

**Comments from the Ministry of Finance on
The Constitution Amendment (Tobago Self Government) Bill, 2021 and
The Tobago Island Government Bill**

There are two questions posed to the Minister of Finance by the Joint Select Committee in respect of the above mentioned Bills relating to the power to borrow provided for in the said Bills. The following are the responses from the Ministry of Finance.

The Constitution Amendment (Tobago Self Government) Bill, 2021 (Bill No. 1)-

Question

1. In the proposed Fourth Schedule which sets out the law-making powers of the proposed Tobago Legislature, Tobago will be granted exclusive power to legislate on matters related to the *borrowing of moneys or obtaining grants of moneys for the purposes of the Tobago Island Government and the making of grants and loans for those purpose*. This is consistent with the power of a Legislature to have oversight of borrowings by a Government. However, the Fifth Schedule which sets out exclusive executive powers, exempts “*external borrowing*” notwithstanding the fact that the Tobago Island Government will be empowered to borrow externally with the approval of the Minister of Finance. The Committee seeks the advice of the Minister on whether the Fifth Schedule ought to be amended to include the power to borrow.

Response:

A review of the Bills has revealed the following:

1. The Fourth Schedule to the Constitution (Amendment) Bill, 2021 (Constitution) speaks to the list of matters for which the **Tobago Legislature** shall have exclusive law making powers in Tobago which includes the “*borrowing of moneys or obtaining grants of moneys for the purposes of the Tobago Island Government and the making of grants and loans for those purpose*”.
2. The Fifth Schedule to the Constitution speaks to the list of matters for which the **Tobago Executive Council (TEC)** shall have exclusive administrative jurisdiction in Tobago which includes “*Finance Except – Borrowing (external)*”.
3. The power to borrow both locally and internationally has been given to the **TEC** at clause 39 in the Tobago Island Government Bill, 2021 (TIG Bill).

Law making powers (the Fourth Schedule of the Constitution), administrative jurisdiction (the Fifth Schedule of the Constitution) and the power to borrow (the TIG Bill) are all different things.

The Fourth Schedule outlines the areas upon which the **Tobago Legislature** can legislate. The Fifth Schedule relates to areas for administration by the TEC. The power for the TEC to borrow is neither in the Fourth nor Fifth Schedule. These two Schedules just provide a list of areas for legislative and administrative oversight by the Tobago Legislature and the TEC respectively. The power for the TEC to borrow is in the TIG Bill.

The question on whether the Fifth Schedule ought to be amended to include the power to borrow may be misplaced given that the Fifth Schedule deals with exclusive administrative jurisdiction and not a power to borrow. There is need for clear policy intention with respect to the provisions in the Constitution and the TIG Bill in order to properly represent the said intention.

The Tobago Island Government Bill, 2021 (Bill No. 2)

Question

2. Must the Tobago Island Government be a legal entity in order to borrow and invest and to otherwise contract?

Response:

As mentioned above the TEC has been given the power to borrow. The TIG has not been given such a power to borrow. The question on whether “the TIG must be a legal entity in order to borrow and invest and to otherwise contract?” may be misplaced when it does not seem to have the power to do so in the TIG Bill.

If it is the policy intention that the TEC is to have the power to borrow, then the question to be asked is: what is the nature of the statutory body called the TEC which has been given the power to borrow under the TIG Bill? Is that body properly constituted in order to borrow, invest and to otherwise contract? In order to borrow, invest and to otherwise contract a person even in law must have the legal capacity to do so. The Chief Parliamentary Counsel should advise on the nature of this statutory institution called the TEC and whether or not it has or must have the capacity in law to borrow, invest and to otherwise contract. If it must have such capacity then how will it be included in the Bill?

Ministry of Finance
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