

MEMORANDUM

TO: Ms. Allison Raphael, Chairman, Board of Inland Revenue
u.f.s. Mr. Ramnarine Bedassie, Commissioner Legal
u.f.s. Ms. Shireen Aziz, Chief State Counsel

FROM: Ms. Candace Lopez, Mr. Sheldon Prescott, State Counsel I

DATE: 25th May, 2018

SUBJECT: Request for Comments – JSC Constitution (Amendment) (Tobago
Self-Government) Bill 2018

We have been asked to submit comments on the captioned Bill.

The following sections of the captioned Bill are noteworthy to the Board of Inland Revenue:

- Clause 18, proposed section 141A, *inter alia*, limits the power of the Tobago Legislature from proceeding on legislation which would have the effect of imposing or increasing taxes and charges on revenues or other funds of Tobago.
- Clause 18, proposed section 141AD establishes a Fiscal Review Commission which will have the responsibilities to –
 - Determine and recommend to Parliament the sums required to be appropriate to Tobago in each financial year;
 - Establish a mechanism for revenue sharing between the Islands of Tobago and Trinidad;
 - Develop a regime for sharing the revenue obtained from the marine resources in the waters comprising each island and the maritime boundaries superjacent air space and telecommunications;
 - Ensure that all revenues, fees and duties collected in Trinidad that are attributable to Tobago such as from custom duties, import duties and stamp duties and other duties shall be held for the account of Tobago;

- o Ensure that all companies operating in Tobago or which operate offices, branches or do business in any other way in Tobago shall pay taxes in Tobago on such operations; and
- o Give due consideration to the financial and developmental needs of Tobago in the context of Trinidad and Tobago and shall allocate financial resources to Tobago as fairly as is practicable.

WHAT IS THE EFFECT?

The isle of Tobago wishes to have independent status. As stated in Section 5 of the Bill, Tobago wishes to attain 'Equality of Status' whereby it will no longer be categorized as a Ward. The Bill intends to introduce certain institutions such as the 'Tobago Island Government' (which replaces the Tobago House of Assembly), the Tobago Service Commission as well as the Tobago Executive Council. As such Tobago would be a fully self-governing Isle.

COMMENTS:

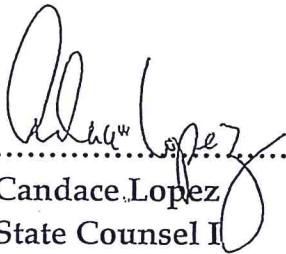
This form of governance structure has occurred before, most noteworthy within the United Kingdom. This country comprises of England, Wales, Scotland and Northern Ireland. The year 1998 was pivotal where the latter three sought independence from England, which had long ruled over them. That year saw the introduction of the Government of Wales Act, the Northern Ireland Act 1998 and the Scotland Act 1998. All of these legislations were formed after Referendums.

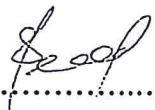
This process where an entity which is part of a larger Sovereign state seeks independence is recognized under the concept of Devolution, which is an Administrative Law ideal. Devolution is defined as 'the transference of rights, powers to another'. There are many concerns with this process.

Firstly, Section 3 of the Tobago Bill proposes to 'alter' the Constitution. Several other sections are stated within the Bill to have this effect. (Sections 3,6,7,8,9,10,11,12,13,14,15,16,17,18 propose to amend Sections 3,3,5,13,53,54,75,75,80,81,11,120 and 121 of the Constitution respectively).

It is noteworthy that there are no proposed changes to the sections of the Constitution which establish and manage the Consolidated Fund, which holds all the funds raised or received by Trinidad and Tobago. The question therefore arises as to whether the monies which are proposed to be paid in Tobago are to be paid into the Consolidated Fund and, if so, then what measures and/or systems would be set in place to keep Trinidad's money separate from Tobago's money to ensure that all of Tobago's money is held in account for Tobago and for the sole use of Tobago, further to the interpreted intention of Clause 18 of the Bill.

A further question arises as to whether any of the functions of the proposed Fiscal Review Commission would replace the functions of the Board of Inland Revenue in collecting taxes in Tobago, seeing that it will be responsible for collecting taxes from companies operating in Tobago. Moreover, would the functions and/or operations of the Board of Inland Revenue have to change or adapt in any way, and if so, in what way, to ensure that all revenues, fees and duties collected in Trinidad that are attributable to Tobago are held for the account of Tobago.


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