

EXPLANATION RE. THE SIMPLE MAJORITY REQUIREMENT FOR THE TRINIDAD AND TOBAGO REVENUE AUTHORITY BILL, 2021

Introduction

The first Bill to establish the Trinidad and Tobago Revenue Authority was the Trinidad and Tobago Revenue Authority Bill, 2010 which was introduced in Parliament on 29th January, 2010, but lapsed on 8th April, 2010. A second Bill, the Trinidad and Tobago Revenue Authority Bill, 2018, was introduced in Parliament on 25th May, 2018 and referred to a Joint Select Committee of Parliament. Following the debate on the final report of the Joint Select Committee, however, the Bill was withdrawn. A third Bill, the Trinidad and Tobago Revenue Authority Bill, 2019, was introduced in Parliament on 26th November, 2019 but lapsed on 3rd July, 2020.

Each of the abovementioned Bills required the support of a special majority of the members of each House of Parliament to be successfully passed in the Parliament. The Bills required a special majority because they sought to confer the powers, authorities and privileges of members of the Police Service (which are currently exercised by customs officers and other public officers) on persons who were to be appointed by the proposed Trinidad and Tobago Revenue Authority (“the Authority”) and not on public officers appointed by a Service Commission. The Trinidad and Tobago Revenue Authority Bill, 2021 (“the Bill”), however, seeks to confer those powers, authorities and privileges on public officers appointed by the Public Service Commission to offices in the Enforcement Division of the Authority, thereby avoiding the need for a special majority.

The following provisions of the Bill relate to the establishment of the Enforcement Division of the Authority and the removal of the requirement for a special majority.

The Enforcement Division

By clause 14, the Enforcement Division of the Authority would comprise the Deputy Director General – Enforcement and other public officers appointed by the Public Service Commission as well as employees appointed by the Board. The Deputy Director General – Enforcement and the other public officers would be authorised to exercise the powers, authorities and privileges conferred by the Customs laws, the Excise Act or other revenue laws for the purposes of the enforcement of those revenue laws. The Public Service Commission would remove, transfer and exercise disciplinary control over the Deputy Director General – Enforcement and the other public officers of the Enforcement Division and the Board would remove, transfer and exercise disciplinary control over the other employees of the Enforcement Division. Section 35 of the Municipal Corporations Act, Chap. 25:04, provides a precedent for the appointment of public officers to positions in a statutory corporation in as much as it requires the Public Service Commission to appoint, remove, transfer and exercise disciplinary control over the officers of the Municipal Corporations mentioned in the Second Schedule to that Act. Thus, to the extent that the powers, authorities and privileges conferred by the Customs laws, the Excise Act or other revenue laws would continue to be exercised by public officers for the purposes of the enforcement of those revenue laws, the Bill does not infringe the Constitution and does not require a special majority.

New Definitions

Clause 3 provides for the new definitions of “Customs laws”, “Deputy Director General – Enforcement”, “enforcement”, “Enforcement Division” and “Excise Act”.

The term “Customs laws” is defined as having the meaning assigned to it in section 2 of the Customs Act, Chap. 78:01. By section 2 of the Customs Act, “Customs laws” includes the Customs Act and any written law relating to the Customs. Further, section 3 of the Customs Act provides that for the purpose of carrying out the provisions of the Customs laws, all Officers shall have the same powers, authorities and privileges as are given by law to members of the Police Service.

Similarly, “Excise Act” is defined as having the meaning assigned to it in section 3 of the Excise (General Provisions) Act, Chap. 78:50. By section 3 of that Act, “Excise Act” means the Brewery Act, Chap. 87:52, the Spirits and Spirit Compounds Act, Chap. 87:54, the Liquor Licences Act, Chap. 84:10, and any other Act, Regulation, Order or Resolution having the force of law relating to excisable goods. Further, section 5 of the Excise (General Provisions) Act provides that for the purpose of carrying out the provisions of any Excise Act, all Officers shall have the same powers, authorities and privileges as are given by law to constables and all members of the Police Service shall have the same powers, authorities and privileges as are given by law to Officers.

Where the Bill refers to the enforcement of “the Customs laws, the Excise Act and other revenue laws” by the Deputy Director General – Enforcement or the Enforcement Division, it should be noted that the words “other revenue laws” should not be interpreted in their broadest sense but should, in keeping with the *ejusdem general* rule, be construed as embracing only those revenue laws which are similar in nature to the Customs laws and the Excise Act.

The Deputy Director General – Enforcement vis-à-vis the Director General

Clause 13 provides for the introduction of the post of the Deputy Director General – Enforcement who would be a public officer and the head of the Enforcement Division of the Authority. Additionally, the salary and allowances payable to the Deputy Director General – Enforcement and his other terms and conditions of service would be subject to review by the Salaries Review Commission. The Salaries Review Commission is an independent commission established under section 140 of the Constitution and currently reviews the remuneration package of both the Chairman of the Board of Inland Revenue and the Comptroller of Customs and Excise. The review of terms and conditions of service by the Salaries Review Commission therefore supports the independence of the Deputy Director General – Enforcement as head of the Enforcement Division in a manner that is similar to that given to the Chairman of the Board of Inland Revenue and the Comptroller of Customs and Excise.

Clause 14(1)(b) expressly confers on the Director General of the Authority, responsibility for the enforcement of the revenue laws by means of civil proceedings. This is necessary in order to distinguish the enforcement capabilities of the Director General from those of the Deputy Director General – Enforcement.

Clause 14(2) and (5)(c) and (d) set out the responsibilities of the Deputy Director General – Enforcement. The Deputy Director General – Enforcement would be responsible for the daily management and direction of the administration of the Enforcement Division and the enforcement of the Customs laws, the Excise Act and other revenue laws. The Deputy Director

General – Enforcement would be responsible for advising the Director General on any matter that could affect public policy, public finances and on any matter that could improve the effectiveness or efficiency of the administration of the Enforcement Division or the enforcement of the Customs laws, the Excise Act and other revenue laws. The Deputy Director General – Enforcement would, in relation to the management of the Enforcement Division, be subject to the general directions of the Board which would be communicated to him through the Director General. With respect to the enforcement of the Customs laws, the Excise Act and other revenue laws, the Deputy Director General – Enforcement would be subject to the general policy directions of the Minister which would be communicated to him through the Director General. Thus, while the Deputy Director General – Enforcement may be subject to general directions from the Board or the Minister communicated to him through the Director General, the independence of the Deputy Director General – Enforcement in relation to the exercise of his enforcement powers is protected by not subjecting him to specific directions from the Board, the Minister or the Director General.

Options Available to Public Officers

Clause 18(2)(c) enables existing public officers to exercise, *inter alia*, the option to be appointed on transfer by the Public Service Commission to suitable offices in the Enforcement Division. In ***Perch v Attorney General (2003) 62 WIR 461***, the Judicial Committee of the Privy Council considered the Trinidad and Tobago Postal Corporation Act, 1999 and held that options similar to those provided for in clause 18(2)(a), (b) and (d) of the Bill were not unconstitutional, even for those who chose to remain in the Public Service, but for whom no other office in the public service was available. At paragraph 15 of its judgment, the Privy Council stated that “[r]etirement, whether voluntary or compulsory, is a mode of leaving the public service recognised by section 12 of the Civil Service Act. So is the abolition of an office held ... [and it] is established that a legislature or (subject to any relevant legislation) a government may abolish a public office in the interests of good administration.” The option in clause 18(2)(c) of the Bill is similar to the option in clause 18(2)(d) in that they are essentially options to remain in the Public Service and to be transferred by and in the discretion of the Public Service Commission to a suitable office in the Public Service. Clause 18(2) is therefore consistent with the Constitution and does not require a special majority.

Charge on the Consolidated Fund

Clause 23(4) of the Bill provides that the salaries and allowances payable to the public officers in the Enforcement Division shall be a charge on the Consolidated Fund. This is consistent with the obligations of the State to pay the salaries and allowances of public officers.

References in Existing Written Laws

By clause 40(1)(a) of the Bill, provision is made for references in existing written laws to the Chairman of the Board of Inland Revenue or the Comptroller of Customs and Excise to be construed as references to the Deputy Director General – Enforcement with respect to the enforcement of the Customs laws, the Excise Act and other revenue laws. This provision once again demonstrates the intention to transfer the said enforcement powers from one public officer to another public officer, without expanding or otherwise altering those powers and without derogating from any fundamental right guaranteed by section 4 or 5 of the Constitution in a manner in which or to an extent to which the existing law does not currently derogate from that right.