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FROM: THE PORT OF SPAIN OFFICE

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May 15<sup>th</sup> 2024

Freedom Law Chambers,  
No. 3 Harris Street,  
San Fernando  
Trinidad

Attention: Ms.Asaha Ramlal

Dear Madam,

**Re: Pre-action protocol letter dated 12<sup>th</sup> May 2024 in respect of the Proposed Legal Action on behalf of Jaiwantie Ramdass, the Auditor General of Trinidad and Tobago to challenge the appointment of an Investigation Team to investigate the understatement of revenue for the financial year 2023 and related matters**

I refer to your pre-action protocol letter dated 12<sup>th</sup> May 2024 addressed to the Acting Prime Minister, Mr. Colm Imbert, setting out the grounds of your client's proposed claim for judicial review challenging the appointment of an Investigation Team approved by Cabinet.

I instruct Messrs. Douglas Mendes S.C. and Mr. Simon de la Bastide who act as Counsel on behalf of the Cabinet in respect of the proposed legal action at caption.

In your letter you claim in various iterations that the appointment of the Investigation Team ("the Investigation Team") and the investigation which it has been tasked with performing ("the Investigation") are unconstitutional in that they contravene sections 121 and 136 of the Constitution.

In support of her claim that the appointment of the Investigation Team and the Investigation contravene section 136 of the Constitution, your client contends that by virtue of the provisions of that section the actions and conduct of the Auditor General in relation to her constitutional and statutory duties may only be investigated if such an investigation is carried out pursuant to and in accordance with those provisions. For the reasons stated in this letter that contention is devoid of any merit.

Section 136 of the Constitution provides for the removal of the Auditor General from office by the President of the Republic on the advice of a Tribunal set up by the President under section 136 to enquire into allegations of inability to discharge the functions of office whether arising from infirmity of mind or body or any other cause, or for misbehaviour, either at the initiative of the President or upon a representation by the Prime Minister.

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It is clear that the relevant parts of section 136 are limited to prescribing the persons who may make a representation to the President that a tribunal be set up to investigate the question of removing certain officers, including the Auditor General, from office, who may make the decision to set up a tribunal to investigate the question of removing certain officers, including the Auditor General, from office, and who may carry out such an investigation and advise the President. They do not provide that **any** decision to investigate the action and conduct of the person holding the office of Auditor General in relation to the performance of her constitutional/statutory duties, even those which are not concerned with the removal of the person holding the office of Auditor General from that office, may only be made by the President or a Tribunal set up under section 136.

It is clear from the terms of reference of the Investigation Team you refer to in your letter (“ the Terms of Reference”) that it is not being tasked with investigating the question as to whether your client should be removed from the office of Auditor General. Further, to the extent that the Terms of Reference may require the Investigation Team to investigate the conduct of your client, any findings made by the team in that regard will not be binding on the President of the Republic or any tribunal set up under section 136.

The related question as to whether section 137 of the Constitution precluded any investigation into the conduct of a Judge outside of section 137 was considered by the Privy Council in *The Chief Justice of Trinidad and Tobago v The Law Association of Trinidad and Tobago* (2018) UKPC 23. In that case, the Chief Justice brought judicial review proceedings against the Law Association challenging its inquiry into certain allegations made against him. The Chief Justice claimed that the Law Association had no power to conduct the proposed inquiry on the ground, *inter alia*, that section 137 of the Constitution laid down the only way in which the conduct of a judge might be investigated.

Your client makes the same contention with regard to section 136. The Privy Council rejected the Chief Justice’s contention and in that regard Lady Hale stated at [24]:

*“The short answer to all these points is that the LATT is in no position to make findings of fact which are in any way binding upon the Chief Justice or upon any tribunal which might be established under section 137. As acknowledged in its letter of 23 February, the “further steps” to be considered “might include assuring the public that, after due examination, the Law Association is satisfied that the allegations have no merit and/or provide no basis for concern. Or, at the other end of the spectrum, the further steps ... might include referring a complaint to the Prime Minister for him to treat with it as he deems fit.” That is the most that it could do. It is in the same position as any other body or individual which might wish to inquire into such allegations and reach such conclusions as it could upon the evidence available to it. Indeed, as a body of lawyers who have so far proceeded with considerable caution, they might be thought better able to conduct such an investigation and present its conclusions in a responsible manner than many others.”*

The principles and reasoning applied by the Privy Council in ruling in that case that section 137 does not lay down the only way in which the conduct of a judge might be investigated apply equally to section 136. There is no valid basis for distinguishing the present case from the case before the Privy Council.

In that regard, the Investigation Team is not in any position to make findings of fact which are in any way binding upon any tribunal set up under section 136 or on the President. To the extent that the Investigation Team makes any findings with respect to the conduct of the Auditor General the most that might be done is that such findings might be passed on by the Prime Minister to the President for consideration in deciding whether the question of removing the Auditor General should be investigated. Equally, any other individual organisation or entity (such as the press or a non-governmental or other organisation) may carry out their own investigation and report their findings to the President or the Prime Minister.

Your client makes a similar argument in respect of her claim that the appointment of the Investigation Team and the conduct of the Investigation contravenes section 121 of the Constitution, the argument being that section 121 lays down the only way in which the conduct of public officers in the Ministry of Finance may be investigated.

Under section 121 power to remove and exercise disciplinary control over public officers and to enforce standards of conduct of such officers vest in the Public Service Commission. However, it is clear from the Terms of Reference that the Investigation Team is not being tasked with exercising disciplinary control over public officers in the Ministry of Finance or enforcing standards of conduct on such officers. Further, the position with respect to any findings the Investigation Team may make with respect to the conduct of public officers is the same as its position with respect to findings it may make in respect of your client. Those findings will not be in any way binding on the Public Service Commission or any public officer. At most such findings may be passed on to the relevant person or entity for further investigation/decision as to whether disciplinary proceedings/action should be brought/taken in respect of a public officer.

In the circumstances the principles and reasoning applied by the Privy Council in ruling in the *Law Association* case that section 137 does not lay down an exclusive mechanism by which the conduct of a judge might be investigated apply equally to section 121. Section 121 does not lay down the only way in which the conduct of public officers may be investigated.

The conduct of public officers may be investigated by entities other than the Public Service Commission and other than pursuant to procedures set out in the Public Services Regulations given that the findings of such investigations conducted outside of those regulations are not binding on anyone. So, for example, the members of the press are free to carry out investigations into the conduct of public officers and are free to pass on their findings to the relevant persons for further consideration as to whether disciplinary action is warranted.

The accuracy of Public Accounts submitted by the Comptroller of Accounts to the Auditor General and the audit of such accounts by the Auditor General are undoubtedly matters of great importance not only to the Government of Trinidad and Tobago (“the Government”) but to all citizens of this country. In those circumstances, an investigation commissioned by the Government to investigate

amongst other things a material error in the public accounts submitted to the Auditor General resulting in an understatement of revenue in the amount of \$2,599,278,188.72, the Auditor General's initial refusal to consider that error after it was discovered and her reasons for refusing to do so, the serious allegation that public accounts submitted to the Auditor General were backdated and other grave allegations made by the Auditor General in relation to those accounts, and that the Auditor General issued an audit report in respect of the public accounts submitted to her which contained a disclaimer, is clearly warranted and in the national interest.

The Cabinet would clearly be failing in its duty to the country if it did not ensure that these matters were investigated by independent persons so as to: (i) ensure that the causes of the errors in the Public Accounts submitted to the Auditor General and the circumstances that led to the Auditor General submitting a report containing a general disclaimer are identified and addressed so that in the future such errors and circumstances are avoided; and (ii) determine the facts surrounding the allegations made by the Auditor General in relation to the public accounts submitted to her so that in the event they are found to be valid or supported by credible evidence the appropriate steps may be taken.

I note that in your letter you suggest amongst other things that the Minister of Finance is the main protagonist in a conflict with your client and that as part of that conflict he launched an unfounded and malicious attack on her. You also contend that having created a fiasco and political misfortune for himself through that conflict with and attack on your client he has caused the Investigation Team to be appointed and the Investigation to be undertaken in order to distance himself from the said fiasco and misfortune.

Cabinet denies this allegation and repeats that it is the Cabinet which has approved the appointment of the Investigation Team and the Investigation for the purposes already stated at (i) and (ii) above. In any event, we are not aware of any basis upon which your client will be precluded from making to the Investigation Team any submission she may wish to make as to the motives of the Minister of Finance, or, given that the Team comprises of independent persons including a former High Court Judge, of any basis upon which the Investigation Team will fail fairly to consider that submission. Indeed, it is to be expected that your client will have full opportunity to submit to the Investigation Team all of the matters you raise in your letter with respect to the Minister of Finance.

You have also suggested that the bias of the Minister of Finance against your client in this matter is such that he is precluded from appointing independent investigators to investigate this matter. You are reminded that while it is the Minister of Finance who recommended the appointment of the Team to Cabinet, it is the Cabinet which made the decision to appoint the team.

In any event, you have not suggested that any member of the Investigation Team is affected by bias nor have you suggested that the Investigation Team is not independent.

Finally, you say in your letter that your client is expected to drop whatever she is doing and participate in the Investigation without the benefit of independent legal advice. We are not aware of any reason why the Investigation Team will not allow your client the opportunity of giving her views on the matters it has been asked to investigate and to answer any statements made by third parties with respect to your client's duties responsibilities and performance of such duties and

responsibilities. However, whether your client participates in the investigation in that way and takes independent legal advice in that regard is entirely up to her.

In the circumstances and for the reasons stated above the Cabinet is not prepared to cancel or recall the Investigation.

Yours faithfully

A handwritten signature in black ink, appearing to read "Jo-Anne Julien", written over a horizontal line.

Jo-Anne Julien

Attorney-at-Law

[jjulien@mgdaly.com](mailto:jjulien@mgdaly.com)

cc Mr. Colm Imbert

The Honourable Prime Minister of the Republic of Trinidad and Tobago (Acting) and Minister of Finance.

