



THE MINISTRY OF ATTORNEY GENERAL AND LEGAL AFFAIRS

MINISTERIAL RESPONSE

First Report of the Public Accounts Committee on the Examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the Financial Years 2014 and 2015 with specific reference to the Auditor General's Department

I. Introduction

The First Report of the Public Accounts Committee on the Examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the Financial Years 2014 and 2015 with specific reference to the Auditor's General's Department was presented in the House of Representatives on February 3, 2017 and in the Senate on January 31, 2017.

Standing Orders 100(6) and 110(6) of the Senate and House of Representatives respectively, require the Minister with responsibility for the Ministry/Body reported on by a Joint Select Committee to present to each House a paper responding to the recommendations/comments contained in the Report.

This report is the Ministerial response to the findings and recommendations as presented in the First Report, to be presented to Parliament, through the Attorney General and Minister of Legal Affairs.

II. Summary of Issues Identified, Recommendations and Responses

During the examination of the Reports of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the financial years ended September 30, 2014 and September 30, 2015 the following issues were identified and recommendations proposed that require written responses by the Attorney General and Minister of Legal Affairs. The responses of the Attorney General and Minister of Legal Affairs to these recommendations are contained hereinafter in this report.

Issue Identified

ii. The Late Submission of Financial Information

Audited reports are replete with incidents of financial records being submitted to the AGD after the statutory deadline. Entities were reminded of this deadline stated within the financial regulations which is January 31st of every year. The Accounting Officer is ultimately responsible for ensuring the completion and timely submission of the financial report. Emphasis must be placed by the Permanent Secretaries to ensure that they make it a priority to have financial statements ready by the deadline.

Recommendations:

- *The penalty for breaching the financial regulations should be increased to boost compliance with the regulations. For e.g. once a submission is more than 2 months late, the Accounting Officer could be fined \$1000 for each month thereafter.*
- *The Auditor General should liaise with the Office of the Attorney General to pursue legislative options in this regard.*

Response:

The Attorney General and Minister of Legal Affairs is in agreement with and supports the recommendation of the Committee in respect of the adequacy and suitability of the current legislative framework governing the Auditor General.

It is noteworthy that any proposed legislative amendments required to amend the Exchequer and Audit Act and the Financial Regulations, Chapter 69:01 would firstly fall under the purview and jurisdiction of the Ministry of Finance. The Permanent Secretary of the Ministry of Finance has the designated authority and responsibility for proposals for amendment to the regulations for the appointment of an external auditor to conduct the auditing of the Auditor General's Department.

The Attorney General and Minister of Legal Affairs therefore advises that draft amendments can be prepared for increasing the current penalty under Regulation 141 for a breach of the Financial Regulations in order to boost compliance with the Regulations by Entities upon receiving written instructions from the authorized officials at Ministry of Finance in accordance with the current procedures for the preparation of draft legislation by the Office of the Chief Parliamentary Counsel.

Issue Identified

v. Access to relevant information required for audit

Limited access to relevant data, hampers the effectiveness of the Auditor General. One example highlighted to the Committee was that of the secrecy provisions of the Income Tax Act. Section 4 of the Act makes it an offence for employees at the Board of Inland Revenue to reveal information to persons not involved in the administration of the Act. This secrecy provision limits the access of the AGD to specific data which may be crucial to its investigation.

Both the AGD and Board of Inland Revenue have sought legal advice on this matter, but to date there has been no positive resolution. Nonetheless it is clear an amendment to the Income Tax Act is required to allow the Auditor General to access critical information on the collection of revenue.

Recommendations:

- *The Auditor General should formally write to the Attorney General in relation to the amendment of Section 4 of the Income Tax Act so that the issue can be rectified before the beginning of the 2016 audit.*
- *The Issue of citizen privacy v. public interest needs to be carefully balanced here.*

Response:

The Attorney General and Minister of Legal Affairs is in agreement with and supports the recommendation of the Committee in respect of the issue of restricted access to information by the Inland Revenue Division and the possible hindrances on the audits by the Auditor General's Department.

The Attorney General and Minister of Legal Affairs met with the Auditor General in January 2016 and had discussions on this issue.

There have been on-going discussions and collaboration in 2016 and 2017 between the Office of Auditor General and the Office of the Attorney General and Legal Affairs, the Ministry of Finance and the Board of Inland Revenue, to address and further explore all legislative amendments that may be required to the Income Tax Act, Chapter 75:01, as well as specific recommendations connected with Trinidad and Tobago's international obligations relative to taxation. The Income Tax Act comes under the purview and jurisdiction of the Ministry of Finance. The Permanent Secretary of the Ministry of Finance has the designated authority and responsibility for proposals for amendment of this Act.

The Attorney General and Minister of Legal Affairs reiterates that proposed amendments to the Income Tax Act can be considered and after completing discussions as aforesaid, expects to receive written instructions from the authorized officials at Ministry of Finance to consider the preparation of draft legislation by the Office of the Chief Parliamentary Counsel.

Recommendation:

- *In the short term, however, the AGD can continue with the alternative methods currently being utilized to produce the report on revenue production.*

Response:

The Attorney General and Minister of Legal Affairs is of the view that this recommendation would not require legislative amendments.

Issue Identified

x. Issues based vs Entities based

The AGD's scrutiny of the Executive has become more entity based instead of being issues based. Like the UK Parliament, issues based reports can give the decision makers a better idea of each entity's standpoint with regard to a specific issue instead of producing a report trying to highlight different issues within every entity. The need for expansion in the area of Value for Money was expressed in order to regularize an issues based strategy but the 1959 public financial framework does not allow for issues based reporting. The Comptroller of Accounts has started a project to replace the archaic regulations with public sector accounting standards.

Recommendation:

- *The Comptroller of Accounts should request the assistance of the Attorney General for the initiative to adopt Public Sector Accounting Standards. With the adoption of the*

Accounting Standards, entity based reporting will eventually be transformed into issues based reporting. Updated regulations will allow the work produced by the Government of Trinidad and Tobago to be in line with the international standard. This is important to ensure that the image of Trinidad and Tobago is one of an enlightened, progressive State adopting modern approaches and practice.

Response:

The Attorney General and Minister of Legal Affairs is in agreement with and supports the recommendation for the initiative to adopt Public Sector Accounting Standards and replacement of the current regulations with public sector accounting standards.

The legislative proposals required for the adoption of International Public Sector Accounting Standards should be first considered and pursued together with specified legislative and regulatory compliance by the Comptroller of Accounts, Ministry of Finance in collaboration with the Auditor General's Department.

The Attorney General and Minister of Legal Affairs would thereby require technical direction and assistance from the work conducted in the project by Comptroller of Accounts, Ministry of Finance together with the Auditor General for the adoption of International Public Sector Accounting Standards in order to replace the current regulations with public sector accounting standards.

Issue Identified

xiii. The auditing of the Auditor General's Department

In accordance with the Exchequer and Audit Act, the auditing of the AGD's accounts should be done by the Comptroller of Accounts of the Treasury. This causes a conflict of interest because the Treasury is audited by the AGD. The regulations should be amended in an effort to rectify this issue, allowing an external auditor to audit the accounts of the AGD as a way of eliminating all bias when performing the audit.

Recommendation:

- *Through the amendment of the regulations by the Attorney General, the appointment of an external auditor who is not influenced by any local entities can be facilitated. It has been noted that the AGD is audited by the Treasury and based on the IAS 10 there should be a separation of powers to ensure not just accuracy of the audits but perception of the possibility of compromise. An update of the legislation must be done and changes made to ensure general autonomy. An external auditor should be hired to audit the AGD to eliminate any conflict of interest or any perception of political interference.*

Response:

The Attorney General and Minister of Legal Affairs is in agreement with and supports the recommendation to address the conflict of interest in the auditing of the accounts of the Auditor General's Department.

It should be noted however that the legislative amendments necessary to the Exchequer and Audit Act and Financial Regulations Chapter 69:01 would firstly fall under the purview and jurisdiction of the Ministry of Finance.

The Permanent Secretary of the Ministry of Finance has the designated authority and responsibility for proposals for amendment to the regulations for the appointment of an external auditor to conduct the auditing of the Auditor General's Department.

The Attorney General and Minister of Legal Affairs is of the view that all parties with authority fully address and collaborate the proposal.

Issue Identified

xiv. Identifying and Correcting Issues raised by the Public and the Whistleblower Protection Bill (Whistleblowers)

The Whistleblower Protection Bill is an act to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector, to protect persons making those disclosures from detrimental action, to regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct and to provide for other matters connected therewith.³ It is important to encourage public participation in different areas of the Public Service. Some persons of the Public may be able to alert the AGD to issues that they may have missed during the investigations of the AGD or they may be privy to information that the AGD auditors may not. Although their submissions are welcomed, persons should also have the comfort of knowing that they can do so privately maintaining their confidentiality.

Recommendations:

- *Firstly, the Attorney General should ensure that the Whistleblower Protection Bill, 2015 becomes law by years' end.*

Response:

The Attorney General and Minister of Legal Affairs is in agreement and supports this recommendation for the enactment of the Whistleblower Protection Bill, 2015 which went through extensive deliberation during the Joint Selection Committee conducted during the 1st session of the Eleventh Parliament. The Whistleblower Protection Bill is currently under consideration by the Attorney General and Minister of Legal Affairs Cabinet following several recommendations from members of the Joint Select Committee on clauses in the Bill and would soon be re-introduced into Parliament.

- *Secondly, the AGD should advertise opportunities for the Public to submit issues to the AGD which will in turn help them identify problems that they may need further investigation e.g. Special Audits. The Whistleblower Protection Bill gives persons the opportunity to produce information that may potentially help improve the functioning of the Public Service and they will be able to do so safely.*

Response:

The Attorney General and Minister of Legal Affairs is in agreement and supports this recommendation by the Auditor General's Department upon passage of the Bill in Parliament.

Issue Identified

xv. Circumstances that infringe the independence of the AGD

The AGD is currently attached to the Ministry of Finance who governs their activities and the Public Service Commission provides the department with staff. The AGD should be allowed to function as an entity totally separated from the State. The AGD should operate as a single, independent entity so that they can be free to perform their duties without political interference. This will allow for completely unbiased investigations and also only the AGD will fully understand their needs and they will be able to deal with them as they see fit giving them more flexibility in turn improving their productivity.

Recommendation:

- *The financial regulations should be amended to include the financial and human resource independence of the AGD. The Attorney General can ensure that these amendments are done so that the AGD will be able to improve their performance and also perform on the level of other Supreme Audit Institutions internationally. The amendment of these regulations will allow the AGD to stand on its own without any conflict of interest or perception of political interference.*

Response:

The Attorney General and Minister of Legal Affairs is in agreement with and supports the recommendation of the Committee in respect of the adequacy and suitability of the current legislative framework governing the Auditor General.

The Attorney General and Minister of Legal Affairs advises that draft amendments can be prepared to amend the Exchequer and Audit Act and Financial Regulations Chapter 69:01 to include the financial and human resource independence of the Auditor General Department upon receiving written instructions from the authorized officials at Ministry of Finance in accordance with the current procedures for the preparation of draft legislation by the Office of the Chief Parliamentary Counsel.

Issue Identified

xvii. Ideal framework envisioned by the AGD to assist with the improvement of its operations

The members of the AGD outlined the ideal framework by which they will be able to enhance their current operations. One of their main points was the need for financial and human resource autonomy which will greatly assist with the performance of their duties giving them the flexibility they need to properly outfit the Department. The need for experts to assist with various topics that the AGD may not be versed in, also the need for oversight, the Public Accounts Committee will act as the person to oversee the AGD and ensure that money is being spent wisely and accountability and transparency is observed.

Recommendation:

- *The Attorney General, in consultation with the Public Service Commission and the Minister of Finance, should take steps to amend the regulations to make provisions for the introduction of financial and human resource autonomy. This type of autonomy will give the AGD total control over its operations allowing them to ensure they are performing at the highest capacity.*

Response:

The Attorney General and Minister of Legal Affairs is in agreement with and supports the recommendation of the Committee in respect of the adequacy and suitability of the current legislative framework governing the Auditor General.

The Attorney General and Minister of Legal Affairs advises that draft amendments can be prepared to amend the Exchequer and Audit Act and Financial Regulations Chapter 69:01 to make provision for the financial and human resource autonomy of the Auditor General Department upon receiving written instructions from the authorized officials at Ministry of Finance in accordance with the current procedures for the preparation of draft legislation by the Office of the Chief Parliamentary Counsel.

Recommendation:

- *In the short term, the acquisition of additional staff and better facilities would greatly improve the operations of the AGD. Arrangements should be made with the Public Service Commission to ensure this is done by March 31, 2017.*

Response:

The Attorney General and Minister of Legal Affairs is of the view that this recommendation would not require legislative amendments.

Issue Identified

xix. Cash Audit vs Accrual Basis Accounting

Throughout the region, majority of the Auditors General or departments of audits, directors of audits, the type of account that is prepared is called a Treasury Single Account, which is prepared on a cash basis. Only two countries within the region practices accrual accounting thus far which are the Cayman Islands and Barbados. Cash basis accounting has been used by the Public Service since the adoption of the financial accounting principles in 1959 which has been noted to have many shortfalls but the switch to accrual accounting is currently being looked at and in due course should be adopted. If the move to accrual accounting is made assets will have to be properly valued and an asset base would need to be determined. The Ministry of Finance, especially including the Treasury, should do their part to speed up the process to ensure that Trinidad and Tobago performs at an internationally acceptable level and ensure a smooth transition into accrual basis accounting.

Recommendation:

- *Through the assistance of the Attorney General, Ministry of Finance and the Treasury, the AGD can make its request known about the immense need for updated financial regulations to include a change from cash to accrual basis accounting. With this update we would be able to catch up to the Cayman Islands and Barbados who are currently using accrual basis accounting. This change can be factored in by December 2016 also giving time for Ministries and Departments to train Accounting Officers and others involved to ensure that records are properly maintained.*

Response:

The Attorney General and Minister of Legal Affairs is in agreement with and supports the recommendation of the Committee in respect of the adequacy and suitability of the current legislative framework governing the Auditor General.

The Attorney General and Minister of Legal Affairs advises that draft amendments can be prepared to amend the Financial Regulations to include provisions for changing from a cash basis accounting to an accrual basis accounting of the Auditor General Department upon receiving written instructions from the authorized officials at Ministry of Finance in accordance with the current procedures for the preparation of draft legislation by the Office of the Chief Parliamentary Counsel.

Issue Identified

xx. Contracts not being Produced

For many years, contracts have not been produced for audit posing a serious issue throughout the Public Service and has been listed as a pervasive issue, has. Proper maintenance of Contract Registers need to become a priority in Ministries and Departments to ensure that proper records are being kept of contracts executed and with whom. When registers are properly maintained this will in turn make it easier for entities to provide their information on time.

Recommendations:

- *Accounting Officers need to put more emphasis on keeping record of executed contracts. Regular checks should be made to ensure that every contract entered into, was properly stored and accounted for within their contract registers.*
- *Proper training should also be provided by the Treasury, for persons responsible for maintaining these registers also. In the amended regulations being processed by the Attorney General, provisions will be made for the usage of electronic data instead of hard copy.*

Response:

The Attorney General and Minister of Legal Affairs is in agreement with and supports the recommendation of the Committee in respect of the adequacy and suitability of the current legislative framework governing the Auditor General.

The Attorney General and Minister of Legal Affairs advises that draft amendments can be prepared to amend the Financial Regulations to include provisions for the usage of electronic data instead of hard copy of the Auditor General Department upon receiving written instructions from the authorized officials at Ministry of Finance in accordance with the current procedures for the preparation of draft legislation by the Office of the Chief Parliamentary Counsel.

Issue Identified

xxviii. Powers of the Auditor General

The duties and powers of the Auditor General are outlined in Part III of the Exchequer and Audit Act which is currently used as a guideline for the performance of his duties. The Auditor General is only able to report on his findings but cannot force entities to adhere to his advice or comply with terms that may be set out.

Recommendation:

- *Greater influence should be afforded to the AGD to make the work done more effective throughout the Public Service. The work of the AGD should have a legal aspect to it which will force entities to implement their recommendations and comply with their requests during audits. Entities need to understand that there can be repercussions for their failure to cooperate. Even though they are currently able to exercise their powers indicated within the Exchequer and Audit Act, with the amendments to be made by the Attorney General this can also be factored into the updated regulations. The Auditor General needs to be able to enforce compliance by Government institutions under its jurisdiction rather than report recurring issues in its reports year after year.*

Response:

The Attorney General and Minister of Legal Affairs is in agreement with and supports the recommendation of the Committee in respect of the adequacy and suitability of the current legislative framework governing the duties powers of the Auditor General as contained in Part III of the Exchequer and Audit Act Chapter 69:01.

The Attorney General and Minister of Legal Affairs advises that draft amendments can be prepared to amend the Exchequer and Audit Act and Financial Regulations Chapter 69:01 to address the powers and duties of the Auditor General upon receiving written instructions from the authorized officials at Ministry of Finance in accordance with the current procedures for the preparation of draft legislation by the Office of the Chief Parliamentary Counsel.

Issue Identified

xxxix. Recommendations to improve the efficiency of the AGD

It is acknowledge that the AGD is consistent in its effort to fulfill its constitutional mandate. However, there are areas where improvements can be made with the assistance of other state agencies. The following were identified by the AGD as the areas of support required in improving the efficiency of the Department:

Recommendations:

a. the Comptroller of Accounts should request the assistance of the Attorney General for her initiative to adopt Public Sector Accounting Standards;

Recommendations:

b. Ministries and Departments with the assistance of the Treasury and the AGD, should strengthen Internal Audit function;

c. an Integrated Financial System to be introduced by the Comptroller of Accounts;

d. the Chief Personnel Officer can help speed up the process for the acquisition of adequate accounting staff and training throughout the Public Service; and

e. the Chief Personnel Officer can also assist in the introduction of performance indicators and implement ways to monitor and report on these performance indicators, which would better assist with the production of value for money type special audits. This will be done to show whether Ministries and Departments are achieving what they set out to achieve with the funds that they have received from Parliament.

f. The Public Service Commission need to respond in a more proactive way to the Human Resource needs of a modern Auditor General's Department in the current context.

g. The Auditor General's Department needs to be given autonomy and authority through appropriate arrangements to guarantee financial independence and independent recruitment of

technically competent personnel. The Auditor General must be given the legislative basis not only for financial and human resource independence but also for enforcement of compliance by offending Government entities.

Response:

Please see response to recommendation xxviii. above.

III. Conclusion

The Attorney General and Minister of Legal Affairs recognizes that it is evident that in addressing the issues identified and challenges faced by the Auditor General as outlined by the recommendations proposed within the First Report of the Public Accounts Committee, there must be overall and methodical review of the primary legislation (The Exchequer and Audit Act and Financial Regulations Chapter 69:01) and all consequential legislation governing the Office of the Auditor General. Such a review would allow for the Auditor General's Department to perform its duties and functions in a more efficient and productive manner and result in greater accountability of the public sector in Trinidad and Tobago.

The Attorney General and Minister of Legal Affairs remains willing to prepare all necessary legislation and collaborate together with the Ministry of Finance and the Auditor General to remedy all deficiencies to facilitate the functioning of the Auditor General's Department.