

THE PUBLIC BODIES MANAGEMENT AND
ACCOUNTABILITY ACT

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SCHEDULES

THE PUBLIC BODIES MANAGEMENT AND
ACCOUNTABILITY ACT

Acts
30 of 2001,
12 of 2003,
7 of 2010,
20 of 2011.

[28th December, 2001.]

1. This Act may be cited as the Public Bodies Management and Accountability Act. Short title.

PART I. *Preliminary*

2. In this Act unless the context otherwise requires— Interpretation.
- “board” means the board of directors of a public body;
- “constituent documents” means the documents of incorporation of a government company;
- “financial distribution” means a distribution made from profits, surpluses or equity; 20/2011
S.2(c).
- “financial year” in relation to a public body means, except as may be otherwise provided in any other enactment, a period of twelve months beginning on the 1st day of April of a calendar year and ending on the 31st day of March of the next calendar year; 20/2011
S.2(c).
- “government company” means a company registered under the Companies Act, being a company in which the Government or an agency of the Government, is in a position to direct the policy of that company;
- “public body” means a statutory body or authority or any government company, but does not include an executive agency designated under the *Executive Agencies Act*; 12/2003
S. 2(b);
20/2011
S.2(b).
- “relevant enactment” means any enactment under which a public body is established;

“responsible Minister” means, in relation to a public body, the Minister responsible for that body.

20/2011
S.2(c).

“statutory body or authority” means a body corporate established by an Act of Parliament over which the Government or an Agency of the Government exercises control.

PART II. *Corporate Governance and Accountability*

Estimates of
revenue and
expenditure.
7/2010
S. 2.
20/2011
S.3.

2A.—(1) Before the end of each financial year, the Minister shall cause to be prepared in such form as may be approved by the him, estimates of revenue and expenditure for public bodies, with respect to the ensuing financial year, containing—

- (a) summary of the corporate plan submitted by each public body, pursuant to section 7;
- (b) information necessary for the compilation of the Fiscal Policy Paper, as it relates to that public body; and
- (c) other data and information pertaining to those public bodies, as the Minister considers appropriate.

(2) The Minister shall cause the estimates referred to in subsection (1) to be laid before the House of Representatives and the Senate for approval.

Minister may
exempt public
body.
20/2011
S.4.

2B. The Minister may by order, subject to affirmative resolution, exempt a public body from all or any of the provisions of this Act.

Accounts of
public bodies.
20/2011
S.5.

3.—(1) The accounts of public bodies shall be prepared in accordance with generally accepted accounting principles promulgated from time to time, by the Institute of Chartered Accountants of Jamaica, or such other body as the Minister may specify by order.

(2) As soon as possible after the end of each financial year, but not more than four months thereafter, the board of a public body shall submit the annual report including audited financial statements of the public body to the responsible Minister, who shall cause the report and statements to be laid on the Table of the House of Representatives and of the Senate.

4.—(1) In acquiring any shares, a public body shall act in accordance with regulations made under section 24.

Sharehold-
ings and
distribu-
tions.
20/2011
S.6.

(2) The Minister may from time to time direct the Accountant-General, in writing, as to the manner in which the Accountant-General should exercise his powers as a shareholder in any government company

(3) All dividends payable in respect of shares held by the Accountant-General in a government company shall be paid in accordance with regulations made under section 24.

(4) An annual financial distribution made by a self-financed statutory body or authority to the Consolidated Fund shall be in accordance with regulations made under section 24.

(5) Notwithstanding subsections (3) and (4), a public body may be requested by the Financial Secretary to pay a special distribution into the Consolidated Fund in accordance with regulations made under section 24.

(6) Notwithstanding the provisions of section 25(3) of the *Companies Act* (which relate to the filing of accounts by private companies) a public body which is a Government company shall file accounts in accordance with that section.

5.—(1) Notwithstanding the provisions of any relevant enactment or constituent document, a public body shall not, without the prior written approval of the Minister—

Exercise of
borrowing
powers.
7/2010
S. 3(a).

(a) exercise any borrowing powers; or

(b) enter into negotiations, or take any other steps, to borrow money by way of the issue of bonds or other debt securities.

(2) An application for approval under subsection (1) shall state the reasons therefor and, where approval is sought pursuant to subsection (1)(a) for the exercise of borrowing powers and the terms and conditions under which such borrowing will be effected.

7/2010
S. 3(b).

(3) The provision of subsection (1) shall not apply to the Bank of Jamaica in the exercise of borrowing powers in the performance of functions relating to monetary policy.

7/2010
S. 3(c).

7/2010
S.3(c).

(4) At the end of each financial year, the Minister shall make a report to the House of Representatives and to the Senate as to every contravention of subsection (1) occurring in that financial year, and where the Attorney-General has made an application pursuant to section 25 (1) or (4), the status of that application.

20/2011
S.7.

(5) The Minister shall not give his approval under subsection (1) unless satisfied that the proposed borrowing is consistent with the debt reduction target specified in section 48C(1) (b) of the *Financial Administration and Audit Act*.

Payments to
public body.
20/2011
S.8.

5A.—(1) Subject to subsection (4), no payment shall be made from the Consolidated Fund to any public body by way of—

- (a) grant;
- (b) capital contribution;
- (c) loan; or
- (d) assignment of revenue,

and no guarantee may be given to any such public body, being a guarantee which may necessitate payment from the Consolidated Fund, unless the conditions set out in subsection (2) are met.

(2) The conditions referred to in subsection (1) are that—

- (a) the prior approval of the House of Representatives has been obtained for such payment or guarantee (as the case may be);
- (b) subject to section 5B, an agreement in writing has been made between the Financial Secretary and the public body, stating the terms and conditions under which the payment or guarantee will be made; and
- (c) where appropriate, the public body has lodged with the Financial Secretary and any other accounting officer concerned, copies of—

- (i) its constitution or, as the case may be, its articles of incorporation; and
- (ii) its latest annual report and audited financial statements.

(3) Where any agreement referred to in subsection (2)(b) is in force, the public shall, within four months after the end of the financial year, submit to its accounting officer—

- (a) its latest annual report and audited financial statement; and
- (b) a certificate, signed by the auditor of that public body, stating whether the terms of the agreement have been met.

(4) Notwithstanding subsection (1), guarantees which are still outstanding at the date of commencement of the *Public Bodies Management and Accountability Amendment Act, 2011*, may be paid from the Consolidated Fund.

5B.—(1) The accounting officer concerned shall, in relation to any agreement referred to in section 5A (2)(b) —

- (a) carry out such investigations as may be necessary of the circumstances in which the payment or guarantee is sought, and shall report his findings to the Minister and to the responsible Minister.
- (b) ensure that provision is made prior to the execution of any such agreement for the effective carrying out of Government policy and for the protection of the financial interests of the Government if—
 - (i) there is a default in complying with the terms of any such agreement; or
 - (ii) the accounting officer has reasonable grounds for believing that any such default is likely to occur;
- (c) carry out such investigation as may be necessary in the circumstances giving rise to such default or the likelihood thereof, and report his findings to the responsible Minister.

Powers of
accounting
officer in
relation to
public
bodies.
20/2011
S.8.

(2) Any such guarantee agreement may provide for the inspection on a regular basis, by the principal accounting officer concerned, of the accounts of the public body—

(3) For the purpose of any inspection mentioned in subsection (2), the accounting officer concerned shall be entitled at all reasonable times to examine the public body's—

- (a) assets;
- (b) accounts;
- (c) documents;
- (d) files; and
- (e) other records.

in whatever form they may be.

Powers of
Minister.⁶
20/2011
S.8.

5C.—(1) Where a report is made to the Minister pursuant to section 5B in respect of any default by a public body, the Minister may, after consultation with the Minister responsible for that public body—

- (a) direct that any guarantee agreement made in relation to that body pursuant to section 5A(1) be revised;
- (b) specify the remedial action to be taken by that body;
- (c) direct that an investigation of the circumstances of the default be carried out by persons specified by him.

(2) Where any principal accounting officer is responsible for any default in complying with the terms of any such guarantee agreement, the public body concerned may appeal to the Minister responsible for that body to take appropriate action.

6.—(1) Every board shall—

Corporate
governance.

(a) take such steps as are necessary—

(i) for the efficient and effective management of the public body;

(ii) to ensure the accountability of all persons who manage the resources of the public body;

(b) develop adequate information, control, evaluation and reporting systems within the body;

(c) develop specific and measurable objectives and performance targets for that body;

(d) advise the responsible Minister on matters of general policy relating to the management of the body;

(e) notwithstanding the provisions of any relevant enactment or any constituent document, enter into a performance contract with its Chief Executive Officer (or person performing like duties, by whatsoever title designated), on terms approved by the responsible Minister and the Minister.

7/2010
S. 4.

(2) The Minister shall, after consultation with the Auditor-General, the Institute of Chartered Accountants of Jamaica, and such other persons having expertise in corporate governance as the Minister considers appropriate, prescribe and keep under review, a code of conduct for boards of directors of public bodies.

20/2011
S.9.

6A. Every public body shall adhere to the Government's procurement rules and guidelines made under any enactment.

Public
bodies and
the Govern-
ment's
procurement
rules.
20/2011
S.10.

7.—(1) The Board of Directors of a public body shall, not later than three months before the end of the financial year of the public body, deliver to the responsible Minister (and a copy thereof to the Minister) a draft corporate plan in accordance with regulations made hereunder.

Corporate
plan.
7/2010
S. 5(a).

First Schedule: (2) Every corporate plan shall contain the information specified in the First Schedule.

(3) The board shall—

(a) consider any comments on the draft corporate plan that are made by the responsible Minister (and, where applicable, the Minister); and

(b) within one month after delivery of the draft corporate plan in accordance with subsection (1), deliver the final corporate plan to—

(i) the responsible Minister; and

(ii) the Minister for his endorsement.

(4) Subject to subsection (5), the board may modify a corporate plan and shall deliver the modification to the Minister for his endorsement.

(5) Where a board intends to modify a corporate plan it shall—

(a) give written notice of that intention to the responsible Minister and the Minister, stating the nature of the proposed modification;

(b) take into account any comments made by the responsible Minister and the Minister, in relation thereto.

(6) The Minister shall, as soon as possible after endorsing any final corporate plan, or any modification of a corporate plan, pursuant to this section, cause a copy of the plan or modification (as the case may be) to be tabled in the House of Representatives and the Senate for approval.

7A. The Financial Secretary may, from time to time, request the board of a public body to supply information on its financial

operations, and the board shall comply with the request within such time as may be specified in the request by the Financial Secretary.

8.—(1) Subject to subsections (2) and (3), every public body that has four or more directors shall establish an audit committee consisting of not less than three directors.

Audit committees and auditors.
20/2011
S. 11(a).

(2) The board of a public body with three or less than three directors shall constitute the audit committee of that body.

(3) The majority of members of an audit committee shall not be officers or employees of the public body.

(4) The auditor of a public body shall—

- (a) be entitled to be given notice of and attend every meeting of the directors or audit committee, in relation to matters concerning the auditor's functions or on which the auditor has made a report; and
- (b) attend every such meeting when requested to do so by the directors or audit committee.

(5) The auditor of a public body shall be entitled to—

20/2011
S. 11(b).

- (a) attend an annual general meeting of the public body;
- (b) receive all notices of and other communications relating to any annual general meeting which any member of the public body is entitled to receive;
- (c) be heard at any such annual general meeting which he attends, regarding any part of the business of the meeting which concerns him as auditor.

(6) For the purpose of ensuring that the audit committee of a public body has the capability to perform the duties of the audit committee, the board may co-opt, to perform the duties of the audit committee, individuals who are not members of the board but who possess a broad range of qualifications relevant to the functions of the public body.

20/2011
S. 11(b).

(7) At least one member of the audit committee shall be a qualified accountant, registered under the *Public Accountancy Act*, or possess expertise in the area of finance.

20/2011
S. 11(b).

20/2011
S. 11(b).

(8) Every individual co-opted pursuant to subsection (6) shall have all the rights and responsibilities of the other members of the audit committee in respect the work of that committee.

Duties of audit
committees.

9.—(1) The audit committee of a public body shall—

(a) advise the board on—

- (i) practices and procedures which will promote productivity and the quality and volume of service;
- (ii) the extent to which the objects of the public body are being achieved; and
- (iii) the adequacy, efficiency and effectiveness of the accounting and internal control structure and systems of the public body;
- (iv) the independence of the auditors auditing the public body;

(b) review and advise the board on the financial statements that are to be included in the annual report of the public body;

(c) oversee any internal audit of the public body;

(d) review and advise the board on the annual auditor's report;

(e) in the case of a public body undergoing a special audit or examination, review and advise the board with respect to the report of that audit or examination; and

(f) perform such other functions as are assigned to it by the board.

(2) The audit committee shall keep detailed records of its meetings and such records shall be made available to the external auditor and any examiner of a public body during any external audit or examination.

Code of audit
practices.

10.—(1) The Financial Secretary shall, after consultation with public bodies, the Auditor-General, the Institute of Chartered Accountants of Jamaica and such other suitably qualified

persons as may be expedient, prepare and keep under review, a code of audit practices prescribing the way in which auditors are to carry out their functions under this Act.

(2) The code shall conform with generally accepted auditing standards.

11. The auditor or examiner of a public body may at any time consult the Auditor-General on any matter relating to his audit or special examination.

Consulta-
tion with
Auditor-
General.

12.—(1) Where, in any particular case, the responsible Minister has reasonable cause to believe that a special audit of a public body should be conducted by an auditor other than the public body's auditor, the responsible Minister may appoint an auditor or a firm of auditors for that purpose.

Special
audit or
examination
of public
body.

(2) Where an auditor or a firm of auditors is appointed pursuant to subsection (1), the responsible Minister shall require that auditor or firm to carry out and report in writing to the responsible Minister on—

- (a) such examination of the public body's procedures as the responsible Minister may specify in order to determine whether or not those procedures are adequate for securing economy, efficiency and effectiveness in its use of the body's financial, human, physical and other resources;
- (b) such other examination of the public body as, in the responsible Minister's opinion, is necessary in the public interest.

(3) The expenses, as approved by the responsible Minister, of any audit or examination carried out pursuant to subsection (1) shall be paid by the public body concerned.

13.—(1) Subject to subsection (2), the Minister may, by order, prescribe the criteria for appointment of an auditor for a public body.

Appoint-
ment of
auditors.
20/2011
S.13(a)(b).

(2) A person is not qualified to be appointed or hold an appointment as an auditor for a public body unless he is a registered public accountant under the *Public Accountancy Act*;

(3) Where a board does not recommend the renewal of appointment of an auditor, the board shall give written notice to the Auditor-General and the responsible Minister, stating the reasons therefor.

(4) Where an auditor withdraws his services in relation to a public body, he shall give notice in writing, stating his reasons, to the Auditor-General and the responsible Minister.

(5) A person shall not be eligible for appointment as an auditor of a public body if he—

(a) is a director, officer or employee of the public body or any of its affiliates or is a business partner of any director, officer or employee of the public body or any of its affiliates;

(b) beneficially owns or controls, directly or indirectly, a material interest in the shares or debts of the public body or any of its affiliates, or

(c) has been a receiver, receiver-manager or liquidator of the public body or any of its affiliates within two years of his proposed appointment as auditor of that public body.

(6) An auditor of a public body who becomes disqualified by virtue of subsection (1) or (5) shall resign forthwith upon becoming aware of the disqualification.

13A.—(1) Notwithstanding anything to the contrary contained in any other enactment, the Auditor-General may, if he thinks fit, audit the accounts of any public body, and shall do so if the House of Representatives, by resolution, so directs.

(2) The Auditor-General's report on his examination and audit of any accounts audited pursuant to subsection (1) shall be submitted to the responsible Minister for presentation, subject to the requirements of subsection (3) (a), to the House of Representatives.

(3) The requirements of this subsection are that—

- (a) the responsible Minister shall—
- (i) obtain the observations of the public body concerned on any matter to which attention has been drawn by the Auditor-General in his report; and
 - (ii) cause such observations to be presented to the House of Representatives, together with the report;
- (b) if the responsible Minister fails, within two months after receipt of the report, to present it to the House of Representatives, the Auditor-General shall transmit a copy of the report to the Speaker of the House to be presented by him to the House.

13B.—(1) In exercise of his duties under section 13A, the Auditor-General may authorize any person who is a registered public accountant under the *Public Accountancy Act*, to inspect, examine or audit the books and accounts of any public body which the Auditor-General may require to be examined or audited; and that person shall report his findings to the Auditor-General.

Powers of Auditor-General to order audit of books of public body. 20/2011 S.14.

(2) In exercise of his duties in relation to public bodies, the Auditor-General, or any auditor appointed by the Auditor-General shall have like powers as are vested in the Auditor-General for the purpose of examining accounts under sections 25 and 28 of the *Financial Administration and Audit Act*.

(3) Each public body referred to in subsection (1) shall pay the person authorized pursuant to subsection(1) such fees as may be determined by the Auditor-General, after consultation with the Financial Secretary.

13C. Where—

- (a) the appointment of an auditor is not renewed by the board of a public body, the board shall inform the Auditor-General in writing of the reasons therefor; or

Auditor-General to be informed re termination of auditor's services. 20/2011 S.14.

- (b) any auditor withdraws his services in relation to the audit of the accounts of any public body, he shall inform the Auditor-General in writing of such withdrawal, and the Auditor-General shall inquire into the matter and report his findings to the Minister.

General duties
of auditors.
20/2011
S.15.

14.—(1) In auditing the accounts of a public body, an auditor shall ascertain and thereafter shall report to the board whether in his opinion—

- (a) the provisions of this Act, the relevant enactment or any other enactment relating to the administration of money and property of the public body have been complied with;
- (b) the rules and procedures framed and applied are sufficient to secure an effective check on the assessment, collection and proper allocation of the revenue and other receipts of the public body; and
- (c) essential records have been made and proper practices have been observed in the compilation of the accounts.

(2) The auditor shall comply with any code of audit practices for the time being in force in respect of the public body.

(3) The auditor shall report in writing to the board whenever he—

- (a) has reasonable grounds for believing that the public body's circumstances have changed, are changing or are likely to change in such a manner as to—
- (i) materially and adversely affect the viability of that body; or
- (ii) otherwise impair its ability to carry out its functions;
- (b) becomes aware of an occurrence or transaction that affects or might reasonably be expected to affect the public body as described in paragraph (a);

(c) becomes aware that the board or any member thereof or any officer of the public body has contravened a provision of a relevant enactment or this Act or any regulations made hereunder.

(4) The auditor may prepare separate auditor's reports on the public body's financial statements if, in the auditor's opinion, separate reports would be more appropriate.

(5) The auditor shall submit such other reports respecting the public body or any subsidiary thereof as the Auditor-General may require.

Auditor's Right to Information

15. The directors or former directors, officers, employees or agents of a public body shall furnish to the auditor such information and explanation and records, documents, books of accounts and vouchers of the public body or any of its subsidiaries as the auditor may require in order to enable him to prepare any report required by this Act or any relevant enactment.

Auditor's
right to
information.

16.—(1) A director or officer of a public body shall, on becoming aware of any material error or omission in a financial statement to which a report prepared by the auditor relates, forthwith notify the auditor of that error or omission.

Errors and
omissions.

(2) An auditor or former auditor of a public body who is notified pursuant to subsection (1) or becomes aware of any material error or omission in a financial statement to which a report prepared by the auditor or former auditor relates, shall forthwith notify each director of the public body of that error or omission.

(3) Where an auditor or former auditor of a public body notifies the directors of an error or omission in accordance with subsection (2), the auditor or former auditor shall issue a correction to the report and a copy thereof shall be given to the Auditor-General, the responsible Minister and the Minister.

PART III. *Duty of Care, Disclosures, etc., of Directors and Officers*

Duty of care.

17.—(1) Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties—

- (a) act honestly and in good faith in the best interests of the public body; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.

(2) A director who is directly or indirectly interested in any matter which is being dealt with by the board—

- (a) shall disclose the nature of his interest at a board meeting;
- (b) shall not take part in any deliberation of the board with respect to that matter.

Dissent of absent director.

18. A director who was absent from a board meeting at which a resolution was passed or any other action was taken, shall be deemed to have consented thereto unless, within seven days after becoming aware of that resolution or action, as the case may be, the director—

- (a) causes written notice of his dissent to be appended to the minutes of the meeting; or
- (b) delivers such notice to the registered office of the body or sends such notice by registered mail addressed to that office.

Reliance on statement.
20/2011
S.16(b).

19.—(1) A director or officer shall not be liable for a breach of duty under section 17(1) if he relies in good faith on a report of an attorney-at-law, accountant, engineer, valuer or any other person whose profession gives authority to a statement made by him including any director or officer who has provided such report in his professional capacity.

