

# **BACKGROUND TO THE PUBLIC BODIES MANAGEMENT AND ACCOUNTABILITY ACT 2001**

## **1.0 Introduction**

1.1 Since the 1980s, administrations have been giving consideration to instituting a structured framework to address the accountability and efficiency of public sector enterprises. This need was further highlighted in the early 1990s when the Government had to assume substantial debt obligations on the divestment of two large public sector entities. In more recent times, the Government, in addition to shouldering the FINSAC debt obligations, has had to meet massive debts of other public sector entities. The Government, in attempting to improve the efficiency and accountability of public sector entities, appointed a committee to examine and make recommendations on these matters<sup>1</sup>.

1.2 The findings of the Committee indicated that generally: -

- Enterprises lacked a clear understanding of their roles and their relationship with the Portfolio Ministry and the Ministry of Finance and Planning (MOFP)
- Changes in Boards of Directors usually coincided with each change of Administration, and that appointments often lacked quality membership and relevant skills
- The monitoring role of the MOFP was not known, or, where known, was not complied with on a timely basis

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<sup>1</sup> *The report so generated has now been referred to as the “Thorburn Committee Report”*

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- There was little structured monitoring by Portfolio Ministries
- Entities generally did not prepare Business Plans
- Entities maintained poor financial records and were frequently late in reporting

1.3 A major recommendation of the Committee was that there should be early enactment of umbrella legislation applicable to the accountability of all public sector entities. The GOJ accepted this recommendation and pursuant to Cabinet Decision No. 10 of March 20, 2000 Cabinet gave approval for:

- a) the withdrawal of the previous decision to develop Regulations in accordance with the provisions of Section 50 of the Financial Administration and Audit Act (FAA Act); and
- b) the issue of drafting instructions to the Chief Parliamentary Counsel for the development of new legislation to give effect to good corporate governance and accountability of Public Bodies.

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## **2.0 Other Issues**

- 2.1 Guidelines to financial management in Public Sector Entities<sup>2</sup> are currently being developed. Specifically, the MOFP (Public Sector Establishment Division) has been involved in the development of a comprehensive Pay and Benefits Policy for the Public Sector; and a Code of Ethics for Board of Directors is also being prepared jointly by the MOFP and the Cabinet Office. These will be made available to the respective public sector entities as soon as they become available.
- 2.2 Even as these guidelines are implemented, there will be the need for refinement to accommodate current thinking and they will be communicated on a timely basis to all concerned parties.
- 2.3 To dispel any notion of micro-management by the MOFP, or for that matter, the Portfolio Ministry, the Act, together with the above mentioned policy guidelines, will also place a greater duty of care on the Internal Auditor, the External Auditor, and the Audit Committee of the respective Boards of the public body.

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<sup>2</sup> *On Tuesday 7 December 1999, the Honourable Prime Minister laid before Parliament the “Guidelines to Financial Management in Public Sector Entities” which were first issued in October 1996. Subsequently, HMOF indicated that the Guidelines would remain in place until the Regulations referred to in paragraph 1.3 (a) above became operative.*

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2.4 Appendix A summarises the overall actions provided in the Act which will be under the direction of the Minister of Finance and Planning, the responsible/portfolio Minister, the Board of Directors as well as the external auditors. Highlights of the Act are provided in paragraph 3.0 below.

### **3.0 Highlights of the Act**

3.1 The Act seeks to increase the accountability of all public bodies and provides *inter alia* for:

- a) Improvements in corporate governance and accountability in the areas of
  - i. Reporting:-
    - to Parliament, by the tabling of the annual report - including the audited financial statements of public bodies - in the House of Representatives by the Responsible Minister within a specified time frame<sup>3</sup>.

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<sup>3</sup> *There is wide disparity in the requirements of the timing of Annual Reports in the FAA Act and individual Acts ranging from 2½ months to 6 months, after the end of the financial year. The intention is to standardise the required timing and also to bring them more in line with international standards.*

<i>Jamaica Stock Exchange</i>	<i>90 days after annual audit</i>
<i>Caribbean Companies</i>	<i>90 days after annual audit</i>
<i>Canadian Companies</i>	<i>3 months after the year-end</i>
<i>New Zealand Companies</i>	<i>3 months after the year-end</i>

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- to the responsible Minister by the submission of half yearly and quarterly reports
  - to the Minister of Finance and Planning on matters of a financial nature
- ii. Approval/consultation with the Minister of Finance and Planning on matters which will/may have a financial impact on the Consolidated Fund. These include:
- The exercise of borrowing powers<sup>4</sup>
  - The acquisition of shares by a public body whose primary business does not involve the acquisition of shares
  - The formation of new companies
- iii. Collective responsibilities of boards of directors in promoting efficient and effective management. This involves the
- accountability of management personnel
  - development of specific and measurable objectives and performance targets, as well as
  - development of adequate internal control systems.
- iv. Audit committees.
- The criteria for establishment, the duties of the committee and the code of audit practices prescribing the way in which auditors are to carry out their functions under the Act have been detailed. The Act also provides for consultation with

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the Auditor General on any matter relating to his audit or special examination.

v. Special examinations.

The conduct of special audit or examination is specifically addressed, thereby allowing the responsible Minister to appoint an auditor or firm of auditors to determine whether adequate procedures are instituted for securing economy, efficiency and effectiveness in the use of the organisation's financial, human, physical and other resources.

vi. External auditors.

The appointment of auditors, their general duties as well as the auditor's right to information are addressed in the legislation. Details of the procedure for dealing with errors and omissions in financial statements are also addressed.

b) Establishing a measure of the duty of care, disclosure and general conduct of Directors and officers. This includes:

- i. the procedure for addressing dissent of an absent director
- ii. specifying that where a director or officer relies in good faith on a report of a person whose profession gives authority to a statement made by him he/she shall not be liable for breach of duty

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<sup>4</sup> *Of relevance here is the matter of contingent liabilities which would crystallise if entities default on debts or suffer losses from high-risk investments.*

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- iii. the guidelines for the establishment of levels of emoluments payable to staff<sup>5</sup>
  
- c) Providing sanctions for non-compliance with the provisions relating to corporate governance and accountability. These include a pecuniary penalty not exceeding one million dollars or an injunction restraining that person from engaging in the activity, having regard to:
  - i. The nature and extent of the default
  - ii. The nature and extent of any loss suffered as a result of the default
  - iii. The circumstances of the default, and
  - iv. Any previous determination against the person concerned.
  
- d) Detailing the format and content of reports that are to be generated by the public bodies. This should ensure that there is uniformity in reporting as well as the level of detail and information expected for decision-making. The contents of the following reports have been detailed:
  - The Annual Report
  - The Corporate Plan
  - Quarterly Reports
  - Half-yearly reports

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<sup>5</sup> Refer to Paragraph 2.0 above.

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- e) Disclosure of the emoluments of the chairman, directors, chief executive officer and senior managers in the Annual Report.
- 3.2 In effecting the level of detail required in the legislation, it will be necessary to repeal sections of the FAA Act which have been expanded and/or clarified in the Public Bodies Act. These sections pertain to the submission of accounts and the acquisition of shares.

**4.0 Evaluation of Reports Submitted to the House of Representatives and the Senate**

- 4.1 The MOFP has been providing Parliament with the Estimates of Revenue and Expenditure and other documentation on the Selected Public Sector Entities (SPEs) since 1986 and Other Public Sector Entities (OPEs) since 1997. The Ministry is developing the capacity to accommodate financial data and analyses of all public bodies and this would be used as the vehicle to inform the House.

**5.0 Conclusion**

- 5.1 The Government has taken this initiative in order to address the issues of efficiency and accountability in public bodies. The legislation will therefore assist in the provision of good corporate governance, accountability and efficiency which are necessary prerequisites to the achievement of growth in the economy.

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STAKEHOLDERS	RESPONSIBILITIES	SECTION REFERENCE
<b>MINISTERS</b>		
Minister of Finance and Planning	Consult re acquisition of shares	4 (1)
	Direct the Accountant General in writing as to the manner in which his powers as a shareholder in any government company should be exercised	4 (5)
	Approve exercise of borrowing powers	5 (1)
	Prescribe the criteria for appointment of an auditor for a public body	13 (1)
	Consult with the responsible Minister on the formation of any new company	21 (1)
	Make regulations generally giving effect to the provisions and purposes of this Act	24 (1)
Responsible Minister	Lay on the Table of the House of Representatives the Annual Report and Audited Financial Statements	3
	Lay on the Table of the House of Representatives and the Senate a copy of the Corporate Plan	7 (6)
	Appoint auditors for Special Examination	12 (1)
	Give written approval for the formation of a new company after consultation with the Minister of Finance	21 (1)
<b>BOARD OF DIRECTORS</b>	Deliver a draft Corporate Plan to the responsible Minister and a copy to the Minister of Finance by the 1 <sup>st</sup> day of January each year.	7 (1)
	Deliver the final Corporate Plan to the responsible Minister for his approval	7 (3) (a)
	Deliver a copy of the approved Plan to the Minister of Finance on or before the 31 <sup>st</sup> day of January each year	7 (3) (b)

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STAKEHOLDERS	RESPONSIBILITIES	SECTION REFERENCE
<b>BOARD OF DIRECTORS</b> Cont'd	Give written notice of any modification to the Corporate Plan to the Minister of Finance	7 (4)
	Constitute an audit committee of not less than three (3) members	8 (1)
	Give written notice to the Auditor-General and the responsible Minister for not recommending the renewal of the appointment of an auditor	13 (2)
	Act in accordance with any guidelines on emoluments issued from time to time by the Minister responsible for the Public Service	20
	Submit to the responsible Minister half-yearly and quarterly reports	23
<b>DIRECTORS</b>	Disclose the nature of any direct or indirect interest in any matter being dealt with by the board and refrain from any deliberation of the board on the matter	17 (2)
	Provide written notice of his dissent on any matter dealt with at a board meeting at which he was absent	18
<b>AUDITORS</b>	Consult with the Auditor-General on any matter relating to his audit or special examination	11
	Give written notice, with reasons, to the Auditor General and the responsible Minister, for the withdrawal of services	13 (3)
	Refrain from accepting an appointment or resign forthwith as auditor of the public body upon becoming aware of a disqualification by virtue of being a director or officer of the public body or any other criteria as specified in the Act	13 (4) & (5)
	Report in writing to the Board of Directors on a range of matters detailed in the Act	14 (1) – (5)
	Notify each director of any error or omission contained in any report which is prepared by the auditor and issue a correction to the report. Copy the corrected report to the Auditor General, the responsible Minister and the Minister of Finance and Planning	16 (3)