joint select committee doing 300 pieces of law, some with 200clauses, some with 500 clauses, some with three, some with two, some with one, with three-fifths majority and simple majority all mixed up in one. So forget debate, let us just go into a massive joint select committee. Law does not operate that way. The passage of law does not operate that way.

Let us go on to the position of operationalization. Operationalization is critical. When I came into the Ministry of Legal Affairs as Minister of Legal Affairs and as Attorney General, I met an environment—firstly, we were in South

Quay. Sen. Vieira, I am sure remembers, and a few others who are a little bit older, what it was like to have the Registry in the Red House. I remember being exercised as a young lawyer being told, "Until you go and pick up dusty old books in the Registry and thumb through them and do searches, you are not a lawyer." And I remember being exercised in that dark, dusty room and those dark shelves, with some light coming through the big windows, in that little wing of the Red House.

We then went to South Quay, and at South Quay I would say that the public servants deserve a medal of honour for having operated in that condition. Right here in this Parliament right now, [*Desk thumping*] is a public servant who, when Tropical Storm Bret was passing, was receiving my phone call coordinating "how we filling sandbags" to put in front of the doorways at the Registrar General, Mr. Sandy himself. That night we were praying that the water would not flood out the books of Trinidad and Tobago, and he stood there packing sandbags day and night to make sure that Bret did not harm the records of Trinidad and Tobago. [*Desk thumping*]

So what did we do? We picked up 11 million records, three million other records, the entire Companies Registry, Land Registry and Civil Registry, all the servers, all the staff, all the people, all the systems, and we moved it to the building which is the tower of the Attorney General and Legal Affairs. That building was unoccupied for nine full years after construction—nine full years after construction. And let me tell you this: if people think that occupying government rental, government-owned buildings is cheap, think again, you know. The constructive costs of having government-owned accommodation, the maintenance and occupation cost is close to $50 a square foot per month. You hear what I am saying? To leave a building empty costs you in air-conditioning, in cleaning, in

lights, in electricity, $50 square foot per foot per month.

Sen. Obika: $23 million in three years—

Hon. F. Al-Rawi: Yes, so what, Sen. Obika? Madam President, $23 million in three years. The question is: Would it have been $500 million in three years? What is your value for money in the real-term equation?

So we moved the Registry. We retrofitted the vault, but very importantly we invested in servers. What we inherited from our predecessor Government was failed licences. None of the licences were in operation. The server for the Companies Registry was 12 large computers—those of you old enough will remember what a Curtis Mathes TV looked like, the big-box TV with a round screen—12 of those daisy-link-chained; that was the server for Companies Registry. Licence out of date, Registry out of date, and what we had to do—and I know that Sen. Seepersad knows this as a member of a law firm with a larger practice—in managing it, we had to close the Registry for a full month.

I am pleased to say that we have, in the ease of doing business, procured a brand-new Companies Registry which is being built out. Secondly, we have purchased what we call the PBRS system, the Property Business Real Estate Solution, to modernize and complete the modernization of the Land Registry, which is a 12-month project, now into its third month, and we expect it to finish this year. So we have dealt with IT, we have dealt with accommodation, we have dealt with capacity and we are going to launch e-payments. So that at two o'clock in the morning you could file your documents, get your positions done, and if I have my way that will be done by next month. By hook or crook it is going to get done, because people reside in analysis paralysis without a desire to push effort for far too long in this country.

Madam President, when we look to a few of the other issues, Sen. Teemal in

particular raised some concerns with section 33. I think he answered, or perhaps he wanted confirmation of answer. There was no prescription of an offence for section 33(3), the new section 33(3), because we are relying upon the general provisions offence, which is sections 512 and 513 of the Companies Act.

When we look to the time being the reasonable time to do positions, we did that in the context. I know in committee stage we can explain that a little bit tighter, because of the vagaries as to how certain companies operate. Sen. Hosein asked why put a penalty, why imprisonment for a failure to do something, and what would compel someone to bring in their bearer share warrants. We are not relying on people to bring in their bearer share warrants. Your bearer share warrants or bearer share certificates will be cancelled if you do not bring them in. In other words then, hard luck. Go to the High Court under section 245 and restore your certificate. Restore your property through due process where you can be registered that way. So there is the ultimate penalty under due process for those circumstances.

Sen. Teemal asked why 12 months for external companies, as opposed to the six months for locals—because the nature of an external company is that the mind and management is effectively elsewhere. And that being the case we have allowed for the process of transmission of mind and management.

With respect to the 30 days in section 337(C)(1), we have kept 30 days because that is the time frame for everything else. Any other change: Notice of registered office, notice of change of directors, all of these things are within a 30-day period. So we have harmonized the legislation to be 30 days.

Is this the first time we are going to invite thousands of entities to consider their position? No. But how many of us really believe that there are 20,000, 10,000 or 5,000 companies in this country with beneficial owners? Chances are

the vast majority of companies—Sen. Ramdeen was right, most people do not know what a beneficial owner is; they think it is something different. They would not understand the concept of equity over law, but that does not relate to the TTPS or the investigators.

The Financial Investigation Branch, which is being merged into a Financial Investigation Division, that Financial Investigation Division is comprised of the Anti-Corruption Investigation Bureau, which falls under the square authority and sole authority of the Commissioner of Police. It includes the Cybercrime Unit, it includes the Fraud Squad, and it includes the FIB, the Financial Investigation Branch. Those four divisions have been well trained, and I want to say that as a result of our amendment of laws as a Senate, as a Parliament, in changing money laundering to triable either way, just this week we have had three guilty pleas. Because we did MSI, maximum sentence indicator hearings, the Goodyear Hearings, via Madam Justice Gillian Lucky, and because it is either way, they elected to go summarily and took the plea. That is a conviction—that is a conviction. So I am giving you a real example, that notwithstanding exhortations that these laws do nothing, you are beginning to see the progress.

Now, it is true that this law is not a panacea to all that is wrong. It is true. It is true that the enemy is in fact a quest for perfection, but the point is—I want to place a call and I place this call now to politicians. The criminal division Act which we passed, and which is now law in this country, contemplates the expansion of the Judiciary, the expansion of judicial support officers, the expansion of administrative officers. We answered a question today in the Parliament: How many people will be fired or dismissed or likely to lose their jobs? The answer was none. But a sitting politician who is acting as a trade union leader, finds his words echoed in the mouth of the Leader of the Opposition,

because the Leader of the Opposition last night, I am told, was giving and extolling a story that the Attorney General is to be blamed because "we tinkering" with the courts.

I would like to say this: Responsibility in ensuring that your courts are working is critical. Encouraging contract workers to take a day off, when they are not entitled to do that, because the PSA could never represent contract workers, is a dangerous thing in this country. And one would think that the loyal Opposition should have better resolve to call for order in our courts when you know that convictions are necessary; when you know that rape trials need to go on; when you know that children who are being abused have their matters coming up, domestic violence, land disputes, matters are ready. It is irresponsible to be playing politics with the courts and the administration of justice in this country. [*Interruption*] I am grateful that Sen. Mark agrees with me as wholeheartedly as he does. Hopefully he will speak to the Leader of the Opposition. Thank you, Sen. Mark; quite out of character.

Madam President, if I may say that it is entirely within our memory that industrial action by Mr. Duke on the last occasion involved the shutting down of the Immigration Division. Seven years of work was lost. There are matters that are seven years old, where people applied for residency and citizenship and passports that still cannot be found. But I want to tell you this, stark difference in the Registry of the Attorney General and Legal Affairs, because our staff worked through an earthquake, a shutdown, a renovation, a build out, and not a "man jack" took a day off. [*Desk thumping*] It shows you what leadership and roll up your sleeves can do. It shows you what commitment can do because the one place—[*Knocks the desk*]—knock on wood—that we have not had difficulties so far has been in that Ministry, and I compliment every single hard-working person in those

Ministries for doing as they did. [*Interruption*] I "eh fraid dat".

Madam President, the 20 per cent of inactive companies—Sen. Ramdeen is very correct. There has to be an education campaign to cause this law to operate. Do we have an example? Yes. When we did continuance of old companies under the Companies Ordinance and we moved them into having to file a Form 16 Articles of Continuance approach, that was done within a time frame in an education programme for the migration of thousands of companies. On the record, it can be done. Education is critical, I agree with Sen. Ramdeen.

Secondly, I wish to propose an amendment to the law today. This Bill, which I intend to circulate in a short while, and it is specifically to treat with the 20 per cent defunct companies. Now, the 20 per cent defunct companies are not just defunct companies. A lot of them are not because they are "small people and small man", it is not that. A vast majority of them are property owning companies. They own property. They may be management companies that have to handle condominiums or town housing complexes, or they may be special purpose vehicles that just own property. And some people are looking for the opportunity to have their company struck off the record and to have the assets distributed via that process.

I want to caution Trinidad and Tobago that I have my eye on that, because there will be no circumvention of these principles. So we have an amendment to treat with that very shortly. But importantly, to allow the management companies and special purpose vehicle companies that cannot come up-to-date because they do not have $15,000, $30,000 or $100,000, because the offence it seems small, you know, $300 per day. It is actually on a factoral basis.

So if you fail to file one form and your penalty is $300 per month, let us say it is a Form 8, your Notice of Directors, it is Form 8, let us say it is six years in

arrears—it is 300times 12 times five for one document. Let us assume it is 10 documents, you did not file your annual return, Notice of Secretary, registered address, it is that times the number of months, times the number of years added on to that. So people are finding themselves with large numbers to pay and, therefore, I propose an amendment today which I wish to circulate for a new clause to be admitted into this Bill, related to this Bill, which is an amendment to section 516 of the Companies Act to provide an amnesty for the filing of documents for the period May to August2019, as we go on an aggressive campaign to assist people to get themselves out of that "monkey pants", particularly the property-owning companies. Because the caution that we give is that we wish to assist and then move on an aggressive strike-out campaign. Sen. Obika.

Sen. Obika: Thanks, hon. AG. Through you, Madam President, could the hon. AG could the hon. AG indicate how far back persons who are negligent in filing returns, what years this will cover?

Hon. F. Al-Rawi: Sure. It will cover all years, as far back as you are negligent. So it is entirely in respect of anything that you have failed to file, and it is critical. If we want to operationalize this law we have to ensure compliance. Give people a fighting chance. And that is the intention behind the amendment to Section 516 that I propose to be circulated at committee stage.

And, it also brings me to the point—thanks to Sen. Obika's question—as to whether this law is retroactive. The law is not retroactive, but its effect is to apply retroactively. What does that mean? We are not stating, pursuant to the Liyanage learning from the Privy Council, that the law is intended to be retroactive in the way that it is, because we do not need to. But, if you have failed to comply, going forward there are certain steps that you have to take which may affect what you have done in the past. We can get the 30 days done with the education campaign,

with the clean-up campaign, and really what we have before us is a golden opportunity to try to make this right. I think that treats with the retrospectivity issues, and the fines issues raised by Sen. Deyalsingh in his contribution as well.

I would like to say, as I end, Madam President, we are not pursuing these amendments because FATF tells us to do it, not so the case at all. This approach that we are taking is directly lined up with all that we are doing to treat with the scourge of criminality in our own jurisdiction. Our own jurisdiction, all of us, want to feel the joy of our society. We know that there is profit in crime. We know that we have to follow money. This is a local agenda, but it would be delinquent of me not to share what the international pressures are.

If we pass this Bill here today and we tidy it up, amendments in the House of Representatives, it means we have got two more to go: non-profit organizations and civil asset explain-your-wealth legislation. These are two critical items which I believe hon. Senators would enjoy debating. It has been well thought out with lots of consultation, lots of stakeholder input, and I think it is time that we brought it now. It is not because we were waiting last minute. It is because the consultative and drafting process in novel areas had to take the time that it did, but we set our priorities into the systems that work.

Those of us who remember the debate on judge-only. We were told nobody would ever use judge-only. The line we got was, "Who in their right mind is going to plead to guilt, or have a trial done for murder before one judge alone? Better they take their chances with a jury." That is what we were told. History has now proved that to be wrong. And the admissions of liability in either-way offences have now been proved to be wrong. So it is clear that the law can work. What is required is to have a clear process, to have a commencement to improve our way along the path as we journey, and to try to just get it right.

Madam President, in all the circumstances, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

8.10 p.m.

Madam Chairman: Hon. Senators, may I remind you that there are 11 clauses in the Bill, and while we go through I would ask Members to be attentive and indicate promptly when you wish to raise an issue. Okay?

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

Clause 4.

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

Sen. Mark: Madam Chair, I do not have an amendment in circulation, but I am just seeking some clarification under clause 4, subsection (4). I am just concerned about the verification process, it is an area that has given me some concern. We know that the companies are being asked to address these matters, but ultimately they will arrive at the doorstep or doorsteps of the Registrar in the form of a return in a prescribed form.

The question here, Madam Chair, is what is the capacity like at the Registrar General's office to verify these submissions that would be made via these companies? I need to get some clarification from the Attorney General on that matter.

Madam Chairman: Sen. Mark, which clause, subclause?

Sen. Mark: Yeah. On clause 4, and I am seeing (2), (3) and (4).

Madam Chairman: Okay. Any other questions and comments? All right. Well, let me ask the Attorney General to respond to Sen. Mark.

Mr. Al-Rawi: Sure. Madam Chairman, consequent and equal to the functions of the Registrar General as Registrar General under any piece of law, the first priority is that the Registrar General receives documents for registration in a process of putting it into the public register. To do that, the only form of verification is really in respect of matters of form and not necessarily deep substance. So provided it is in registrable form meaning in the prescribed documentation with the prescribed fee, and then relative to some degree of inspection as to consistency with respect to other documents, there is no verification process that the Registrar General engages in.

Verification functions come in different other areas. They come via the TTPS, if it is an investigation, they come via persons who are searching the register and observe inconsistencies and who may report, or they may come via entities such as the FIU who has supervisory jurisdiction for an investigative processes or the Auditor General or other areas.

So there is not intended to be any verification exercise by the Registrar General that would be outside of the RG's capacity and functionality of this Bill. The job of the Registrar is to receive, collect, post to a public registry and ensure that compliance with dates, times and positions are managed.

Madam Chairman: Sen. Hosein.

Sen. S. Hosein: Thank you very much, Madam Chair. With respect to subsection (4), through you, Madam Chair, to the Attorney General, I noticed that you indicated that there is a prescribed form. Now, I know when you file anything in the Companies Registry, everything is on a prescribed form, Articles of Incorporation, Notice of Secretary. Is there a prescribed form that will, I did not look at these specific sections in the parent Act—is it that it is going to be made by negative resolution of Parliament or by ministerial order?

Mr. Al-Rawi: Yes. May I? So, we have adopted the very format in the rest of the architecture of the Companies Act that the Registrar General shall prescribe those forms under the parent law, so that is why we have got a proclamation clause. There is a subsidiary law process by which those forms will be promulgated, exactly as are set out in the schedules to the legislation where that can happen. And you are perfectly correct, there are set forms, for instance, in incorporation changes, et cetera, it will mirror those functions in the same fashion and in the same way of modification.

Sen. S. Hosein: There is one issue also, Madam Chair, that I raised. There was a typographical error, I think, an omission.

Mr. Al-Rawi: The proofreading will catch that from the CPC's Department.

Sen. S. Hosein: The other thing, AG, with respect to this subsection (3), the company and every director and office the company will be deemed to have committed an offence. Now, I know we are trying to get at those persons who would hide behind shareholders, would have been issued share certificates, the bearer share certificates and those issues. Is Cabinet or the Government taking any policy with respect to criminalizing those persons who themselves do not issue the share—who do not disclose the share certificates instead of the company itself?

Mr. Al-Rawi: Well, yes, because, well the ultimate sanction to them is that they lose the share. So the cancellation of share via the court process is the sanction that they suffer.

Sen. S. Hosein: But not criminal offence.

Mr. Al-Rawi: Well, no. We did not go that route because the mischief here is the utilization of a bearer share or bearer share certificate or warrant. You can just present it and therefore pass the benefit and consideration without any meaningful transaction, so there is no registration for share transfer. That really happens in

other jurisdictions.

So what we took here was an existing system where you would just cancel the benefit entirely until you become registered, and then once registered you would have to comply with your Articles of Incorporation or continuance or other amendments, and then the general provisions of the Companies Act with or without pre-emptive rights pursuant to section 38 or the articles themselves, and then you do your share transfer forms, pay stamp duty, et cetera, in those circumstances.

Sen. Mark: May I seek clarification in this?

Mr. Al-Rawi: Yeah.

Sen. Mark: Clause 4, subsection (5) makes it very clear that if you fail to comply, then you are liable on summary conviction to a fine of $10,000 which would include an officer of the company, and we know what an officer of the company means under the Companies Act.

So, I think what Sen. Hosein was making, raising here, is whether the officers which would include the Corporate Secretary as an example would be criminalized in this instance. And I am seeing where clause 4 subsection (5) is saying that officer, if that officers fails, then there is a summary conviction and is liable.

Mr. Al-Rawi: Sure.

Sen. Mark: So, I am just saying that it seems to me that you capturing that.

Mr. Al-Rawi: Well, actually—

Sen. Mark: Because they are gate keepers, eh.

Mr. Al-Rawi: So, Madam Chair, I ought to put on the record because it cleaned passed me in looking at the wrong section that, if you look to subsection (9) it is captured there.

So, Sen. Hosein:

> "Where the holder of a share warrant or bearer warrant fails, without reasonable cause, to bring in the share warrant or bearer…he commits an offence…"

So it is there. I had unfortunately skipped right past that and when to the cancellation thinking of the ultimate sanction, and if you look to subsection (10) that is where we have the application to the High Court.

And in Sen. Mark's position, Sen. Mark is correct, there are other gatekeepers, and these gatekeepers are in keeping with section 512 which is the general offence subclause which allows for officers including the same officers to be treated in the way with the same offence parameters.

Madam Chairman: Sen. Obika.

Sen. Obika: Thank you, Madam Chair. What I would like to ask is, what would happen in situations where the holder of the share, the bearer share is not a sophisticated party? So there may have some income, but they may be acting on behalf of a family member, and the sophisticated party may be at the company and now they run afoul of law, because they are holding this instrument that they should not hold, and then they end up basically inadvertently facing three years' imprisonment, up to three years' imprisonment. Is there any fix for that?—unsophisticated parties.

Mr. Al-Rawi: The fix is sort of askew. So under section 245 which is the remedies provisions. I mean, most of us know 242 in the minority shareholders' realm, but in section 245 of the Companies Act, that is where you have the ability to approach the court for relief. So why I say "askew", the first relief that you are looking for is the rectification of records, and you can apply to the court to rectify, and then the court has any other power in an application under that section 245(3):

"In connection with an application under section, the Court may make any order it thinks fit, including—

(a) an order to rectify the record

(b) order restraining the company…

(c) order a determining the right of party to proceedings to have his name entered…in"—et cetera,

"(d) an order compensating a party…"

And those are remedies which touch and concern that unsophisticated person. But your question on the other side of it is also, well what about the relief from the criminal penalty for an unsophisticated person? And I think that we would have to turn instead to another law. And when we look to the other laws you would probably, if it is a summary offence, be looking to invoke the court's jurisdiction under a reprimand and discharge or some other mechanism where you may have otherwise been liable.

Sen. Obika: Then, through you, Madam Chair, what is the—because we are having a Joint Select Committee on non-custodial sentencing right now. Right? So what is the possibility of a conversation at the level of the Attorney General's office and the Judiciary on consideration for non-custodial sentencing?—just in the event that, because the conversation is in the public domain for things like marijuana and so on, so what is the possibility of such.

Madam Chairman: I think that, Sen. Obika, that the Attorney General has to just take note of your observation, and without anymore, well, Sen. Mark.

Sen. Mark: Yeah. Thank you very much, Madam Chair. Attorney General, clause 4, subsections (12) and (13).

Firstly, Madam Chair, I am trying to get from the Attorney General, there are many companies, from my information, who have deliberately and wilfully

neglected to submit their annual returns to the Registrar General's Office under the Companies Act. And therefore, we are asking them to submit in their annual returns what is contained in subsection (12), but there is no penalty attached for failure to do so—

Mr. Al-Rawi: The penalty.

Sen. Mark:—yeah—having regard to the fact that many of them have just breached the law, and they just gone unscathed. So, I am just asking you whether you are contemplating any action for those parties that breach the law. That is what I am asking.

Mr. Al-Rawi: Yes. And they would fall to be treated with under section 513 of the parent Act which says:

> "Every person who is guilty of an offence under this Act or Regulations is, if no punishment is elsewhere in the Act provided for that offence, liable on summary conviction to a fine of ten thousand dollars."

Sen. Mark: Madam Chair, if I may quickly to (13). Would the public have access to the register?

Mr. Al-Rawi: Yes, pursuant to the parent legislation, all documents which are prescribed to be filed and which the company must keep when lodged with the registrar become public documents and posted onto the public documents.

Sen. Mark: Are you contemplating like the UK registry on "beneficial ownership"?

Mr. Al-Rawi: Exactly.

Sen. Mark: Because I am seeing a link between the both.

Mr. Al-Rawi: Yeah. Yeah. It is exactly in the same way that our Companies Registry is public right now both online and in hard form, it is the same way that this is.

Sen. Mark: No. What I am asking you is, whether you are thinking of moving away from this fee structure?

Mr. Al-Rawi: Not yet.

Sen. Mark: Because, you know, I maintain, AG, that information is the oxygen of democracy.

Mr. Al-Rawi: It is.

Sen. Mark: And I find it very difficult to reason why, if I want to access a registry on "beneficial owners", I should have to pay a fee, and that is why I am asking.

Madam Chairman: I think that it is also something that the Attorney General will take a note of. Sen. Hosein, you wanted to raise one further issue?

Sen. S. Hosein: Yes. Thank you very much, Madam Chair. AG, with respect to subsection (6) the issuance—

Madam Chairman: You have gone back to subsection (6)?

Sen. S. Hosein: It is the issuance of the notice, Madam Chair.

Madam Chairman: Yes?

Sen. S. Hosein: AG, this notice is it going to be where the company has to issue the notice to those who hold the share warrants or the bearer share warrants, is it going to be written? Is it going to have to be published in the papers? Is it going to be in a form?

Mr. Al-Rawi: It is not intended to be in a form. It is just the same way that there is no prescription for a share certificate looks like. Most people do not know, but in fact, there is no formula in the Companies Act to tell you what your share certificate must look like. In fact, many of us in practice at the turn of the legislation going from the ordinance to the Act, had to invent our own share certificates. I see Sen. Vieira nodding became we remember how artistic we became overnight on our computers to invent share certificates, so there is no form

specified.

Madam Chairman: Sen. Dillon-Remy.

Sen. Dr. Dillon-Remy: Attorney General, the question I had asked about: companies that do not issue shares.

Mr. Al-Rawi: Oh. Very good question. Sen. Remy, what I can say, Dr. Remy, we are looking at a larger overhaul of the Companies Act. For instance, I just referred to the general penalty provisions at $10,000 and you are looking at three years. Whereas our securities legislation, our insurance legislation, those are to the tune of a million dollars, $100,000, $500,000 either way, et cetera.

Two areas that we have under observation right now is, one, where shares have not been in the issued. There is a presumption in law that the persons who would have incorporated the company, that the incorporators are the shareholders for that purpose. That is well-defined in law, it is a carryover from of the Companies Ordinance, and became something which was ventilate in quite a few cases where persons had failed to issue shares at the registry.

Secondly, that is usually backed by the fact that most of those people, in fact, I have gone so far as to declare dividends to themselves, and you cannot have declared a dividend unless you are the shareholder, so they have been caught on that back end of the equation. But we are looking at that aspect specifically, and as I mentioned earlier in my wind up, we are looking at the consequence where you allow for the winding up of your company and distributing of your assets on an involuntary or strike-out basis and then you sidestep the scrutiny of eyes that should really have a look.

Madam Chairman: Sen. Vieira.

Sen. Vieira: Not really with the legislation, but coming back on the point of education. You see, a lot of people are now forming companies because they are

so easy to form, but we have not really as a people developed a culture of how to run and manage companies. So even the things like, you know, you set up the company but they have not really thought through about issuing a share and what is the importance of that, the keeping of proper minutes all of that, a lot of it is not nefarious activity, but people really just do not know, so I really encourage this training programme, I think it is important.

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

Clauses 5 to 8 ordered to stand part of the Bill.

Clause 9.

Question proposed, That clause 9 stand part of the Bill.

"337A (3) In respect of beneficial ownership, the entry relating to the relevant Member shall include—

(i) an entry in respect of that member specifying that the ownership of the member is on behalf of a beneficial owner;

(ii) the name of the beneficial owner; and

(iii) such cross-reference, index or information as is necessary for convenient inspection of the particulars of the beneficial owner identified in the entry."

Madam Chairman: There is an amendment proposed by Sen. Mark that I think has been circulated to all Members. Sen. Mark, I will just ask you to just speak on your proposed amendment.

Sen. Mark: Thank you very much, Madam Chair. Madam Chair, through you to the Attorney General, this is all in an effort to straighten and provide greater transparency and accountability in the context of the beneficial ownership concept that we have rooted in this particular clause. And I was looking at the Jamaican

legislation, Attorney General, and I thought this provision is in the Jamaican legislation would really fit in nicely with— [*Crosstalk*] Yeah. I am dealing with clause 9. Am I—?

Madam Chairman: Sorry. I was not speaking to you, Senator.

Sen. Mark: Yeah. So, Attorney General, I am proposing that we just want to tighten this area. In fact, I was about to even go further by asking you to look at this area where it is being suggested in the Jamaican legislation that the names of these people, their nationalities, their addresses and occupation of these members, as well as beneficial owners, all of these things must be stated in the legislation which I fined to be absent unless I have not observed those provisions, but I believe that we need to strengthen this section of the legislation hence my submission for your consideration.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Yes, please. Yes, Madam Speaker, I thank you. Madam Speaker.

Hon. Senator: Madam Speaker?

Mr. Al-Rawi: Sorry, Madam President, Madam Chairman, I am forgetting which House and which stage we are in; I apologize to all Members. The first thing is, I welcome Sen. Mark's observations. Perhaps Sen. Mark may be comforted, firstly, by reference to 337B(3). So:

> "Where a company fails to takes reasonable steps to ascertain and obtain all information as to the beneficial owners holding an interest in the company, et cetera.

But then when we go to 337C, the following appears:

> "Within thirty days of the commencement of…the Act, where the name of a person is entered in the register of members of a company as a holder of shares in that company but the person does not hold beneficial…in such

shares, the person shall submit a declaration in the form approved by Registrar, to the company, stating the capacity which the person making the declaration holds and indicating the person who has beneficial owner by name and address other particulars sufficient to enable that person."

Now, I have pointed to that because it does two things. It provides a formula which can be expanded by the Registrar from time to time without the need to come to Parliament and amend the parent law by a full Act of Parliament.

So this law is in keeping with the architecture adopted in the whole Companies Act where the Registrar can manage the forms, the particulars, et cetera, and we have kept consistent with that, but we have also in this subsection 337C(1) we have caught the elements of which you are looking for.

Sen. Mark: Madam Chair, through you, I know that you mentioned about the prescribed form and you referred to a section of the Companies Act. Does the Registrar General have the power to just unilaterally alter forms? Or would she require or he require some kind of supervision of the Parliament?—because I would not know what form the Registrar General is altering. And I like the idea of the flexibility, but there ought to be some supervision, so that the Parliament would be able to know and keep a check on what is being done. I would not know what is the nature of this prescribed form, what are the elements that make up this prescribed form that the Registrar General is issuing, and I think that as a parliamentarian we need to have sight of these, even if it is just being tabled so that we will know.

Mr. Al-Rawi: Sure. Madam Chairman.

Madam Chairman: Finally.

Mr. Al-Rawi: We do have that power, there is supervision, it is contained in section 507 of the Companies Act where the Minister makes the prescribed matters

perfected, and subsection (2):

"Regulations made under this section are subject to negative resolution of Parliament."

So it is there. But, Madam Chair, Sen. Mark has through his line of questioning pointed us to something that needs to be amended. In the very clause that I just read out 337C(1), the word "enable" in the last line it really ought to be "identify", sufficient to "identify" that person. I think what the drafter intended to is, sufficient to enable the identification, but it could be more simply put to say "identify".

Madam Chairman: Sorry, Attorney General, could you just give us the page number?

Mr. Al-Rawi: Yes, please. It is page 15 of my Bill. Yes?

Madam Chairman: Yes.

Mr. Al-Rawi: Page 13, 337C subsection (1), last line, remove the word "enable" and replace with the word "identify".

Question put.

Mr. Al-Rawi: Aye. Sorry, no. [*Laughter*]

Sen. Mark: I know you are tired, I understand. I forgive the AG, I forgive you, Sir. You know I am about—[*Crosstalk*] Madam Chair, I forgive the AG.

Question, on amendment, [*Sen. Mark*] *put and negatived.*

Madam Chairman: Could we deal with any other questions or comments on clause 9?

Sen. Mark: Yeah. Madam Chair, I just wanted to ask through you to the Attorney General, the EITITT has been talking about a central public beneficial ownership registry that is easily accessible to the public at no cost.

What I want to find out from you is under the "beneficial ownership"

section, where are we on that? And when you take into account, AG, we as an implementing country of the EITI, I do not know if it is compelled, but we are being nudged to have our systems in place by the 1st of January, 2020. So I wanted to know if there is a collision between the legislation that we are dealing with here, and our obligations to the EITITT in terms of our commitment as it relates to the 1st of January, 2020—when we are supposed to have established a registry for beneficial ownership. I just wanted you to clarify that point for me, because I know there is a conflict, a contradiction and possible collision, and you need to clear the air for us on this matter because you know I am a strong proponent of the EITI concept.

Madam Chairman: Sen. Mark, I will ask the Attorney General to respond, but I just to keep us on track what we are doing in this committee stage. Okay? Attorney General.

Mr. Al-Rawi: Yes, Madam Speaker. Madam Chairman. I humbly apologize for all the mistakes that I will make in uttering your title during the course of this. Madam Chairman, the fact is that the sign on to EITI is with respect to having a register not have a registry, so we would have been fully compliant in having a register. That register is public pursuant to section 472 of the Companies Act, the parent law, Register of Companies:

> "The Registrar shall maintain a Register of Companies in which to keep the name of every body corporate—
>
> (a) that is—
>
> (i) incorporate…
>
> (ii) continued..
>
> (iii) registered…
>
> (iv) restored…

(b) that has not been subsequently…

473 (1) A person who has paid for to prescribed fee is entitled, during normal business hours, to examine, and to make copies or extracts from, the document required by this Act or Regulations to be sent to the Registrar…"

So everything is public under 473. The register must be maintained under 472.

8.40 p.m.

We do have very small administrative costs for the access to that, and we do not think that we are in any collision as a result of that very small administrative cost.

Sen. Mark: Madam Chair, I just wanted to ask the Attorney General whether the registry is going to be so constructed in terms of the access to information that I can plug in the name Faris Al-Rawi or Wade Mark, and if I have 15 companies, they will come up, rather than having to put in a company's name, because, remember, in places like the United Kingdom, you can plug in the name Wade Mark or Faris Al-Rawi and if you have 25 companies, all come up, but given our present structure at the companies—

Mr. Al-Rawi: Madam Chair, the answer to that is a resounding yes.

Sen. Mark: Okay.

Mr. Al-Rawi: It will be that for companies, for land, for everything. What we are doing at the registry has never been done before, ever.

Sen. Mark: When you anticipate that to be concluded?

Mr. Al-Rawi: Within eight to 10 months from now.

Sen. Mark: Okay.

Mr. Al-Rawi: The PBRS system that we are putting in will link every cadastral, every plan, every map, every property, all companies, it will tie into your birth certificate, your death certificate, your marriage certificate, everything. It is a one identification aspect of public register. This has never been done. It will also tie in

for security aspects elsewhere to your driver's license, your Board of Inland Revenue, your passport, everything. So you are now going to get a whole picture, so that if you type in Faris Al-Rawi, every company, every property, everything that I own on my name appears on. Every power of attorney will also come up.

Sen. Mark: So if I ask for Sinanan? "I get yuh. I get yuh too." All right, yeah. [*Laughter*]

Madam Chairman: Sen. Mark.

Sen. Mark: Yes. Yeah. Yes.

Madam Chairman: I have one—

Sen. Mark: One more area.

Madam Chairman: One more question? Sure.

Sen. Mark: Yes, let me just ask my colleague again, through you. Madam Chairman, we know we have the land or property, we have the civil and we have the Companies Registry. What I am asking, AG, I do not know if you are aware, but there is a form of discrimination—

Madam Chairman: No, Sen. Mark.

Sen. Mark: No, no, when I say discrimination—Ma'am, permit me, I am not saying anything in any kind of derogatory way. I am just dealing with a factual situation. If I go—Madam Chair, just bear with us, I know it is getting a bit late, but just bear with us. All I am saying to the hon. Attorney General, if I go to the Land Registry, I can put $20 and get my business organized. However—and if I want to go back again, I put another $20 and I get whatever information I want. However, with the Companies Registry, I must deposit a $500. So I am wondering, for instance, why the discrimination?

Mr. Al-Rawi: It will be solved by next month. The discrimination, you are right, is because, sorry to put it bluntly, the last Government did not update the software,

so there are three registries that are in operation. AXIAL Systems runs the Civil Registry, AXIAL Systems has now been given the Companies Registry, and the IDB project is doing the PBRS tie-in for everything for the property real estate. So with AXIAL taking the Companies Registry, you are going to have that removal of barriers. And, I mean, I am confident Sen. Mark, that when you see what is coming here, that we will welcome you in your vote for the PNM at the next election.

Sen. Mark: "I thought de PNM gone tru? De PNM gone tru so I—"[*Crosstalk*]

Madam Chairman: Just one second. Sen. Mark, Members, please. Please.

Sen. Mark: The PNM died.

Madam Chairman: Let us please continue on the committee business.

Sen. Mark: I agree with you.

Madam Chairman: Sen. Mark, is there something you want to raise?

Sen. Mark: One clarification. Hon. Attorney General, I did raise with you—I know you are having a fun—[*Laughs*] I know you are having a great time today. [*Laughter*] I know what is happening to you and I know what is going on, but trust me I sympathize with you. [*Laughter*]

Madam Chairman: Sen. Mark, I would like to suggest that you sympathize with me. [*Laughter*]

Mr. Al-Rawi: Madam Chair, I accept the sympathy, I am listening with sympathy, trust me.

Sen. Mark: Madam Chairman, through you, to the hon. Attorney General, I did make a point earlier and you had asked me to give me way but I had a problem with time so I could not give way, I apologize to you. Madam Chair, I just wanted to ask the hon. Attorney General whether he could explain, in the Tira Greene's report, where she indicated, Madam Chair, that there was some 700,000 companies

on the electronic database and 110,000 businesses—

Mr. Al-Rawi: Sure. Sure. These are treating with companies. There are only 104-odd thousand companies, either limited by shares, by guarantee, externally registered companies, or without share capital, or old law companies being previous companies. Those are the five categories of companies. There is a very different categorization which is permitted, as Sen. Teemal put it, for persons trading as under the Partnership Act, et cetera, so under the registration of names legislation which is very old law, 81:01, then under 81:02 for the partnership legislation, you would have entities that pop up. And then that is further complicated by the non-profit dynamic, where for instance, you know, Friends of San Fernando West or somebody does a bank mandate for Trinidad and Tobago Karate Association, those things populate the numbers upwards, and that is why the anecdotal number is in the 700,000, because it is disaggregated among several species of entities. But for companies there are only 104,000-odd as of March 08, 2019.

Madam Chairman: Hon. Senators the question is that clause 9 be amended as proposed by the Attorney General which is at 337C, sub (1) in the last line, to replace the word "enable" with the word "identify".

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clauses 10 and 11 ordered to stand part of the Bill.

New clause 10A.

New clause 10A read the first time.

Question proposed: That the new clause 10A be read a second time.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Yes, should it please you, Madam Chair. In accordance with the

Government's intention to allow the best opportunity possible to clean the register up, there being a 20 per cent delinquency on the register, we propose to introduce an amendment to section 516A of the Companies Act via a new clause 10A, which would effectively allow an amnesty period for the filing of all companies' documents without penalty in the period 01 May, 2019, to the 30th of August, 2019. We, of course, did not go for the 31st of August because it is a public holiday, so we went for the 30th instead, and that is the rationale for this new insertion.

Madam Chairman: Sen. Mark

Sen. Mark: Yeah, Madam Chairman, in principle I have no problem with the amnesty, I just wanted to make sure, through you, Madam Chair, and you will have to guide me, is this particular clause in order in the context of our Standing Orders? I just wanted to get from you, because I know that whatever amendments we have to make, it must be consistent with what is before us and what came from the other place, so I do not want us to have any collision on this one.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Yes, Madam Chair. This is entirely:

(a) Associated with the rationale of the Bill;

(b) Within the confines of the Bill itself being an Act to amend the Companies Act; and

(c) Within the scope of the debate and recommendations that have come not only in the debate but in the committee stage, so it is properly associated, and therefore stands to be included in the Bill.

Madam Chairman: Any other questions or comments?

Question put and agreed to.

Question proposed: That the new clause be added to the Bill.

Question put and agreed to.

New clause 10A added to the Bill.

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

Senate resumed.

Madam Chairman: Attorney General.

Hon. Al-Rawi: Madam President, I wish to report that a Bill entitled an Act to amend the Companies Act was considered in committee of the whole and approved with amendments, I now beg to move that this Senate agree with the committee's report.

Question put and agreed to.

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

ADJOURNMENT

Madam Chairman: Leader of Government Business.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I now beg to move that this Senate do now adjourn to Tuesday, March 26, 2019 at 1.30 p.m. That would be Private Members' Day for the month of March, and the Motion, I have been told by the Leader of the Opposition Business in the Senate is that we would be doing Motion No. 5, as listed on the Order Paper. That has to do with a clear and cogent economic policy.

Madam Chairman: Hon. Senators, before I put the question on the adjournment, leave has been granted for a matter to be raised. Sen. Mark. [*Desk thumping*]

Purchase of Fast Ferries

(Details of)

Sen. Wade Mark: Madam President, I raise a matter dealing with the two fast ferries and the two Cape-class patrol vessels.

Madam President, it was on the 11th of January, 2019, the hon. Prime Minister read a statement under Statements by Ministers in the House of Representatives, and I have the *Hansard* report here in which the Prime Minister brought to the attention of this nation that the Government had taken a decision to purchase two fast ferries, one from Austal, a 94-metre high speed passenger cargo roll on roll off catamaran ferry at an estimated cost of US $73.5 million, and also to purchase another 100-metre high speed passenger cargo vessel for US $72.9 million inclusive of booking fees. I want to quote this section here for this honourable Senate:

> "Madam Speaker, NIDCO and the Ministry of National Security have proceeded to order the two fast ferries and the two Cape-class patrol vessels, and the contracts for the purchase of these vessels have been executed and moneys paid in accordance with the material contractual arrangements."

May I repeat? May I repeat?

> "…and the contracts for the purchase of these vessels"—which is—"the two Cape-class patrol vessels…"—and—"the two fast ferries…the contracts for the purchase of these vessels have been executed"—have been executed—"and moneys paid in accordance with the material contractual"—obligations.

It went on to outline further, the moneys that were paid.

Madam President, we have been looking up on this matter, because we have an interest in this subject matter, so we have been looking up. We have here, Madam President, Austal, a report dated the 31st of December, 2018. It is signed on the 27th of February, 2019, by the chairman, Mr. John Rothwell. Madam President, hear what it says, and I quote:

> A 100 million contract for a 94-metre catamaran ferry for the Government of the Republic of Trinidad and Tobago was awarded—that is fine—in 2019, to

be delivered in mid-2020.

This vessel is a derivative of the 109-metre AutoExpress being built in Austal's shipyard—no, being built for a group in Denmark following an intensive development programme. This vessel is currently being built, which is this 100 million contract, 94-metre, being built where? It is being built in Austal's new shipyard in Vung Tau, Vietnam. It is not being built in Australia, it is being built in Vietnam.

This new facility commenced operations on November 01, 2018, and has already successfully delivered large aluminium modules for the 109-metre Fjord Line ferry being built in the Philippines.

It goes on: Austal expects the new shipyard—they built a new shipyard in Vietnam for this particular vessel. So this is an experiment that they are getting involved in, in Vietnam.

They expect the new shipyard in Vietnam will be profitable in its first year of operation and will quickly expand to over 450 people as a result of this contract.

Madam President, it goes on, and this is the interesting part. Nowhere in the Prime Minister's statement was any announcement made of any down payment, any amount of money allocated for the two Cape-class patrol vessels. What we do know, Madam President, is "Mind Your Business" presentation, [*Laughter*] $600 million turned up on this particular graph for the two patrol vessels.

Madam President, there is no evidence that there is any money being paid. We know for the fast ferries moneys have been paid down, and we have the numbers here. Hear what is alarming: The Government of the Republic of Trinidad and Tobago—I want to go slowly. This is written by Austal.

Sen. Ramdeen: Slow. Slow.

Sen. W. Mark: The Government of the Republic of Trinidad and Tobago has also announced its intention—no contract, eh—its intention to purchase two 58-metre Austal Cape-class patrol boats to enhance the border protection capabilities of its country.

Now, Madam President, we are told by the Prime Minister on the 11th of January, 2019, that contracts have been executed for these two vessels. Here we are being told by the Australians that the Government announced its intention to purchase these two vessels. It goes further, Austal is telling the whole world that they have since—let me read this, Madam President:

> Austal have since received US $6 million deposit against the potential order which is valued at AUD $100 million. We and parties are working towards signing the full contract. Austal is planning to re-establish a service centre in Trinidad to support these vessels.

Madam President, I have just read this statement from the Austal report signed by its chairman, where we are being told and the world is being told that Trinidad and Tobago has made, upfront, a deposit of US $6 million without a contract being signed.

Hon Senators: "Wayyy!"

Sen. W. Mark: So I would like the Government to explain to this Parliament—

Madam President: Sen. Mark, you have one more minute.

Sen. W. Mark: Yeah. I would like the Minister to explain to this country how come they were able to generously offer the Australian, Austal, $40 million just so, no contract signed, to build two Cape-class patrol vessels.

Madam President, this is a scandal of epic proportions, and we call on the Government to explain to us, [*Desk thumping*] why? Who? When? Who authorized this? Was it the Permanent Secretary? The Minister of Finance?

NIDCO? Who did this? Because this is in black and white, and this is signed by the chairman of Austal. So, I wait and await a response from the Minister of Works and Transport on this matter. [*Desk thumping*]

Madam President: The Minister of Works and Transport.

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): [*Desk thumping*] Thank you, Madam President. Madam President, yet again the hon. Sen. Mark got it all wrong.

Hon. Senator: As usual.

Sen. The Hon. R. Sinanan: Madam President, the Prime Minister did make a statement on the date as mentioned, but actually it was a statement that, if I were to print it out, might have taken about 12 pages. Sen. Mark read two lines of the statement. But if Sen. Mark had took the time to read the entire statement, the Prime Minister delivered a comprehensive statement on the acquisition process of the vessels. And it is not two vessels, it is actually four vessels, both from Austal and Incat, and the Prime Minister did indicate how the Government of Trinidad and Tobago came up with the procurement, the invitation to Australia by the Prime Minister of Australia, and all the avenues surrounding that.

But I would not go into the Prime Minister's statement, because the Motion is about the need for the Government to ensure that the citizens of Trinidad and Tobago obtain value for money in respect to the purchase of the two fast ferries for the interisland sea bridge and two Cape-class patrol vessels for use by the Trinidad and Tobago Coast Guard. The Motion obviously changed to how the payment was made. So, again, I will stick to the Motion, because I like to respond to Sen. Mark and correct his information.

Madam President, who is Austal? Austal is a global shipbuilding and defence prime contractor, a recognized world leader in the design and construction of

customized commercial and defence vessels. Austal proudly lists many of its world leading ferry operations, navel and defence forces as valued clients. Incat provides optional lightweight ship solutions for ferry operations, special service providers for military, from fast flexible and efficient vehicle passenger ferries to high speed military support vessels, cruise ships and dynamic platforms, Incat sets the global benchmark for aluminium ship technology. And when I reach to Incat, who the hon. Senator did not mention, I will give you their profile.

Madam President, when the Government of Trinidad and Tobago decided to acquire these vessels based on the assistance from the Australian Government, Cabinet appointed a committee to review the proposals by both Incat and Austal, and that committee, Madam President, reviewed the proposal based on cost, delivery time, speed/knots, outfitting, after sale service and maintenance logistics, on-board management system, ship management system, and the willingness to partner with us. That committee, Madam President, was headed by Minister in the Prime Minister's office, at the time Minister in the office of the Attorney General and Legal Affairs, Minister Stuart Young; hon. Minister Edmund Dillon, Minister of National Security; the hon. Minister Dennis Moses, Minister of Foreign and Caricom Affairs; Minister Robert Le Hunte, Minister of Public Utilities; retired colonel Lyle Alexander, Chairman of the Port Authority of Trinidad and Tobago; Mr. Stephen Gardiner, Deputy Chairman of the National Infrastructure Development Company, and Mr. Marvin Gonzales, the director of legal services at the Ministry of Works and Transport.

Madam President, this is how the Government dealt with the evaluation. And you want to compare that to 2010—2015, when there were three vessels that were acquired in this country. One was the *Superfast Galicia*. That matter is in the court, I would not speak too much about it.

Secondly, we had the Damen vessels, those vessels, again, are under investigation as we speak, so I would not speak much about that.

Hon. Senator: Really?

Sen. The Hon. R. Sinanan: Yes. And thirdly, there was the—let me give you the exact name of that vessel, it is the CG—

Sen. Mark: It is the *Su*, MV *Su*.

Sen. The Hon. R. Sinanan: No, the CG 16, the Chinese vessel purchased for Trinidad and Tobago Coast Guard. There was no procurement for that vessel, no evaluation. And, Madam President, that vessel was purchased like when you are buying "bodi" in the market, [*Laughter*] and when you are walking out you see a nice "baigan" and you say, "Ah want one ah dat". [*Laughter*] You did not go to buy "baigan" but you see one, it shiny, and you say, "gih meh one ah dat". [*Laughter*] That is how that vessel was purchased. [*Desk thumping and laughter*]

Sen. Mark: [*Inaudible*]—that is all we ask you about, no "bodi". We ask you about—[*Laughter*]

Sen. The Hon. R. Sinanan: Madam President, after the procurement—[*Interruption*] Sen. Mark, you cannot take your blows? "Take some nah man, ah now start." [*Crosstalk*] "Madam President, let meh address you nah, let meh doh take on Sen. Mark." [*Continuous crosstalk*] Madam President, when they bought the boat—mistake it for the "baigan"—they did not pay. This Government came into office, the Prime Minister made it quite clear, he got a call that a vessel is on the way to Trinidad—

Hon. Al-Rawi: No arms.

Sen. The Hon. R. Sinanan:—no arms and in pirate infested waters. Had to get on to the US Coast Guard to escort the vessel to Trinidad. When we asked how much the vessel cost, they said, "No, well, we eh start to talk payment yet". No payment

plan.

Hon. Senator: They take "baigan" on trust.

Sen. The Hon. R. Sinanan: They took it on trust. They did not even walk with money to the market to buy what they really wanted. "Dey take it trust." Same thing with the Damen vessels.

Madam President, after the initial review by the committee, it was agreed that an in-depth discussion and negotiation should be conducted with both Austal and Incat to finalize specifications and determine the contract parameters. For the purpose of the new negotiation a new committee was formed with NIDCO officials, as well as officials from the Port Authority, Ministry of Works and Transport and technical experts in the maritime field. That is how you buy vessels, not "gih meh one ah dat". [*Laughter*]

The committee also included Mr. Andreas Silcher, a partner from Haynes and Boone Limited of London. We hired an internationally reputable law firm. Again, not "gih meh one ah dat", it is not "baigan" in the market we are buying. [*Crosstalk*] It is noteworthy, Madam President, that over the three-day period, and this three-day I am speaking about is when this committee, when Incat and Austal flew to Trinidad sat at the Ministry of Works and Transport with a committee and a day and night negotiation, for three days, from the 27th, 28th and 29th. The committee discussed several issues of clarification. One, the technical operations and maintenance requirement; risk assessment including financial risk; commercial issues surrounding the price proposal; proposed delivery date, costs and other contractual issues. Emanating from the discussions with Austal, the following principles/outcomes were agreed. The Government through NIDCO will purchase a 94-meter high speed passenger cargo roll-on—

Madam President: Minister, you have one more minute.

Sen. The Hon. Rohan Sinanan: "Oh gosh", Madam President, I cannot get about 10 more?

Sen. Mark: You could circulate the rest, circulate the rest.

Sen. The Hon. Rohan Sinanan: All right. Madam President, [*Crosstalk*] in other words, the information from Sen. Mark was wrong. The purchase of the vessel was entirely wrong.

Sen. Baptiste-Primus: Scandalously incorrect.

Sen. The Hon. Rohan Sinanan: One of the vessels cost $73 million, the other vessel from Incat cost $72 million.

Sen. S. Hosein: Game changers, boy, game changers.

Madam President: Members, please.

Sen. The Hon. Rohan Sinanan: Madam, the Government did sign the contracts. The financing for the vessels will be done by the Australian finance Exim bank and they are financing up to 80 per cent of the cost of the vessels. So your information about the signing of the contract and the Government paying, is another way of [*Crosstalk*] misleading the country just like how their [*Desk thumping*] main advisor is misleading the country by writing the Australian authority. Thank you.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 9.13 p.m.