

The Tobago House of Assembly Act, No. 40 of 1996 — Tobago's Devolved Powers

The Tobago House of Assembly Act is the statute under which Tobago administers its own affairs within Trinidad & Tobago. It defines the THA as a statutory body with delegated administrative powers over a defined list of matters set out in the Fifth Schedule. Investors should understand where THA authority ends and central Government authority begins, the boundary is not always intuitive.

Key Points

- The THA is a statutory body, not a sovereign legislature.
- THA authority extends over the matters listed in the Fifth Schedule (including tourism, agriculture, infrastructure, state lands within Tobago, and local health services).
- The THA does NOT levy national taxes, that remains with the central government.
- Financial autonomy is bounded: the THA operates on appropriations approved by Parliament plus locally-collected revenues, with Cabinet oversight on estimates.
- The Privy Council decision *AG v THA* (UKPC 8) confirmed that the THA cannot enter into long-term borrowing-like arrangements without prior Ministerial or Cabinet approval.
- Constitutional amendment (not judicial interpretation) is required to expand THA autonomy further.

1. What the THA is, and isn't

The Tobago House of Assembly is the elected body responsible for the administration of specific matters relating to Tobago. It is established as a statutory body under Act No. 40 of 1996 (which replaced the 1980 Act). It is NOT a sovereign or federal legislature, its powers are delegated by Parliament and are confined to the matters listed in the Fifth Schedule to the Act.

For investors, this means that some approvals are issued by THA divisions (e.g. certain building permits, health facility licences within Tobago, and lease arrangements over state lands vested in the THA), while others remain with central government agencies (e.g. Town & Country Planning outline approval, EMA environmental clearances, work permits, and Fiscal Incentives).

2. Fifth Schedule matters

The Fifth Schedule delegates administrative responsibility to the THA for a defined list of areas, including:

- Tourism.

- Agriculture, fisheries, and food production.
- Physical infrastructure and public utilities within Tobago (in cooperation with central agencies).
- State lands within Tobago, including leases and dispositions.
- Local health services.
- Sports, culture, and the arts.
- Sports and youth affairs.

The list is prescriptive, the THA cannot act outside the schedule without express delegation.

3. Finance and appropriations

The THA Fund is composed of monies appropriated annually by Parliament and revenues collected in Tobago. The Secretary of Finance submits annual draft estimates of revenue and expenditure to the Assembly, which are then transmitted to Cabinet for consideration and final approval.

Section 43 requires Cabinet to consider Tobago's specific developmental and financial needs — including its physical separation and distinct identity, when allocating resources.

4. The AG v THA Privy Council decision

In *Attorney General v Tobago House of Assembly* [2020] UKPC 8, the Privy Council held that the THA cannot enter into Build, Own, Lease, Transfer ('BOLT') arrangements, or any other long-term financial commitment that is functionally equivalent to borrowing, without prior Ministerial or Cabinet approval. Such arrangements would circumvent the expenditure controls in Part IV of the Act.

For investors contemplating a public-private partnership with the THA, this decision matters: the THA cannot bind itself to long-term availability payments or purchase commitments unilaterally. The Ministry of Finance and (typically) Cabinet must be engaged up-front, attempting to circumvent central government scrutiny will not survive judicial review.

5. Practical implications for investors

- For projects on state lands in Tobago, expect to engage the THA's Division of Infrastructure or the Division of Land Settlement (via LSA) for the lease/rental arrangements.
- For tourism licences, engage the Division of Tourism.
- For agricultural leases, engage the Division of Agriculture in conjunction with the central Land Settlement Agency.
- For PPP proposals, expect to engage both the THA and the central Ministry of Finance / Ministry of Planning, and to receive Cabinet-level scrutiny.

- For everything else touching central regulators (planning, environmental, telecommunications, work permits, foreign investor licences), the central agencies remain the counter-party even where the project is physically located in Tobago.

6. Fiscal autonomy debate

There is an ongoing public debate about expanding Tobago's autonomy through constitutional reform (including entrenchment of the THA and enhanced revenue-raising powers). The Commission monitors these developments closely, but for the moment the 1996 Act remains the governing framework and any expansion of THA authority will require action by the central Parliament, not judicial interpretation.

Sources

- Tobago House of Assembly Act, No. 40 of 1996
- AG v Tobago House of Assembly [2020] UKPC 8
- Martin George, Constitutional Status of the THA

This guide is an informational summary prepared by the Tobago Foreign Direct Investment Commission for the benefit of prospective investors. It does not constitute legal, tax, or financial advice. Legislation and administrative practice change from time to time, always consult a qualified attorney-at-law admitted in Trinidad & Tobago before acting on any of this material. Where a discrepancy exists between this guide and the underlying statute, the statute prevails.