

FROM: Attorney General's Chambers

DATE: 5 September 2024

**RE: Legality of Increased Admission Fees to Pedro St. James and The Queen
Elizabeth II Botanic Park**

Please refer when replying AGC 9582 of 2024

BACKGROUND

1. Prior to The *Cayman Islands National Attractions Authority Act, 2023* ('CINAA Act') coming into force on 1 June 2023, the Cayman Islands National Attractions Authority ('the Authority') had no properly constituted Board nor was there any Board meeting for 6 months (January – June 2023) under the *Tourism Attraction Board Act, 1996* ('the old act') as the Deputy Chairman had resigned in January 2023.
2. After the *CINAA Act* came into force, the management team of the Authority increased the entrance fees to Pedro Saint James and the Queen Elizabeth II Botanic Park ('the attractions') on 1st July 2024. There had been no previous decision to increase fees of the attractions. It was also not a Board decision.

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3. On 1 September 2023, a new Board (“current Board”) was appointed by Cabinet. The current Board has not ratified the decision to increase the fees as the Chairman has opined that approval/ratification is not required. A part of the Chairman’s contention is that ratification of the fee increase is not needed on the basis that *section 25 of the CINAA Act* cures the need for ratification.
 4. The Chambers has therefore been asked to advise on the validity of the decision to increase the entrance fee to the attractions, where no approval/ratification has been given.

ISSUES

5. The issues for determination are therefore:
 - a. Whether the decision taken by the management team of the Authority to increase the entrance fees to the attractions is lawful; and
 - b. Whether *section 25 of the CINAA Act* cures the need for ratification of the decision to increase the entrance fees to the attractions.

LEGAL ANALYSIS

Issue A:

6. The functions of the Authority, *inter alia*, pursuant to *section 5(a) of the CINAA Act* are to:

“(a) execute the general and financial management of all property vested in the Authority or placed under the Authority’s management by this Act or by the Cabinet.”(Emphasis added)
7. In the absence of statutory definition, the ordinary English definition applies. “*Financial management*” refers to the “*strategic planning, organising, directing, and controlling of financial undertakings in an organisation or institute. It also includes applying management principles to the financial assets of an organisation, while also playing an important part in fiscal management.*”¹ Broadly, the primary goal of financial management, is to manage the financial resources efficiently to achieve the

¹ [The Importance of Financial Management \(lsbf.org.uk\)](https://www.lsb.org.uk)

organisation's objectives and maximise value, which in the instant case, does not necessarily entail, either setting or altering, the fees for all services (or any service) and attractions.

8. While the *CINAA Act* does empower the Authority to execute its financial management, this does not, without more, empower the Authority, its servants or the Board to increase the entrance fees to the Attractions. This is so, as the purported enabling Act, the *CINAA Act*, does not directly (nor indirectly) vest within the Authority (and by extension the Board), the power to prescribe fees. An application of '*expressio unius est exclusio alterius*' (*one thing excludes all others*), a rule of construction, whereby the listing of things emphasises the absence of other things - inclusion emphasises exclusion² supports this construction. So too, in *The Commissioner of the Independent Commission of Investigations v Police Federation and others (Jamaica) et al.* [2020] UKPC 11, the UK Privy Council at paragraph 15, reasoned that, "*The Commission [a statutory corporation sole], therefore, only has the powers conferred directly or indirectly upon it by the Act or other relevant legislation*". Therefore, the omission by Parliament to expressly/directly or indirectly empower the Authority, a statutory corporation, to change the fees to the attraction, is intentional, with effect that, such a power is not reposed upon the Authority.
9. In fact, pursuant to *section 23 of the CINAA*, it is only the Cabinet that has such a power. Under that section, the Cabinet after consultation with the Authority, may, by way of regulations, "*prescribe*" the "*fees to be charged by the Authority*", which also imputes, the incidental power to likewise, change or alter those stipulated/prescribed fees, with respect to "*all services and attractions*" vested in the Authority. It states:

"The Cabinet, after consultation with the Authority, may make regulations to –
(b) prescribe the fees to be charged by the Authority for all services and attractions vested in the Authority." (Emphasis added)

10. Plainly read, the above supports a purposive and harmonious construction³ to the effect that, the prescribing of fees (which may necessarily include stating and changing them),

² Statutory Interpretation and the Doctrine of Precedent, Practical Law, UK Practice Note 9-107-4972. Under this rule, the express mention of one person or thing implicitly excludes other person or things.

³ Doctrine of *Noscitur a sociis* (it is known by its associates): Words are known by the company they keep and so must be read in context. Each word is considered in the context of the section it is in and each section within the context of the Act as a whole.

is reserved to the Cabinet, after consultation with the Authority, and to no other body/person.

11. As mentioned, the Authority by itself does not have the power to prescribe or change fees. As we understand it, the current Board is of the view that, the decision of the management team to increase the fees was a sound financial decision. However, the question is not whether the decision was a financially prudent one, rather, whether the *CINAA Act* (or any other relevant/related Act) empowers the Authority (and by extension, its servants and the Board) to so do. As earlier outlined, the Act is clear that neither the Authority, nor its servants, or the Board has such a power.
12. It follows from the reasoning above, that, if the Authority does not have the power to change fees, then it cannot delegate same to the Board. Further, the responsibilities of the Board as outlined under section 8 of the *CINAA Act*, part (a) of which has been outlined below, (as broadly as they may be construed), do not include nor touch and concern prescribing or changing (entrance) fees, with respect to any of the property vested in the Authority. The Board therefore does not have the power to prescribe/change fees nor does it have the power to delegate such power/functions. Under section 8 of the *CINAA Act*, the Board shall be responsible for, *inter alia* :-

“(a) The governance, policy and performance of the Authority and the general conduct of its affairs and business” (Emphasis added)

Issue B:

13. Although the contention with respect to *section 25 of the CINAA Act* falls away, given that it was *unlawful/ultra vires* for the ‘management team’ to increase the fees to the attractions, (without the Cabinet first having prescribed such change of fees), the Chambers is still minded to explain why it would not, in any event, be relevant. Section 25 of the *CINAA Act* provides:

Where a transaction or undertaking was entered into by the Tourism Attraction Board and such transaction or undertaking has not been completed at the date of commencement of this Act that transaction or undertaking shall be executed and completed by the Authority and shall be treated as if the transaction or undertaking were entered into by the Authority and in accordance with relevant procedures under this Act. (Emphasis added)

14. A proper literal construction of the above highlighted transitional provision, indicates that it does not apply to the increase in entrance fees. Section 25 of the *CINAA Act* could therefore not have cured the *ultra vires* decision to increase the entrance fees to the attractions. The reasons for the inapplicability are that, the decision to so increase was:

- a. not taken by the Tourism Attraction Board pursuant to the old Act, as required by section 25 for it to apply; and
- b. the date the decision to change the fees was made, was during the currency/operation of the existing Act (the *CINAA Act*), as opposed to being a decision that was taken under the old Act, which simply, had not been completed or realised by the time the *CINAA Act* had come into force.

CONCLUSION

15. Based on the foregoing, the entrance fees to the attraction cannot be changed unless so prescribed/approved by the Cabinet. Altering or increasing the fees without such consultation and approval by Cabinet is unlawful and *ultra vires* the *CINAA Act*. Further, given that the prescribing of fees by the management team was unlawful, the issue of whether the Board needs to ratify the decision falls away and section 25 of the *CINAA Act* becomes irrelevant.

RECOMMENDATION

16. Entrance Fees at the attractions should revert to the original value before the increase. All future matters regarding prescribing of such fees (including increasing or decreasing fees) must be approved by Cabinet (after consulting with the Authority).

We so advise.

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